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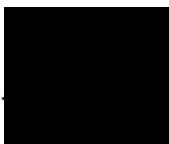
PhD Thesis

THE VIABILITY OF APPLYING ALTERNATIVE DISPUTE RESOLUTION
PROCESSES IN THE NIGER DELTA CONFLICT

Ofinjite Joy Ogaji

This thesis is submitted in partial fulfilment of the requirements for a Doctor of
Philosophy degree in Law at the School of Law, University of Warwick, Coventry,
United Kingdom.

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Abstract

As the resource related conflict in the Niger Delta area of Nigeria escalates at a furious pace, it is becoming clear that traditional means of dispute resolution (such as litigation and violence) are no longer applicable. Research has also shown that no method of dispute resolution can be efficient, equitable and administratively practicable without the collective effort of all parties involved; individuals, institutions and non-governmental organizations need to work together to develop a countrywide ability to design an effective conflict resolution system. While there is a perceived need for a viable dispute resolution process, to date, no concerted effort has been made to harness relevant experiences and build a network of practitioners skilled in the management of such conflicts.

The emerging Alternative Dispute Resolution (ADR) methods (which do not involve litigation) may offer opportunities to resolve disputes in the Niger Delta region more effectively than litigation-based means. In view of this, this research assesses indigenous dispute resolution processes in terms of their potential applicability as alternative dispute resolution processes for the Niger Delta conflict. The review also provides insights into the criteria used to support decision making as it relates to choosing the most appropriate dispute resolution process. To do this, this research advocates a hybrid model (an integration of both customary indigenous process and westernised mediation process). The choice of a hybrid model is predicated on the assumption that the Niger Delta is a hub for investors, where both locals (indigenes) and outsiders (foreigners) interact and relate together in pursuit of a common goal. Experience at the grass roots level in one community may also provide guidance for conflict resolution at similar levels in other communities.

Keywords: *Conflict, Niger Delta, Alternative Dispute Resolution (ADR), Western, Indigenous, Hybrid, Mediation.*

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Table of Abbreviations / Acronyms

ADR   Alternative Dispute Resolution

AMDC   Abuja Multi-Door Court House

AGIP   Azienda Generale Italiana Petroli

ECHR   European Convention on Human Rights

ENE   Early Neutral Evaluation

EMIROAF   Ethnic Minority Organization of Africa

EU   European Union

GDP   Gross Domestic Product

GoN   Government of Nigeria

IOC   International Oil companies

LCIA   London Court of International Arbitration

LMDC   Lagos Multi-Door Court House

MOU   Memorandum of Understanding

MOSOP   Movement for the Survival of Ogoni People

MNC   Multinational corporation

MEND   Movement for the Emancipation of the Niger Delta

NAOC   Nigerian Agip Oil Company

NDCS   Niger Delta Communities

NGO   Non-Governmental Organization

NNPC   Nigerian National Petroleum Company

OGC   Oil and Gas Company

PHC   Port Harcourt

RCPC   Rivers State Chiefs and People's Conference.

SPDC   Shell Petroleum Development Company of Nigeria Limited

UNEP   United Nations Environment Programme

WC   Willink Commission

WB   World Bank

WIPO   World Intellectual Property Organization

Table of Cases

Case	Citations
Shell Petroleum Development Company v. Farah	[1995] 3 NWLR [Part 382] p.148
Dunnett v Railtrack	[2002] EWCA Civ 302,
Frank Cowl v. Plymouth County Council	[2001] EWCA Civ 1935.
Egesimba v. Onuzurike	[2002] 15 NWLR [Part 791] p. 466 at pp 512-513.
Nzekwu v Attorney-General East-Central State	[1972] ANLR 543
Ariori v. Muraimo Elemo	[1983] 1 SCNLR p. 1
Chukwuobaji and 2 ors vs. Nwali Nweke Okpo and ors	[1978] 1 IMSLR p.258
Ufoma v Ahucahoagu	[2003] 4 SC [part II] 65 at 90
A.G. Kaduna State v. Hassan	[1995] 2 NWLR part 8, p.483
Hurilaws V. Nigerian Communications Commission and Ors	[Unreported] Suit No FHC/L/Cs/39/2000.

Declaration

I hereby declare that, except where otherwise indicated, this thesis is entirely my own work,

and that no part of it has been submitted for any other degree or qualification.

Dedication

I dedicate this thesis first to the Almighty God whose inspiration gave me understanding and the anointing for completion. I further dedicate this thesis to my hubby who did not see my pursuit of further academic qualification as competition but as the realisation of a dream to see his beloved wife become an accomplished Doctor of Laws.

Dedication

Acknowledgement

This research has been completed with the help and support of many individuals, some of whom I will specifically mention. I owe immense gratitude to Tony Cole, who started the foundational work with me before leaving for Brunel University.

I sincerely appreciate the efforts of William O'Brian, who took over my academic supervision and continued diligently with the work after my first supervisor left, and whose constructive critiques of the research drafts realigned my creative thoughts to produce this piece of academic work.

My profound appreciation goes to Dr. Abou Jeng, Nathan Tuminsing and other PhD students such as Agnes Meroka, Laura Ekposi, Dr. Beed, Sharifa, Helen and Hanna, to mention a few, for their support and kind assistance throughout my stay at Warwick. I would also like to show my appreciation to Mr Ibrahim Clark for his editorial help and my neighbours, Mrs Osinkolu, Mrs Lola Adeyemi and Mrs Lucia Austin for their assistance with baby sitting and lodging.

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I cherish the memory of my late mother and elder brother who taught me real family values and sacrificial love.

Finally, I wish to express my sincere gratitude to all who positively contributed to my success. Though some of their names are not mentioned here, they are written in gold in my heart.

Chapter 1 : Introduction/Background

"Disputes, unlike wine, do not improve by ageing. Delay in settlement or disposal of conflicting claims is a primary enemy of justice and peace in the community." (Willard 1995 p 1)

Formerly a British colony and located on the West Coast of Africa, Nigeria is Africa's most populous nation, consisting of approximately 155 million people. To the west of the country lies the Republic of Benin, Cameroon to the east, Chad and Niger to the north and the Atlantic Ocean to the south. Its political and legal systems are structured within a federal setting, comprising of 36 States and the Federal Capital Territory, which acts as the seat of the Federal Government.

In addition to membership of the Commonwealth and a number of other international organisations, Nigeria plays a leading role in both the African Union (AU) and the Economic Community of West African States (ECOWAS). Nigeria has remained committed to peacekeeping in different parts of the world, resulting in the country playing a leading role in African peace keeping (Ikechukwu 2010). Each of Nigeria's successive ambassadors to the UN since 1999 have chaired the UN Special Committee on Peacekeeping while the Head of the Darfur Mission and Joint Special Representative (JSR) of the UN Secretary General, Ibrahim Gambari, is a Nigerian. Until 2009, the former Nigerian army and defence chief General Martin Luther Agwai commanded the United Nations Hybrid Operations in Darfur (UNAMID) while Lt-General Chikadibia Obiakor was the UN military adviser on peacekeeping operations for two years until 2010. In UNAMID Darfur, Nigeria was the largest Troops Contributing Country (TCC), with four battalions, one military hospital, military observers and staff officers.

In view of these proactive engagements in peacekeeping, one may wonder why Nigeria is being ravaged by conflict and instability at a community, state and national level. Since

attaining independence in 1960, Nigeria has survived a two and a half year civil war (from July 1967 to January 1970), undergone periods of post-war reconstruction and endured successions of military regimes. Prior to the present regime, the country experienced a period of political crisis, when the ailing President, Umar Musa Yar'adua, left the country for months without any process of formally handing over power taking place. It took a joint resolution of the National Assembly to recognise the Vice-President as Acting President, after deeming that the requisite constitutional notices be given. The violence that erupted in Kaduna State and other northern states following the release of the results of the 2011 presidential election was typical of the violence that seems to be perennially associated with the Nigerian political landscape. Shortly after Dr Goodluck Ebele Jonathan was declared the winner by the Electoral Commission, homes of his supporters, churches and police stations were set ablaze in the northern cities of Kano and Kaduna, leaving many dead (Mbaku 2011).

1.1 The Niger Delta Conflict

The conflict in the Niger Delta has been attributed to myriad factors. Some scholars attribute the conflict to marginalisation and frustration among local communities (see Van Dessel 1995; Welch 1995; Ukeje 2001; Ifeka 2001; Fleshman 2002; Ikelegbe 2005), while some refer to it as a clamour for more oil revenue (see Obi 2001; Ross 2003; Omeje 2004). Yet, others have seen it within the broad context of environmental degradation resulting from oil extraction (Naanen 1995; Okoh 1996; Onduku 2001). These explanations are not necessarily incompatible and no doubt improve our understanding of the conflict from a variety of standpoints. However, because each explanation might concentrate on one or two apparent factors as the 'root cause' of the conflict, most are unable to provide a complete picture of the nature and dynamics of the conflict.

Be that as it may, a complete picture is necessary for the design of an effective policy geared towards conflict management and resolution of the Niger Delta conflict. Ibeanu (2000)

asserted that while it is often said that the conflict is caused by a multitude of factors, what has been lacking is the integration of these factors into an explanatory system that enables us to make sense of empirical data and support effective policy intervention. He went on to argue that it is not often clear if all the factors that are said to be responsible for the conflict are causal or mediatory; and assuming that they are all causal, which of the factors are principal, secondary and tertiary. It is also not clear which factors are triggers, pivotal, mobilising or aggravating. Notwithstanding the fact that the conflict in the region has developed in a manner which suggests that different factors have accentuated the conflict at different times, it is difficult (if not impossible) to demonstrate in practice that one particular factor has had a greater exacerbating impact than another and that, that particular factor can be considered one of the explanatory variables for the conflict. Moreover, the failure to address explicitly the question of how factors responsible for the Niger Delta conflict are interlinked has contributed to the reason why most previous studies are unable to proffer viable solutions beyond general recommendations.

In addition, Nigeria's justice system is largely regarded as corrupt, slow and too distant to be a viable mechanism of dispute resolution for many people. Power imbalances, lack of capacity or insufficient authority can lead to solutions that are forced on weaker parties, that are never effectively enforced or that only partially resolve the problem. In the worst situations, the absence of any legitimate dispute resolution actors may result in citizens taking justice into their own hands, resulting in an increase in violence.

Filling this gap in the existing literature, this research argues, would require a critical probing of historical evidence and contemporary events shrouding the Niger Delta conflict, with a view to highlighting the interactions between contributory factors. For example, Watts (2005) criticised Collier (2000) and Ross (2001) on the grounds that many of the dynamics they noted between oil and conflict did not emerge from oil per se, but from the centralisation of oil revenue. Similarly, the suggestion that political and economic factors

are the root causes of the Niger Delta conflict is supported by the assertion by Agim (1997) that the remote cause of the friction between oil companies and their host communities can be traced to the deep-seated historical discontent with governance in Nigeria.

Another factor responsible for the lack of robust peace is a mis-diagnosis of the type of conflict in the region. This mis-diagnosis further leads to wrong approaches being applied in managing various conflicts. An examination of the approaches employed by the Nigerian government in the management of conflict (see chapter four), especially in the Niger Delta region, would suggest that these methods or approaches, have been largely inadequate and reactive, as opposed to proactive (Alapiki 2001). This is particularly evident in the context of resource-related conflicts, where the approaches have not been sustainable and culturally adaptive, and as such, have been unable to stimulate appropriate peace models in order to realize robust peace.

In addition, the adjudicative system, which is one of the approaches discussed in chapter four, is too focused on determining a winner or loser, implying that one party always ends up on top. It is in view of this that, this research is geared towards finding a viable alternative to the Niger Delta conflict and to develop a framework for conflict management in the region. However, it is also important to note here that the chosen approach (i.e hybrid model) does not presume to address all of the issues surrounding the Niger Delta conflict. Nor does it pretend portend to provide a foolproof explanation. Rather, what it achieves rests on its ability to highlight hitherto neglected relationships between the contributory factors and therefore provides a basis for pursuing effective conflict resolution.

1.2 Central Research Argument

"Peace cannot be kept by force; it can only be achieved by understanding"

(Einstein 1930 cited in Caprise p 158).

The principal claim of this research is that the current approach towards the management of the Niger Delta conflict is not only inadequate, but also exposes a montage of problems, especially in the area of human rights.

1.3 Research Aim and Objectives

In addition to the research argument above, this research aims to explore the viability of mediation in resolving the Niger Delta oil and gas conflict. To do this, the researcher studied and reviewed the current development of mediation and its effectiveness in resolving natural resource related conflicts in the Niger Delta area of Nigeria. This was done by exploring the existing legal framework on ADR to see the provisions of the law as it relates to mediation and its applicability. Also, the research investigated the suitability of mediation as a viable method in resolving resource-related conflicts. To this end, a field study was conducted (see chapter six for details) to determine the acceptance or readiness of parties to adopt mediation as a means of conflict resolution.

The outcome of these findings is predicated on developing a hybrid (indigenised) mediation model/framework in natural resource management which will be capable of monitoring and reporting on the conflict situation in communities and villages, understanding the root causes and proffering solutions, while taking into account the indigenous as well as the western perspectives. By so doing, the research further aims to address the gap in knowledge as well as to develop a framework for conflict management.

1.4 Scope of the Research.

As stated earlier, the research will look into the Niger Delta (oil and gas or resource-related) conflict. Although there are many parties involved in the Niger Delta conflict, this research focused on the parties that are most prominent in the conflict. These are:

- Multinational oil companies;

- Niger Delta host communities;

- Federal and State governments of the Federal Republic of Nigeria.

The major Multinational oil companies, who operate in the Niger Delta region, include but are not limited to:

- Mobil Producing Nigeria Unlimited (Mobil) formerly, known as Mobil Exploration Nigeria Incorporated;

- Chevron Nigeria Limited (Chevron) the third-largest oil producer in Nigeria;

- Shell Petroleum Development Company (SPDC);

- Elf Petroleum Nigeria Ltd (EPNL Elf);

- Nigerian Agip Oil Co Ltd (Agip).

The Niger Delta host communities and landowners are situated across nine of Nigeria's thirty-six States namely: Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers (see chapter two for detailed history).

1.5 The Research Challenge

A few of the many critical issues I envisage in this research are: Is mediation provided for under Nigerian Law? If not, would a special law be required? Secondly, if any mediation agreements are secured, and broken, what will be the outcome? To this end, the discussions in the chapters below will provide valuable insights into the potential of mediation in providing a slate upon which a reorientation of ADR approaches to conflicts can be conceived. By so doing, the thesis aims to establish the prospects of the hybrid model, and also bring to the fore potential future challenges that may confront the hybrid model as an innovative but evolving conflict resolution framework.

1.6 Ethical Considerations

Since this research is partly empirically based, (see chapter six for more details) and as such, requires the participation of human respondents; I have taken certain ethical issues into consideration, which will enable research subjects to consent to their participation in the full understanding of the potential risks and benefits (Kelman 1972); Belmont 1979). To do this, I relayed the major details of the study to participants, including its aim and purpose (See appendix for participant consent form). By explaining these details, the respondents were able to understand the importance of their role in the completion of the research.

The respondents were also informed of their right to withdraw from the study at any time they wished. This was designed to ensure that participants did not feel forced or coerced to participate in the research. The non-disclosure of the names or personal details of the participants assured their confidentiality; only the details that were considered relevant in answering the research questions have been disclosed.

1.7 Relevance of this Research in the Oil and Gas Sector

This research is original, and the first to focus on the application of mediation in resource control and oil and gas conflict in Nigeria. In view of this fact, this research will contribute to the African (Nigerian) perspective in natural resource conflict management/resolution and to the body of knowledge in this emerging discipline. This research has reviewed African conflict resolution traditions and effectively demonstrated how hitherto undiscovered African conflict resolution traditions could be applied to conflict resolution around the globe.

The unrest in the Niger Delta has remained unchecked for many decades, posing a threat not only to the people of the region but to the stability of Nigeria and to the surrounding West

African region and the world at large; as a result of this, the quest for an alternative through the application of mediation is of utmost importance.

1.8 Contribution to ADR Knowledge

The dearth of publications relating to the actual use of mediation or ADR in communal conflict management, and in particular in resolving oil and gas issues, makes this research very important. The research will also break new ground in conflict management literature, extending the frontiers of knowledge on how indigenous mediation mechanisms could be pushed beyond the resolution of legal disputes to the resolution of political conflicts, especially in the area of natural resource conflict management.

Furthermore, it aims to encourage policy makers and stake holders in the Niger Delta region to maximise the potentials of mediation. By examining and subsequently documenting the way that the Kalabari tribe in Rivers State process disputes, there will be publications and literature available to guide both the government and the oil companies on how to manage conflicts in Kalabari speaking communities via an indigenous approach; such communities are of particular importance since they happen to host major oil wells such as soku oil field/oil wells/flow station. Finally, the knowledge generated from this research contributes to the bettering of the relationship between the parties, especially the relationship between host communities and oil companies.

1.9 Thesis Layout

Chapter One: lays the foundation for the research with an overview of the motivation for this research; a description of the Niger Delta conflict; how ethical issues in the research are considered; and the significance and scope of the research.

Chapter Two: focuses on the ethnographic background of the Niger Delta and its conflicts. It explores the dynamics of the conflict, the main players as well as the vulnerable parties in the conflict, and the role of regulatory frameworks/ international mechanisms. The chapter also explores the historical background of the violence and conflict in the Niger Delta region of Nigeria, stating the role of history in the conflict.

Chapter Three: begins with an outline of the theoretical framework of the research. The chapter examines the utility of the theoretical and analytic framework, and considers whether it could provide an understanding of the inadequacies of violence and other adjudicatory processes in the Niger Delta and Nigeria as a whole.

Chapter Four: looks at the different strategies the different players in the Niger Delta conflict have employed over the years in the management of the conflict, the role that litigation has played in the conflict, and why there is a need for an alternative to these methods discussed. It further examines and discusses the diagnostic phase for a suitable ADR process for the conflict in context, the potential problems and limitations of ADR in the Niger Delta conflict, and how these limitations may be dealt with.

Chapter Five: looks at the development of mediation in Nigeria, its relevance, the efficacy of the theoretical framework and its potential contribution to advancing alternative approaches to conflict in modern Africa. It further examines the viability of western mediation methods, as opposed to mediation in its indigenous form.

Chapter Six: presents the critical analysis of the data from the field trips and the relevance of the results to some key national issues in Nigeria.

Chapter Seven: examines the customary dispute resolution method in the Niger Delta region of Nigeria, using two tribes as examples for the case study. The objective of exploring the indigenous model is to test the viability of the indigenous process. The case

study also provides insights into the potential challenges, and proposes a potential roadmap for the future development of the indigenous framework.

Chapter Eight: examines, amongst other things, the practicality of hybrid mediation, with one form of mediation following the indigenous conflict resolution system, and the other modelled according to the western mediation style, within the context of the indigenous culture and natural resource management.

Chapter Nine: is the concluding part of the thesis, in which all the points raised in the different chapters that make up this research are discussed and original contributions of this research to knowledge are put forward.

Chapter 2 : Historical Background of the Conflict.

2.0 Introduction

This chapter seeks to provide a historical background to the violence and conflict in the Niger Delta region of Nigeria. An understanding of the genesis of the conflict allows the chapter to undertake an in-depth analysis, showing the gradation, origins and dynamics of violence as well as the multiplicity of actors and their respective roles. In doing so, the chapter excavates some of the residual impact of the region's history and lived experiences of its people.

The aim is as much to determine the extent to which this continues to influence the course of the conflict as it is to gauge the relevance of the historical context in formulating a conflict resolution model. On the surface, the conflict in the Niger Delta conforms to the patterns and pathologies of conflicts and armed struggles elsewhere in Africa. It has also remained elusive to resolution initiatives, an attribute that has also stalled mediation processes in other conflicts in Africa. However, on closer interrogation, the Niger Delta conflict departs from these commonalities in a number of ways. These are embedded in the deeper history of the conflict and the complex nature of the actors, as explored below.

2.1 A Historical Overview

The geographic appellation of the name Niger Delta is derived from being situated at the mouth of the River Niger. The Niger Delta region is situated in the southern part of Nigeria and is bordered to the south by the Atlantic Ocean and to the east by Cameroon (NDDC 2004: 49). Official statistics show that the population is estimated at 31 million people from more than 40 ethnic groups, including the Efik, Ibibio Annang, Igbo, Ijaw, Itsekiri, Kalabaris, Oron, Urhobo and Yoruba, speaking about 250 different dialects. In terms of physical size, the Niger Delta is around the size of the Netherlands and Mississippi, (NDDC

2004: 2). It is through the delta's network of creeks that the water systems of the Niger and Benue Rivers flow into the Atlantic Ocean (Udo 1970: 55).

The Niger Delta is made up of nine of Nigeria's thirty-six States namely: Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers (Wifa 2008). The region is Africa's largest delta, and stretches for nearly 242 kilometres (150 miles) from north to south and spreads along the coast for about 320 km (200 miles) covering an area of approximately 22,600 square kilometres (Encyclopaedia Britannica-Macropaedia 1979). The region is rich in both renewable and non-renewable natural resources, such as oil, gas, bitumen, timber and non-timber forest products and wildlife. With these vast resources, the region plays host to over 1,481 oil wells and an estimated 159 oilfields, linked by more than 7,000 kilometres of pipelines and flow lines, and some 275 flow stations operated by about 13 oil companies (Brisibe 2001).

Furthermore, the Niger Delta consists of a number of ecological zones: sandy, coastal ridge barrier, brackish or saline mangroves, fresh water, permanent and seasonal swamps, forest and lowland rain forest. The area is traversed and criss-crossed by many rivers, streams, rivulets, and creeks and by twenty estuaries. These make the Niger Delta communities particularly vulnerable to natural disasters, such as floods and ocean encroachment, and man-made disasters, such as oil spills, leaks and various forms of pollution (Ambily 2006).

For purposes of clarity, the historical overview of the Niger Delta region will be discussed under different periods, namely the Precolonial, Colonial/Imperialism, the period of Transatlantic/slave trade, the era of palm oil trade, the fall of the Niger Delta region and the period of Independence.

2.1.1 The Period of Antiquity/ Pre-colonial

Ethnic communities which make up present day Niger Delta region are believed to have lived in the region presently known as the Niger Delta, for many years. They were noted by Portuguese pilots, from A.D. 1500, as occupying all the coastal marshlands of the Nigerian coast from the Escravos to the Rio Real (Bonny/New Calabar) Rivers (Alagoa 2003). Archaeological excavations carried out in the Central and Eastern part of the Delta provide concrete evidence of developments going back over a thousand years, showing how deep the cultural, social and political systems were (Akpobibibo 2001).

The people who are today's Niger Deltans apparently moved down the River Niger from unspecified homelands in the West African hinterland and made most parts of the Niger Delta their home (Alagoa 2003). Back then, the economic activities were mainly fishing and farming. They also dealt in exports of fish and salt to the hinterland. The region had abundant raw materials, such as timber, rubber, terra-cotta figurines and bronze artefacts. The figurines and aretfacts dating from between 1250 and 1450 suggest the beginnings of economic exchanges across the length and breadth of the region, and beyond it into the Nigerian hinterland (Alagoa 1975).

Before the Niger Delta was colonised, the region was characterised by a large degree of pluralism and flexibility (Alagoa 2003). The region consisted of fluid units that would readily incorporate outsiders (even whites) into the community as long as they accepted its customs; these units were founded on the principles of communalism, in that they were self-governing, autonomous entities, and all members took part, directly or indirectly, in the daily running of the tribe (Alagoa 2003). Land was held communally, and could not be bought or sold. The chiefs ran the daily affairs of the tribe together with one or more councils. These councils simultaneously informed the chief, checked his powers and made policy by reaching unanimous decisions (Alagoa 2003).

2.1.2 The Period of the Transatlantic Trade 1472 – 1807

Research shows that the period of transatlantic trade was one in which the people of the Niger Delta played a pivotal role in the history of Nigeria, (Barrett 2008) serving as middlemen in the contact process between the Nigerian hinterland and the West (Tasie 1978). This was a period during which the peoples of the Niger Delta were treated as sovereign peoples, inasmuch as they entered into partnerships, treaties and mutually acceptable business and political agreements with visitors, as well as acting as a clearing house for trade external to Nigeria (Mabogunje 1968). The major commodity for this trading relationship was slaves.

The slave trade shaped the nature of conflict, cooperation and rivalry for economic and political supremacy between and among the many ethnic groups that lived in the region. Slaves were considered a mode of production, and as such, the slavery business was the decisive economic factor and way of life in the Niger Delta region for more than three hundred years, beginning in the late fifteenth century (Lovejoy 2000). Records of slave shipments from the present-day town of Bonny (a town in Rivers State) and Old Calabar by English slave traders showed that between 1650 and 1800, about 1,010,000 slaves (24 percent of the West African total) were shipped from the Bight of Biafra ports; between 1690 and 1807, English traders shipped another 1,069,100 slaves (40 percent of their total trade) from the port cities in the Bights of Benin and Biafra (Tasie 1978).

2.1.3 The Era of Palm Oil Trade, 1807 - 1957

With the abolition of the slave trade, palm oil and palm kernels became the principal commodities of legitimate trade. Britain first became aware of Palm Oil in 1588 when one English sea captain named Welsh sailed with two ships to the Benin coast (presently in Delta state in the Niger Delta) and took back to Britain among other things 22 barrels of palm oil. The European traders, having learnt from the natives the many uses of palm oil

such as soap, candles and lubricants for machinery, increased the demand for the product. This demand led to a rapid expansion in exports, especially after 1830, just at the time slave exports collapsed. The Niger Delta, which had once been known for the export of slaves, now became famous for the export of palm oil, so much so that the delta streams were given the name "Oil Rivers Protectorate" until 1893, when its borders were expanded and renamed the "Niger Coast Protectorate".

Due to the industrious and adaptive nature of the Niger Delta communities, the end of the slave trade had very little impact on them; former slaves were redirected into the domestic economy, especially to grow the staple food crop, yams, for marketing throughout the palm-tree belt, as well as to work in the production of palm products. The palm trade grew to significant proportions, palm oil exports grew to £1 billion a year by 1840 (Ukpabi 1987).

2.1.4 The Period of Imperialism 1880-1960

The Niger Delta creeks and waters were the European imperialists' first point of call (Ambily 2006). From the 1880s, the British started their colonial project from the Niger Delta with the establishment of Oil Rivers Protectorate. It was established by the British in 1885, later known as the Niger Delta Protectorate, later named "Niger Coast Protectorate". Unlike other regions, the Niger Delta region was never colonised through the defeat of its leaders; rather, its chiefs and leaders were tricked into signing series of deceptive "treaties of protection and friendship" with the British Crown in the 18th and 19th centuries. These treaties turned out to be a ploy through which the Niger Delta became incorporated into the emerging British Empire.

How was this ploy implemented? The French and the Germans had eyed the region for its richness in general and its palm trade in particular. In 1877, Sir George Dashwood Taubman Goddie (a Manx administrator who played a significant role in the founding of Nigeria) saw this, and conceived the idea that the only means of ousting the French so as to incorporate

the regions of the then Niger River (the present day Niger Delta) to the British empire was through chartered companies. In order to achieve this, in 1879 he merged all the British trading firms competing against each other in the Niger Delta region into a single trading block with a total monopoly of the palm trade, thus creating the United African Company(UAC). In 1882, he changed the name from the United African Company to the National African Company (NAC) to put an end to all existing competition from French and German imperialists. The apparent reasoning behind these moves (as the chiefs were told then) was to protect the natives from external invasion by would-be colonialists; so that as soon as such threats were dispelled, the Niger Delta kings and rulers would revert back to their usual position of control (Flint 1960).

However in the Berlin Conference, a period which ushered in a period of heightened colonial activity by European powers who scrambled to gain control over the interior of the continent while simultaneously eliminating most existing forms of African autonomy and self-governance.At the three month conference, which ended on February 26, 1885, colonial powers haggled over boundaries in the interior of the continent, disregarding the cultural and linguistic boundaries already established by the indigenous African population. What ultimately resulted was a hodgepodge of geometric borders that divided Africa into fifty artificial countries.

After the conference, Goddie applied for a Royal Charter, which was granted by Britain on 10th July 1886. The original intentions of the Charter were to ensure free trade in the region, respecting local customs except where those customs were deemed as not being in the interest of humanity. However the Charter in its final form granted concessionary powers in all the territories of the basin of the Niger, empowering the imperialists to create conditions which enabled them to exploit economic resources in the region for Britain's interest (Ukpabi 1987). The Royal Niger Company, a mercantile company, was chartered by the British government in the 19th century and established a military force sanctioned by the

British government for the purposes of protecting its interests in the area. The activities of this military force led to the destruction of lives and property in the region (Ambily 1995). Most communities who fought and resisted the moves of the British were brutally dealt with. One instance of such brutality occurred in 1879 under the command of Commodore Hewitt of the British Navy, where two gunboats 'Cynet' and 'Ariel' in addition to some hired steamers mounted an attack against the towns of Agberi, Akede and Sabagriea. After a long drawn-out battle, the town of Sabagriea was burnt to the ground. Furthermore, British troops were stationed at Brass, while 50 others were stationed at Sabagriea to suppress any uprising from the Benin expedition. During the invasion, the Royal treasuries of precolonial communities were looted and taken back to Britain (Igbafe 1979).

Incidents of British sponsored violence were brutal and frequent. On 12 November 1886, an expeditionary force led by one commandant Vetch set out to wipe out local villagers who had complained about their practices in the Niger Delta, burning villages. In December 1886, some British soldiers attacked Agberi, Mbiama and proceeded to Patani where they repeated the deadly attack on the local people. In October 1887, British soldiers also destroyed and looted Obe. The month afterward, November 1887, colonial soldiers also destroyed several villages in the Warri creeks (Ukpabi 1987).

2.1.5 Fall of the Niger Delta Region (1906-1918)

As highlighted above, the fall of the region actually occurred at the point when the Niger Delta people, who once had been known for the export of slaves (acting as middlemen) and were also famous for the export of palm oil, became subjugated by the British imperialists through deceptive treaties and through divide and rule tactics. In 1900, Sir Fredrick Lugard, who assumed the position of the high commissioner of the Protectorate of Northern Nigeria, ruled the North through indirect rule using the defeated rulers. Having ostensibly succeeded in achieving this in the North, he proceeded to the Southern part of Nigeria to do the same

(Palmer 1958). To implement his indirect rule, present day Nigeria was divided into three regions: Northern region, Western region and Eastern region. This newly imposed artificial structure set the stage for ethnic divisions and politics, including the agitation of ethnic minorities against perceived ethnic majority domination. As part of Lord Luggard's strategy, in 1906 the Protectorate of Southern Nigeria and the Colony of Lagos amalgamated to form the Colony of Southern Nigeria. By 1914, the British effected the amalgamation of the colonies of southern and northern Nigeria to form the British Colony of Nigeria. Research marked this as the period when the Niger Delta communities lost their identity as separate political entities, having being subsumed by the majority tribes (Hausa, Ibo and Yoruba).

Furthermore, Lugard took steps to institute a uniform tax structure, based upon the traditional system that he had adopted in the North during his tenure. By 1929, there was general unhappiness with Britain's heavy-handed methods and its growing intrusiveness into ethnic life. Within a few years, warrant chiefs who were leaders from the various communities appointed by the Colonial masters became increasingly oppressive. They seized property, imposed draconian local regulations and began imprisoning anyone who openly criticized them. Although much of the anger was directed against the warrant chiefs, most Nigerians knew the source of their power, the British Colonial administrators (Afigbo 1972; Adegbulu 2011:1).

Colonial administrators added to the local sense of grievance when they announced plans to impose special taxes on the Igbo market women. These women were responsible for supplying food to the growing urban populations of Calabar, Owerri and other Nigerian cities. They feared the taxes would drive many of the market women out of business and seriously disrupt the supply of food and non-perishable goods available to the populace. In November of 1929, thousands of Igbo women congregated at the Native Administration centres in Calabar and Owerri as well as other smaller towns to protest against both the

warrant chiefs and the taxes on the market women (Allen 1971). The British government's reaction to the protest was brutal; more than fifty women were killed by British troops, who fired on crowds of demonstrating women at Opobo, Utu Etim, Akpo, and Abak (O'Neill 2007).

The brutality of the British Colonialists did not in any way deter the Niger Delta people, and the struggle continued with the demand for the creation of their own State out of the Eastern region (Agbese 2002). In the period of 1929 to 1935, the formation of ethnic and kinship organizations increased in the form of tribal unions. These organizations were primarily urban phenomena, made up of the large numbers of rural migrants that had moved to the cities. Alienated by the anonymity of the urban environment and drawn together both by ties to their ethnic homelands as well as by the mutual need for aid, the new city dwellers formed local clubs that later expanded into federations covering whole regions.

By the mid-1940's, the major ethnic groups had formed such associations as the Igbo Federal Union and the Egbe Omo Oduduwa (Society of the Descendants of Oduduwa), a Yoruba cultural movement. The rapid growth of organized labour in the 1940s also brought new political forces into play. Three constitutions were enacted from 1946 to 1954 (Richardson Constitution, Macpherson Constitution and the Lyttleton Constitution) that were themselves subjects of considerable political controversy, but that inevitably moved the country toward greater internal autonomy, with an increasing role for political parties.

Ethnic cleavages intensified in the 1950s. Political activists in the southern areas spoke of self-government in terms of educational opportunities and economic development. The preparation of a new federal constitution for an independent Nigeria was carried out at conferences held at Lancaster House in London in 1957 and 1958, presided over by The Rt. Hon. Alan Lennox-Boyd, M.P. and the British Secretary of State for the Colonies (Palmer 1958). Nigerian delegates were selected to represent each region and to reflect various shades of opinion. As the tempo of the struggle heightened, the Rivers State Chiefs and

People's Conference (RCPC) was formed on 4 July 1956 to strengthen the clamour for the emancipation of the Niger Delta. In 1957, it received an invitation from the Colonial Office in London in 1957 to present its case for the creation of its own State. However, their hopes were dashed as the conference, rather than acceding to their demands, decided to refer them to a special commission called the Willink's commission headed by Sir Henry Willink to look into their grievances.

The commission found evidence of domination and other problems alleged by the minorities, and acknowledged the genuineness of their fears and anxieties, but only deemed it fit to make a number of alternative recommendations, including the constitutional entrenchment of a bill of rights and the creation of a special commission to handle the problems of the region (Osaghae 1986). It made particular mention of the fact that the Ijaw, the largest ethnic group in the Niger Delta, was "poor, backward and neglected" and recommended that their land be designated a "Special Area" with a federal board to "consider" its problems for ten to twelve years. It also noted that the board should consist of representatives from the then eastern and western regional governments, "preferably Ijaws," and four representatives from "peoples of the areas." The report took special note of the "challenges of poverty, complex ethnic rivalries and geographical barriers posed by the rivers that crisscrossed the Delta" (Nnoli 1980p 258).

The most dramatic event to have a long-term effect on Nigeria's economic development was the discovery and exploitation of petroleum deposits. The search for oil first started in 1908 but was abandoned a few years later. Shell and British Petroleum then restarted oil exploration again in 1937. These activities were intensified in 1946, but the first commercial discovery did not occur until 1956, at Olobiri in the Niger Delta. In 1958, exportation of Nigerian oil was initiated at facilities constructed at Port Harcourt.

Nigerian oil wells producing crude oil in commercial quantities were a development that would redefine the relationship between the Federal Republic of Nigeria and the peoples of

the Niger Delta. Oil income was still marginal, but the prospects for continued economic expansion appeared bright and further accentuated political rivalries on the eve of independence (see section 2.5.1 where the discovery of oil is discussed further as one of the genesis of conflict).

Although oil has brought significant expansion to Nigeria's economy, there has been no structural development in the areas where it is was found and exploited. Promises made to host communities have turned out to be mere rhetoric, for several decades after, they are yet to be fulfilled, with no hospital, no school, no maternity, no industries, no water, and none of the basic essentials of life have been provided for their use (Enogholase 2000).

2.1.6 The Period of Independence

Following an Act of Parliament of Great Britain, Nigeria became an independent country within the Commonwealth on October 1 1960. The roots and character of the modern Nigerian State were planted in the colonial state, which characterised the indigenous peoples as natives, subjects and a conquered people to be "civilised". "Civilising the natives" often included exploiting them and treating them with contempt, revulsion and mistrust; in short, considering them as inferiors. Trade at independence was not left in the hands of Nigerians. Exploitation of Nigeria's oil was in the hands of two oil monopolies: British Petroleum and the Royal Dutch Shell Company, enabled through the 1914 Petroleum Act. The complete monopoly exercised by these oil giants rested on an agreement with the colonial state to share oil proceeds at a ratio of fifty- fifty (Osoba 1987).

According to Osoba, the formula was designed to make cheap petroleum available to the industrial societies in Europe and America, while keeping the petroleum producing countries in a state of relative poverty and underdevelopment. Osoba further argued that there was a complete lack of control by the Nigerian government over the operations of these firms. The oil companies were free to invest their resources in Nigeria, with the sole

purpose of maximizing their profits and generally without any consideration for the real interests and development needs of the country (Osoba 1987). This lack of oversight led the transnational corporations to resort to wanton exploitation of the people and the environment.

It is important to add here that the history of the oil industry is embedded in the colonial oil and mineral laws of 1887, 1907 and 1914 (amended in 1925, 1950, and 1958 respectively), which vested ownership of oil in the colonial state and handed over control of oil exploration in Nigeria to British or British-allied firms (Omeje 2006: 35–36). However, by 1959, the oil exploration duopoly held by Shell-BP over the country was broken, and other Western oil companies were granted oil concessions. In the period immediately after independence, (Obi 2005) the first and main oil-related statute in post-colonial Nigeria was the Petroleum Act of 1969, which repealed the Mineral Act of 1914. Thus, for nine years after independence, Shell BP continued to operate freely under favourable colonial legislation. According to Frynas, even the 1969 Ordinance was largely a confirmation of its colonial equivalent (Frynas 2000).

However, an important change in the 1969 law was the introduction of the joint venture arrangement with the oil companies, which consolidated the relationship between these companies and the State. Nigeria proceeded to enact statutes such as the Anti-Sabotage Decree No. 35 that offered security to oil companies and undermined the autonomy of local communities (Adebayo and Falola 1987). Likewise, in 1978, the government enacted the Land Use Decree, which vested ownership rights over all land within a state in the state governors. Through this unprecedented act, local communities were denied communal rights over land and any compensation for land acquired by oil companies. In fact, land confiscation by oil companies, aided by state agents, became the order of day, and communities could not even question the entrance into, or use of, any land by oil companies.

The independence of Nigeria heralded economic stagnation, with attendant neglect of the Niger Delta (Michael 1962). This assertion was further buttressed by the United Nations Development Programme (UNDP), who described the region as suffering from "administrative neglect, crumbling social infrastructure and services, high unemployment, social deprivation, abject poverty, filth and squalor and endemic conflict" (UNDP 2006 P74). The majority of the people of the Niger Delta do not have adequate access to clean water or health-care.

The post-colonial history of Nigeria has been marked by massive instability, including a number of military coup d'états, as a result of conflict between the three major ethnic groups. The smaller ethnic groups in the Niger Delta have been systematically excluded from positions of power. Crowder (1962) labelled the Niger Delta struggle a story of a people who have been *afraid of ethnic domination and discrimination in development*. Indeed, the past/contemporary history of the Niger Delta, as highlighted above, is fraught with stories and accusations of neglect, oppression, domination, exploitation, victimization, discrimination, marginalisation, nepotism and bigotry (World Bank 1995).

The Human Rights Watch, in its Report (1999), captured the current state of the Niger Delta region as follows: "The evidence suggests that companies benefit from non-enforcement of laws regulating the oil industry, in ways directly prejudicial to the resident population. Oil companies benefit from federal laws that deprive local communities of rights in relation to the land they treat as theirs. Grievances … center on the appropriation or unremunerated use of community or family resources, health problems or damage to fishing, hunting or cultivation attributed to oil spills or gas flares and other operations leading to a loss of livelihood; as well as oil company failure to employ sufficient local people ... or to generate benefits for local communities from the profits that they make" p 160.

The wanton disregard and exploitative tendencies arose from some assumptions, which include the following:

- Oil is a national resource that belonged to the Nigerian State, rather than the Nigerian people in general, or oil producing communities.

- Agitations for resource control or change in the derivation (see principle of derivation below) formula are either politically motivated, lack merit or are orchestrated by troublemakers and criminals (militant*s*).

- Force or military soldiers rather than a political or an economic solution is what is needed to deal with or silence the demands of the Niger Delta communities.

- The Nigerian indigenous ruling class, the Nigerian state, and the Nigerian people cannot develop Nigeria; instead the ruling classes, states, peoples and agencies of advanced (former colonial) countries can.

- Nothing must be done by the Nigerian indigenous ruling class, the Nigerian State and the Nigerian people to oppose, contradict, criticise or fight against the development strategies, efforts, ideas and processes advanced by the ruling classes, States, peoples as well as agencies of former colonial masters to develop Nigeria.

Hence, independence actually paved the way for the former colonial masters as well as their agents, to whom they handed over power to exploit loot and dominate their former colonies (Akpobibibo 2001). Julius Nyerere (former President of Tanzania), decrying Tanzania's situation at independence corroborates the above assertion thus: "It seems that independence of the former colonies has suited the interests of the industrial world for bigger profits at less cost. Independence made it cheaper for them to exploit us, we became neo-colonies" (Nyerere 1999; interview by Bunting 1999 p 4).

Further, Mukagbo (2004) compares the Niger Delta region to a place where time seems to have stood still and where people live the most meagre of existences, similar to what you

find in a refugee camp, leaving them bitter and angry at not having benefited from black gold, in spite of Nigeria being Africa's largest producer.

Due to a long history of neglect, the Niger Delta people experienced problems such as poverty, deprivation, non-availability of essential social amenities including services like electricity, hospitals, pipe borne water, and quality education and environmental degradation. Meanwhile billions of dollars generated on their door step went to the State and Multinational Oil Corporation (MNOCs).

2.2 The Role of History in the Niger Delta conflict

The importance of having a historical overview to assist the process of understanding the dynamics of conflicts cannot be overemphasised. The significance of history in conflict is predicated on the fact that memory is an important component; to the extent that it often provides rallying outlets through which members of a given community (especially those that constitute a minority) organise and pursues narratives that determine the course of their existence. In the context of the Niger Delta, the relevance lies in the role of history in the social construction and political management of the region, and the extent to which History has impacted the on-going conflict.

Developing a sustainable model for resolving the Niger Delta conflict will depend largely on the history of the conflict to identify issues such as ethnicity, religion, socio-economic environment, demographic shifts and employment issues. The historicist position of Hegel suggests that any human society and all human activities such as science, art or philosophy, are defined by their history, so that their essence can be sought only through understanding that history (Hatfield 1996). Also, the historical approach will help to support or discredit one of the dominant theories which suggest that the development of the oil industry gave rise to, or at least significantly contributed to the conflict (Naanen 1995). Several studies have also stressed the importance of past violent episodes in producing shared cultural

memories that can help in managing future violence (see Wickham-Crowley 1992: 130-153).

In addition, history exposes the tempestuous institutional and political relations between the region's population and state institutions, which provided the context for the emergence of an identity defined by resistance to, and victimization by, the Nigerian state. Every historical account of the conflict has political connotations, as the interpretation of history often serves to legitimise violence as "retaliation". Decades of systematic marginalisation of the region, starting from the imperialist times to date, are themes that linger in the mind of even the children in the region. Lack of attention and compassion in relation to the history of the dispute and the different viewpoints has escalated the conflict (Ukpabi 1987: Ibeanu 2000). Henry David Thoreau (2007) noted that when there is a dispute between points of view that threaten the foundations of a society, the graves must be opened so that the disputants can see the direction in which the evidence of history points. The graves in this instance meant the history of social, political and economic relations in the Niger Delta, before and during colonial rule.

From the foregoing, the reader can see that the role history has played in the Niger Delta conflict. The Niger Delta people, like any other indigenous people, have unique languages, knowledge systems and beliefs and possess valuable knowledge of the sustainable management of their natural resources. Their ancestral land has a fundamental importance to their collective physical and cultural survival as a people. They strove for recognition of their identities, ways of life and rights to traditional lands, territories and natural resources. Tracing from the period of antiquity to the period of independence, they have been known to resist all forms of subjugation or suppression. This is evident in the epic wars fought by the various war lords from imperial times to date.

2.3 Colonialism, the Genesis of the Niger Delta Conflict:

Contrary to the perceptions associating the Niger Delta conflict with the discovery of petroleum, documentary history shows quite persuasively that the grievances of the region prior to oil exploration and production have not receded, in spite of the passage of time and the political transformations that have occurred in the country. In addition to the historical background, as stated above, below are some specific factors which this research has identified as being contributory to the conflict in the region.

European imperialist rule is one of the causal factors of the Niger Delta conflict (Nnoli 1978). One of the defining legacies of colonialism is the adoption of a faulty democratic model imported from the West, which has been rendered incompatible with the socio-cultural particularities of the people (Udoma 1994). The creation of artificial boundaries was an outcome of the Berlin Conference of 1884-1885, where rules on how to partition Africa were discussed and decided. The effect of such partitioning was the bringing together of different ethnicities within a nation that did not reflect, or have the ability to accommodate or provide for cultural and ethnic diversity (Wole 1997). For instance a Zambian chief remarked thus: "My people were not Soli until 1937 when the Bwana D.C. told us we were (Meredith 2005 p 154)". This view is further buttressed by Bob Geldof thus: *"by creating an image of Africa steeped in unchanging tradition, the colonizers condemned the continent to live in a reconstructed moment of its past. But perhaps, the most pernicious of the traditions which the colonial period bequeathed to Africa was the notion of tribalism, just as every European belonged to a nation; every African must belong to a tribe, a cultural unit with a common language, a single social system and established customary law"*. This situation complicated social relations, resulting in the frustration of the underprivileged and crystallizing identity and conflicts (Geldof 2004 p 1).

The next colonial legacy was the politicisation and elevation of ethnicity. Nigeria is usually characterised as a deeply divided state, in which major political issues are vigorously or in

some cases violently contested along the lines of the complex ethnic, religious, and regional divisions in the country (Smyth and Robinson 2001). Historical analysis of conflict refers to the pre-colonial period as the golden era of identity relations, pointing to the low politicisation of ethnic or other identities in society. Mixing of identity groups often occurred during trade, wealth and provision of skills (Bayart 2005: 92-96). The distinct mark of pre-colonial African societies was not the absence of multiple identities or conditions that could ignite conflict; rather, it was the absence of the elevation and politicisation of a single identity, clan, gender or age.

Mamdani argued that the ethnicisation of politics started with the construction of ethnicity as a legal entity that was elevated over the otherwise fluid and loose characteristics of populations. This process turned race and tribe into fixed denominators in the colonial legal project (Mamdani 2002). Ethnicity became axial to the colonial divide-and-rule device used for the purpose of political control, enforcement of taxes and extraction of wealth (Broch-Due 2005). The colonial state drove a wedge between ethnic groups by giving preferential treatment to some identity groups through appointments of local authorities or administrative staff in the colonial offices.

These colonial ethnic stereotypes and divisive patterns of power between and within specific ethnic identities were inherited and replicated by Nigeria's post-colonial states to protect their power, thus sowing the seeds of competition and conflict along ethnic fault-lines. Also, the prevalence of patrimonial systems led to the exclusion of 'outsider' identities and to unequal development and widespread disaffection. It also tended to exclude rival identity groups, placing ascribed barriers to their upward mobility (El-Battahani 2007). Thus, what were essentially cultural identities became transformed into political identities.

The existence of multi-ethnic nationalities does not necessarily promote conflict; rather it is the process of social change which elevates the selective interest of the different ethnic groups in the country that is responsible. This elevation fosters competitive communalism,

where each ethnic group competes to maximise the benefits it can derive from the Nigerian State. As competitive communalism flourishes, the State gradually disappears (Zalik 2004). Ultimately, winners and losers emerge and a sense of identity is reinforced (i.e. majority-minority); and in Nigeria, the domination, neglect, marginalization and exclusion of the Delta ethnic minorities was the outcome.

Through this process, ethnicity was animated into a political force, with ethnic citizenship becoming a counter-force to civic citizenship. With no other recourse, those communities that felt excluded from the state and discriminated against by the dominant group often resorted to violent tactics; instances of this include the wars fought by ethnic communities from 1800 to 1960 in the Niger Delta against the expanding/invading European powers.

The first illustrations of the Niger Delta struggles for self-determination and equitable socio-economic relations appeared in Olaudah Equiano's autobiography of 1789. The book focused on the evils of the Trans-Atlantic Slave Trade, as well as in the 19th century when merchants and princes of the region confronted European capitalists and colonizers over fair deals in trading. Some of these epic encounters produced idolised local heroes. These include Jaja of Opobo, King Dappa Pepple (Perekule) of Bonny, leaders and masses of the brave city-State of Nembe, King Ossai of Aboh, Nana Olomu, Festus Okotie-Eboh and Alfred Rewane of Itsekiri, King Oghwe, Oshue, MukoroMowoe, Samuel Mariere and Thompson Salubi of Urhobo, Udo Udoma of Ibibio, Dr. Okoi Arikpo of Ogoja, Ambakederemo and Wenike Briggs of Kalabari, Dennis Osadebay of Asaba, Oba Ovonramwen, Oba Akenzua II and Humphrey Omo-Osagie of Benin, Michael Imoudu of Ora, Oba Momodu of Auchi and Anthony Enahoro of Esan (Darah 2003).

The current Nigerian President, Goodluck Jonathan (2007) in his keynote address at Houston, noted that "the struggle for the control of the palm oil trade in today's Niger Delta, pitched local people against the European palm oil barons. King Jaja's determined bid to protect his people's interest in the trade in palm oil ruffled the feathers of the Europeans

which led to the first recorded high profile kidnap of King Jaja in September 1897"
(Jonathan 2007 p 1). Women also played a vital role; the famous Aba Women riot of 1929
in the Eastern part of Nigeria was precipitated by the anticipated taxation of women as an
integrated part of the indirect rule project of British colonialism in Nigeria (Afigbo 1966).

At Nigeria's independence in 1960, the injustices against the Niger Delta people prompted
Isaac Adaka Boro, the young radical nationalist, an Ijaw born revolutionary and master
campaigner of resource control, to champion a revolt against the oppressors of the people of
the Niger Delta in order to effect a change of the environment so that "man can be man"
(Boro 1982). On February 23, 1966, he arrived at Tontoubau, a sacred forest in Kaiama
town in the present Bayelsa State of the Niger Delta, with one hundred and fifty-nine
comrades to launch a guerrilla war against the then Federal Military Government. This
rebellion has today become known in the political history of Nigeria as the Twelve-Day
Revolution. Though the rebellion was crushed, it brought consciousness to the minds of the
people.

In 1990, Ken Sarowiwa championed the spirit and consciousness to bring the suffering and
deprivation of the people of the Niger Delta to the attention of the international community.
In no time, Sarowiwa was accused of inciting members of the Movement for the Survival of
Ogoni People (MOSOP) to kill four Ogoni elders. He was arraigned for trial in a military
tribunal, set up by the despotic and repressive government of General Sanni Abacha, for the
murder of the Ogoni four, convicted, and hanged in November 1995 (ICE Case Study on
Ogoni).

A decade after the hanging, the potential consequences of the Niger Delta conflict have
escalated in both human and economic terms. Various militant groups have sprung up using
different methods and tactics to undermine the activities of the oil companies directly, thus
indirectly challenging the Nigerian state. Prominent among such groups are the Movement
for the Emancipation of the Niger Delta (MEND), the Niger Delta Peoples Volunteer Force

(NDPVF), and the Joint Revolutionary Council (JRC), the Movement for the Survival of Ogoni People (MOSOP) and Movement for the Survival of the Ijaw Ethnic Nationality (MOSEIN).

Yet another factor is the lack of recognition of minority rights. The constitution of the Federal Republic of Nigeria (1999) does not identify minority and indigenous rights and this has affected the identity and the protection of Nigeria's minorities. Chapter II of the constitution claims to create equal opportunities for all, irrespective of ethnic origin. The fundamental freedoms and human rights stated in Chapter II of the Constitution are non-justiciable, thus rendering its noble objective on equality nugatory. Section 14(2) (c) of the Nigerian Constitution requires the participation of people in their government, while Chapter IV Sections 39 and 40 of the Constitution provide for freedom of expression and peaceful assembly and association. Section 15 prohibits discrimination on the grounds of ethnic origin, sex (gender), religion, or linguistic affiliation.

The constitution purports to confer equality on all citizens of the country, irrespective of ethnic origin, sex, religion and political opinion. It deals with general questions of non-discrimination, but does not deal with the problem of vulnerable groups like the nation's minorities. There is no mention of the rights of minority or indigenous people in the constitution. To ensure fairness, equity and even representation, the Nigerian Constitution provides for the use of a 'federal character' principle in the appointment of public officers in order to promote national unity and foster a sense of belonging among citizens (Olukoju 1997). This principle operates as a form of affirmative action.

A look at the various provisions above shows some inadequacies. For instance, the equal opportunity claim of the constitution is inadequate, as the constitution fails to offer a legal definition of racial discrimination in Nigeria's domestic law, as required by Article 1 of the International Convention on the Elimination of Racial Discrimination (ICERD).In addition, the requirement of Articles 6 and 7(1) of the International Labour Organisation (ILO)

Convention, states that the government should ensure the participation of indigenous peoples with regard to programmes that affect their all-round development including their consultation in administrative and legislative measures, is not adhered to. This fact is corroborated by indigenous groups in the Niger Delta, including the Ogoni and the Ijaw, who have claimed that they have been left out due to their minority status, and that non-inclusion in decision-making deprives them of the opportunity to influence the location of development projects in their communities. Naanen (1995) described this scenario as a case of 'internal colonialism p50.'

This lack of recognition of people from the Niger Delta and the neglect of their communities led to rural–urban drift as most rural inhabitants, especially youths, migrated to the cities in search of a better life (Olatunbosun 1975). Lack of attention and commitment to alleviating the plight of oil communities accelerated the migration of the productive segment of the population to the city (Hutchful 1985). The consequences of these failures include occupational displacement, increased poverty due to reduced or total loss of income, and forced migration contributing to population displacement (Opukri and Ibaba 2008).

2.4 Niger Delta Struggle: A Resource Based Conflict?

The argument as to how natural resource exploration contributes to violent conflict has provoked considerable scholarly interest over the years (Collier and Hoeffler 1998). The assertion of the Economy of War theory championed by Collier et al, suggests that the relationship between natural resources and conflict is best viewed in terms of the benefits that resources provide to rebel fighters or militants, as opposed to being an instrument for furthering any coherent ideological or even ethnic interest (Keen 2003:79). Their main contention is that internal conflicts should not be understood, as has conventionally been the case, in terms of grievance, but rather through the prism of ''greed.' Greed is defined here

as rapacity, profiteering and self-enrichment on the part of rebel groups (Collier and Hoeffler 2001).

The implication of Collier *et al's* assertion is that the configuration and motivation of the varying actors in internal conflicts is greed, hence there is a triumph of greed over grievance in the causation of conflicts (Reno 2003:45).This research does not deny the strategic location of oil in global capitalism, particularly the social relations of power, spawned around oil extraction and commoditization (Harvey 2003). Several theories have emerged out of a large-number of quantitative studies that found strong correlations between oil dependency and various kinds of violence. Statistics have shown that of the seventy-four countries classified as in situations of current or potential conflict by the International Crisis Group, (Feb 2006), 35% have known oil and gas resources (Mokhawa 2005:21; Paes 2005: 305–23; Omeje 2008).

In the wake of Collier and Hoeffler's theorisation, most of the existing scholarship on the Niger Delta conflict largely appears to follow and validate this theoretical approach (Onduku 2001). Hence, there is a strong assertion in the scholarship that the conflict started as a result of the discovery of oil in 1957 in Oloibiri of Bayelsa State of Nigeria (Ejiogu 2011; Scott 2001). Implicit in their argument is also the assumption that violence is an instrument deployed by the actors of a conflict to accumulate and engage in trade in primary commodities and minerals in the circumstance of economic crisis and decline (Allen 1999:372). But as stated above, this argument is inconsistent with some of the broader historical factors.

The Niger Delta discourse does not disagree with the resource wars theme, which links natural resources to conflicts both directly and indirectly (Westing 1986; Le Billon 2001:561-584), since it is found to both motivate and sustain violent conflicts. Also, it does not deny the fact that control over valuable renewable and non-renewable natural resources has induced several acute conflicts, particularly since the end of the Cold War (Keen 1998).

Natural resource grievance in the Niger Delta is tied to the identity issues already on ground as discussed above (Wifa 2008). The surge in oil revenues only coincided with the centralization of political powers in Nigeria, (Winston 2002) which meant the interest of oil companies came to play a much greater role in government policy than the interests of the farming and fishing communities in the Niger Delta and elsewhere. Also, distribution of resource revenues became a prominent reason for the region's discontent, as host communities became curious as to what happened to the profits generated, seeing the region had little or nothing positive to show from the proceeds of oil exploration (UNDP 2006; ANEEJ 2004).

This discontent prompted the different declarations issued in the region, as well as a number of non-violent movements, the Ogoni Bill of Rights from the Movement for the Survival of Ogoni People (MOSOP), the Kaiama Declaration of the Ijaw Youth Council (IYC) and the current demands of the Movement for the Emancipation of the Niger Delta (MEND), the most recent and insurgent face of Ijaw pan-Delta resistance.

Natural resource exploitation gave rise to conflict when it became entangled in the wider processes of identity construction, which were then reinterpreted back to the population by political entrepreneurs in ways that legitimized violence. An example of this from outside Nigeria is the separatist conflict in Aceh in Indonesia (Aspinall 2007). The key factor was the presence of an appropriate identity-based collective action frame. It became common-place for armed rebel groups or militants to frame or tie their insurgencies to resources, in which local people resist harm by exploitative multinational companies in order to win an appreciative international audience.

The feeling of injustice felt by people living in the Niger Delta region over how the revenues derived from their regions had been used by the central government is regarded as one of key drivers behind the contemporary separatist sentiments that arose in the region in the 1990s. The most potent militant group engaging in local resistance but targeting a global

audience is the Movement for the Emancipation of the Niger Delta (MEND). MEND fighters attacked Shell's flow stations, pipelines and the Forcados oil tanker platform, leading to a significant reduction in Nigeria's oil production (Obi 2008:61). Through the effective use of the global news media, the group has attracted international attention to the plight of the Ijaw and its resistance campaign by taking foreign oil workers hostage and sabotaging oil installations seemingly at will, thus demonstrating the inability of Nigerian security forces to stop its activities. One of the key messages that MEND sought to get across to the national and international community was the unfair distribution of natural resource rents across the country.

The reality of the Niger Delta conflict dynamics is that resource predation is a factor of conflict prolongation, and not its cause. The nature of the Niger Delta conflict can best be described as a political struggle between minority and majority groups over the management and control of natural resources. The paradox of power and benefits between those who own and control and those who benefit and bear the social and environmental costs of exploitation is a regular occurrence. Instances abound in Nigeria, Ecuador, Angola, Sierra Leone, Liberia, Sudan and others. This is because the persons wielding the control powers are inclined to ignore, disinherit and disempower locals, community or indigenous people, who in their part will always resist such moves (Ako 2009: 289–304).

In addition to this, to assume that greed underpins conflicts is, in the words of Ellis (2004: 34), dangerously simplistic. This is because most conflicts have a fairly high political content and are precipitated by multifarious factors such as the patronage, predatory and personal rule, and corrupt control of national resources and the undermining of State institutions. Furthermore, research has shown that economic decline, economic desperation, social deprivation, State failure, State repression and State collapse and the nature of management of conflicts can be important factors in the promotion of such conflicts (Reno 2003).

A critical analysis of the argument suggesting greed as the main cause of the Niger Delta conflict reveals some weaknesses. It is true that research does indicate that developing countries that are dependent on oil or mineral wealth face a higher incidence of civil war in any given five year period. However, the argument that natural resources compel conflict is not sustainable (Turshen 2002: 91).

The robustness of the theory suggesting a causal relationship between natural resources and civil war is questionable (Fearon 2005: 483-507). Furthermore, the linking of resource to conflict has taken a political turn, with recent literature showing renewed emphasis on the effects of natural resources on States as opposed to rebel groups (James 2005: 443-50). In similar vein, Obi (2010) added that the quest to redress perceived injustices is embedded in the separation of those that enjoy the benefits of oil production and commoditization (the transnational alliance of petro-state, oil multinationals, and ruling elites) from those that experience the associated negative effects (the local communities from under whose lands and waters the oil is extracted).

However, in exploring the role of natural resources in the Niger Delta conflict, it is pertinent to avoid an exaggeration of that role. Natural resource grievances were important, largely because they resonated with the discourse of deprivation and associated perceptions of identity already developing in the region. The resources war theme is plausible and has become central to economists, business consultants, environmental NGOs, and anti-globalization activists (Clifford 2005). However the presence of natural resources in the Niger Delta is merely an exacerbating factor in the relationship between the communities of the region and the State

There are a number of counter-examples of countries which are mineral-dependent African countries, yet did not suffer from this symptom, such as Botswana, Namibia and South Africa; other rich oil-producing countries like Norway, the United Arab Emirates and the Sultanate of Brunei also stand out as exceptions. The basic assumption which flows through

the resistance discourse is that oil extraction is synonymous with dispossession, marginalization and injustice (Obi 2010:227).

Another salient point in the role of natural resource is the fact that some foreign experts and technical staff from other parts of the world who were brought in to work in oil industries adopted lifestyles that offended local moral sensibilities. Although such localized effects never featured prominently in written accounts to date, there is evidence of occurrences of local resistance. It was further argued that ways of life that were at odds with those of the local community violated the local ''moral economy'' (John 2007).

Furthermore, multinational oil companies have perpetuated regional inequalities by creating oil colonies where oil executives lived quite lavishly in comparison to the impoverished conditions of the local communities (Brisibe 2001). If not curtailed, such practices portend a very grave danger, not only for the region, but also for the Nigerian state in general (BBC News 2007), with the ill-effects of global capitalism in the absence of corporate responsibility manifesting itself across the region in the behaviours of the multinational oil companies. The local resistance to such practices can be likened to the resistance against subjugation and domination by ethnic communities during the colonial period in the palm oil/slave trade era as discussed above. These points enumerated above, further buttresses the fact that the Niger Delta conflict did not start with the discovery of oil.

2.4.1. Impact of Oil industries

Closely linked to the usage of land for hydrocarbon exploration is the resultant associated pollution. Various harmful and toxic organic and inorganic compounds are introduced into the natural environment during oil extraction, as a result of seismic work, oil spills and gas flares to name a few, changing the geo-chemical composition of the soil, river and other components of the environment. This in turn affects agriculture, and leads to a drastic decline in output in both fishing and farming activities. According to Staney (1990), 7.7% of

the 797 people interviewed on the socioeconomic impact of oil in Nigeria identified farm land pollution as a major problem (Staney 1990: 67-79).

In addition, Nwankwo and Ifeadi (1988:58-64) identified several sources of environmental hazard. In the course of oil exploration and production, various materials are released into the environment. For example, during exploration, drill cuttings, drill mud and fluids are used to stimulate production. The major constituents of drill cuttings such as barytes and bentonite clays, when dumped on the ground, prevent plant growth until natural processes develop new topsoil. In water, according to Nwankwo and Ifeadi 1988, these materials disperse and sink, killing marine animals. Damage to oil pipelines and accidents involving road trucks and tankers generate oil spills and hydrocarbon emissions, which can have far reaching effects, because the toxicity of the oil adversely affects the soil, plant, animal and water resources. The flaring of natural gas has also been identified as having a negative impact on surrounding vegetation (Isiche and Sanford 1976).

Refinery waste also contains toxic chemicals, which are potential land, water and air pollutants. Atmospheric contaminants from refinery operations include oxides of nitrogen, carbon and sulphur. Liquid refinery effluents usually contain oil and grease. These compounds contain organic chemicals such as phenol cyanide, sulphide-suspended solids, chromium and biological oxygen demanding organic matter. Land taken for oil industry activities has resulted in the fragmentation of farmlands, which in turn leads to over-farming and poor nutrient value of the soil. The implications for agriculture can be clearly appreciated when it is noted that the country has over 600 oilfields, 5284 oil wells, and 7000 kilometres of pipelines, ten export terminals and 275 flow stations (Watts and Lipschutz 2007).

Another effect of the industry on surrounding communities is the fact that many villagers were relocated as a result of oil exploration and production activities, prompting long running disputes about compensation. Land, as a source of most material requirements

around which the social, economic and spiritual organization of communities revolves in the Niger Delta, is a pivotal component of society and its well-being. 'Land is an important component of the cosmology of most peoples' (Ward and Kingdon 1995:46). In social terms, interests in land derive from membership of the lineage/kinship group and with it, its social obligations.

The kinship group is the means of maintaining primary interest in land that provides for individual subsistence. Moreover, land is where most events in one's life and the lives of immediate relatives occur, so life's events are identified with the land itself. In economic terms, land is viewed in terms of how arable it is and its productivity. In political terms, land has been a source of relations between chief and community, and land allocation provides a means for the chief to enhance his status and to ensure reciprocity in other forms, according to his needs. Finally, spirituality is embedded in the land. Land is a place of ritual, the place where spirits reside and the place where the forefathers/ancestors worked; and in most cases, the place where their bones are kept and propitiated in sacred shrines. Over time, some of these uses have changed with modernisation, but the attachment to land remains strong.

Also, much of the trouble in Nigeria's oil- bearing region has been attributed to the Land Use Act (LUA) of 1978, which altered the manner of land ownership in the country. Prior to its inception, land belonged to the community, as practiced under the traditional or customary agrarian land tenure system. Individuals did not have complete control of the land, and the outright sale of land was an extremely rare occurrence. Individual occupants of land were identified, not by their actual possession of the land, but by the right they held. However, with the introduction of the LUA in 1978 by a military regime, the Federal Government now has unqualified rights and control over the country's oil and gas resources, which is predominantly found within the Niger Delta region of the country (Owoeye 2002).

Ownership of land previously gained by other means reverts to the State government (Ebeku 2001). The Land Use Act also eroded the authority of traditional rulers (elders), who are

inherently linked to land, as evidenced by customary land tenure practices, whereby the power to manage and control the use of land is vested in the community (Section 29(3,b)). The implications are that drilling and mining rights are issued out to oil and gas companies (OGCs) without the knowledge of host communities. In the same vein the government also receives royalties and rents in return. This arrangement also results in the communities' loss of the right to adequate compensation (*Nzekwu v Attorney-General East-Central State*, 1972, ANLR 543). A study on Okrika Local Government Area in Rivers State shows that a total of 820 farmers lost 818.4 hectares of farmland to the Shell Petroleum Development Company (SPDC) of Nigeria (Aaron 2006). As the land space gets smaller, the struggle for ownership and control increases and at the same time potential conflict over ownership of land increases (Opukri and Ibaba 2008). This scarcity buttresses the argument that natural resource driven conflict may be induced also by resource scarcity (Homer-Dixon 1999). The existential threat of land alienation was expressed in 1979 by the Isoko people of Uzere in a protest against Shell: "79 burrowed pits, 39 oil wells and pipelines have taken all our farm lands, where shall we farm?" (Hutchful 1985: 116).

2.4.2 Resource Control: A Clamour for Equitable Distribution

Having explored the historical facts on the Niger Delta conflict, our arguments will not be complete if the issue of resource control/ distribution is not discussed. The term "resource control" is now subject to various interpretations, by politicians, politician-scholars, military-politicians, government and non-governmental organizations, corporate executives, contractors, diplomats and several interest groups. Increasing revenue is only a part of resource control (Sagay 2001: 1). In the interests of brevity, and because this research is not a political debate, we shall look at what it means to the Niger Delta communities. "Resources" to the communities and peoples of the Niger Delta are not just "oil and gas". It involves the land, waters, forests, air and all other resources within and around them whether physical or spiritual. Political history has shown that the debate on resource control

is traceable to the mid 1940's, when various commissions were set up by successive administrations in Nigeria to fashion out an acceptable revenue allocation formula for the country.

The Niger Delta state's agitation for resource control is premised on the fact that the government, which should have held and managed the resources in trust for the communities, has failed in their trusteeship role. Also linked to the resource control discourse is the fact that the Niger Delta region is not the only region that produces natural resources; hence, the exclusive federal jurisdiction over natural resources, which applies only (or so it seems) to oil and gas and not to palm oil, cocoa, hides and skin, bitumen, marble is questionable (Wifa 2008). This seemingly restrictive application of the meaning of natural resources to oil and gas is perhaps the genesis and continuing basis for the various adverse reactions witnessed across the Niger Delta region of the country.

Further, the principle of derivation (which states that component units of a system should be able to control some of its own resources as they desire) is no longer given as much prominence as those of population, population density, and equality of States, landmass and terrain. Nigeria's form of federalism gives so much power to the centre where the bulk of the nation's wealth is so centralised, that the other strata of government depend on the central government for most of their functions, including the payment of government salaries in some cases. The principle of 'derivation' which gives priority to the area under which the resources that generate wealth are exploited or derived was recommended by Louis Chick, and was adopted in the sharing of revenue prior to Nigeria's independence (Ekpo 2004: 5). Notwithstanding the foregoing argument, the fact remains that the history of revenue allocation and revenue allocation formula in Nigeria has been highly politicized (Ekpo 2004: 23).

2.4.3 The Various Revenue Sharing Methods as a Catalyst for Conflict

A revenue sharing method can be described as a method (or methods) of sharing centrally generated revenue among the different tiers of government and how the amount allocated to a particular tier is shared among its components. In the Nigerian federations, centrally-generated revenue is shared among the three levels of government, namely the Federal Government, the States and the Local governments.

The theory of revenue sharing in a Federal State is that each level of government receives an allocation of financial resources, tailored to their specific requirements. Revenue sharing or the statutory distribution of revenue from the Federation Account among the different levels of government has been one of the most contentious and indeed controversial issues in the nation's political life (Obi 1998). None of the formulae introduced at various times by a commission or by decree under different regimes since 1964 has gained general acceptance among the component units of the country (Rupley 1981). The various formulae include the land terrain, population density, internal revenue generation and the derivation formula. For the purposes of brevity we shall state the main principles of these first three methods before focussing on the derivation formula.

2.4.3.1 Land Mass and Terrain

This principle holds that areas with the largest landmass require more resources to develop than other urbanized areas. The Land Mass and Terrain principle was championed by politicians from the north, which contains about 70% of the land mass of Nigeria and the South-South people, who inhabit the swampy terrain of the Niger Delta. The three terrain types recognized under this principle are wetlands (i.e. the swamps of the Delta), the plains and the highlands (Suberu 2001:65). This principle has been so controversial that Suberu (2001) has suggested that "either the use of the principle should be suspended or the weight assigned to it generally reduced".

2.4.3 .2 Population Density

This principle holds that the densely populated areas actually need more resources to provide goods and services for citizens than do other areas. This principle was sponsored during the 1994-95's National Constitutional Conference to assuage the vehement southern opposition to the Land Mass and Terrain principle, which favoured the north.

2.4.3.3 Internal Revenue Generation

This principle is based on autonomous revenue generation, independent of funds coming from the Federal Government. In 1981, this principle was assigned a weight of 5%. The greatest opposition to this principle is from the relatively economically backward states in the north. The second problem militating against the principle is the dearth of reliable data on which to base the revenue generation calculation. As a compromise, the calculation is based on the percentage increase in revenue generation of a given year over the previous year (Danjuma 1996).

2.4.3.4 Derivation

The principle of derivation states that a reasonable percentage of the revenue obtained from minerals and other resources must be ploughed back into the community where the minerals came from. This fund is intended to be used for the development of the area and to compensate for the environmental degradation of the community resulting from the exploitation of the minerals. Between 1951 and 1970, five revenue allocation arrangements by colonial and post-colonial governments emphasised derivation.

The Hicks-Phillipson Commission of 1961 and the Binn Commission of 1964 both recommended 50 per cent derivation proportion to the area generating the resource, 35 per cent to the Regions and 15 per cent to the Central Government. By contrast, the Chick Commission of 1953 had recommended 100 per cent derivation for resource-bearing areas.

In 1958, the Raisman-Tree Commission recommended 50% for derivation, 30% for Regions and 20% to the Central government. At the end of the civil war the Offshore Revenues Act of 1971 was enacted which reserved revenues from offshore oil exclusively for the Federal Government while pegging derivation at 45 per cent of onshore proceeds. Three Federal statutes (Petroleum Act Cap 350, Exclusive Economic Zone Act Cap 116, Territorial Waters Act Cap 428 and The Territorial Waters (Amendment) Act of 1997) and the constitution of the Federal Republic of Nigeria (1999) Section 44 (3) all contain provisions on the ownership, management and control of all minerals, oil and gas under or upon any land, territorial waters or Exclusive Economic Zone of Nigeria in the Government of the Federation.

The argument that is often advanced to support this computation is that offshore oil belongs to the Federal Government, and not the State. The political implications of the offshore/onshore dichotomy are tantamount to expunging the offshore production from the derivation calculation, which also implies expelling Akwa-Ibom and Ondo States from the club of oil producers. For instance, between 1995 and 1998, a sum of US $2 billion was set aside annually for external debt service and US $1.5 billion in 1999. This amounts to US$9.5 billion out of which the Federal Government received over US$7.1 billion instead of US $4.6 billion it was entitled to.

As highlighted above, none of the various methods proposed at any given time period has worked effectively without disagreement. This is due to the fact that the country has lacked a consistent framework which takes into cognisance the needs and requirements of the various regions. From 1970 onwards, the country's political, economic, and policy elites have put in place an authoritarian and commanding power structure to enable them to centralize control of strategic resources. This has led to scarcity, deepening frustration and social unrest in the Niger Delta, as well as elsewhere in the country. In addition to this, there is increased apprehension in many quarters due to the apparent lack of transparency in

accounting for and distribution of resources in the country over the years. It therefore follows that the clamour for resource control is a clamour for adequate compensation and a cry for greater inclusiveness of the host communities in the the revenue accruing from the activities of oil and gas exploration and production. Such clamours and demands are not only a threat to government in power, but also a threat to the idea of 'nationalism'. Hence, such agitation and clamour were largely misconstrued as 'separatist tendencies' that must not be tolerated (Okoh 1996; Omeje 2004) leading up to military violence.

2.5 Conclusion

Following the narrative above, it may be concluded that the Niger Delta conflict is predominantly caused by, or hinges on two main factors – one remote, one immediate. The remote stresses the historical development of the Niger Delta identity while the immediate one emphasizes natural resource industries and their impact. Military violence is indeed important for understanding the insurgency; it helps to explain how the conflict expanded and became intractable, but not how it began. However, it must be noted that it was the evolving framework of the Niger Delta identity that provided a prism through which natural resource exploitation was interpreted in grievance terms. Or to put it another way, one might say that without the Niger Delta's identity issues, there would have been no grievances, at least no politically salient ones.

The Niger Delta conflict is an identity-based conflict which has often been mistaken for a dispute over oil or natural resources. Rothman (1997) argues that attempts to resolve such misdiagnosed conflicts generally fail, since the resolution efforts do not address the real underlying causes of the conflict. He further contrasts identity-based conflicts and interest-based disputes. Interest-based disputes tend to be more concrete, with issues that are more clearly defined and the potential for mutual benefit more obvious. Identity-based conflicts are based in people's psychology, culture, basic values, shared history and beliefs. Identity-

based conflicts arise as a result of a threat to people's basic needs and very survival. These issues tend to be more abstract, ambiguous and intangible. Identity-based conflicts may be expressed as material disputes, in an attempt to give focus to the parties' concerns. The discussion below will further buttress the fact that the Niger Delta conflict is an identity-based conflict and not caused by the discovery of oil or natural resources.

Grievances should not be seen as trigger factors, antecedent to the discourses that motivate violence. Instead, grievances are integral to the ideological frameworks through which the social world, including notions like ''justice'' and ''fairness,'' are constructed and understood (Aspinall 2007). The significant role played by the Niger Delta people both during the eras of the slave trade and the palm oil trade as described above as well as the outcome of the Willinks Report of 1957 which recommended that the Niger Delta be accorded a special status which till today has not been fulfilled, prepared the ground for the conflict since it reinforced and celebrated the region's identity thus resulting in a deepening of the disillusionment. Many Niger Deltans now say that the promises of ''specialness'' had been betrayed.

The argument that the Niger Delta conflict is a product of structural deficiencies inherent in the Nigerian state and systemic anomalies within its society has been buttressed adequately in this chapter. Hence, any genuine attempt to resolve the crisis must address the root causes of the conflict as opposed to addressing the myriad of political, social, economic or environmental issues that beset the region). Rather, the numerous interrelated problems responsible for the violence in the region must be vigorously and simultaneously addressed.

Chapter 3 : Review/Theoretical Framework To The Conflict.

3.1 Introduction

This chapter reviews the general conflict theories which might also help researchers gain a better understanding of, and offer a more complete explanation of the Niger Delta conflict. This chapter also aims to provide readers with a theoretical understanding of conflict resolution that can be applied to the Nigerian context. The reviewed theories will be multi-level, in order to explain the causes and setting of the violent conflict. By multi-level we mean that it will take into account conflict at the individual (interpersonal), group-organizational, societal, international, and global-ecological levels (Sandole 1998:1-30). The theories addressed include the micro, macro, human needs and the enemy system theory. The examination of these various theories is predicated upon a requirement to draw up with a general theory, capable of addressing conflict at all levels in the region.

3.2 Historical Review of Conflict Theories

"Conflict" and "dispute" are used interchangeably in this work. Whereas the two terms are not exactly coterminous, there can hardly be the one without the other; as a result of this, reference to one will also include the other in this research, except where otherwise expressly stated. Conflict, its nature, causes and resolution has formed the basis of much academic study, especially in the 20th century. This has led to the adoption of different conflict management techniques. For instance, sociologists see conflict as a function of social structure and an inherent part of the way society evolves. Political scientists, on the other hand, see conflict as a function of power relations. Marxists and Gramscians have in particular perceived the class struggle as the major cause of conflict. Economists, meanwhile, regard conflict as being the result of rational decision-making by individuals seeking to maximise their personal utility, given a pool of scarce resources.

Traditionally conflict has been viewed as a threat to the State, which should be contained as much as possible (Picard 1998). Philosophers such as Plato and Aristotle (Owen 1960), saw conflict as the greatest evil. Indeed, this line of thought continued to the 17th Century, when theorists such as Hobbes and Locke based their entire political theories upon the necessity for a social contract to safeguard citizenry from conflict (Hobbes 1651). Hobbes' main concern was the problem of social and political order: how human beings can live together in peace and avoid the danger and fear of civil conflict. He opined that the citizenry should give their obedience to an unaccountable sovereign (a person or group empowered to decide every social and political issue).

Failure to do so will expose them to what he called a "State of nature" that closely resembles civil war, and a situation of universal insecurity, where all have reason to fear violent death and where rewarding human cooperation is all but impossible. In Hobbes' social contract, everyone except the person or group who wields sovereign power lays down their "right to all things." They agree to limit drastically their right of nature, retaining only a right to defend their lives in case of immediate threat (Hobbes 1651). As valid as Hobbes's assertion may seem, not everyone will adhere to these rules, and human beings have over time been known not always to comply, but to disagree over issues which if not managed or dealt with may lead to conflict (Pace 1983:59).

Conversely, Marx was of the view that conflict is an inherent part of society. Marxism argued that capitalism, like previous socio-economic systems, will inevitably produce internal tensions leading to its own destruction, and as such, rather than being undesirable and harmful, conflict is in fact vital to the healthy functioning of a society (Marx and Engels 1998: 35).

In British anthropology, the Manchester school led by Max Gluckman (1959) viewed social conflict as a means of maintaining social systems. In his view, conflict maintained the stability of political systems by establishing and re-establishing crosscutting ties among

social actors. Gluckman even suggested that a certain degree of conflict was necessary to uphold society, and that conflict was constitutive of social and political order (Gluckman 1959). He saw conflict as a mode of integrating groups, and hostility between groups as a form of social balance (Frederick 1969). Adding to this discourse, Kenneth Boulding (1977: 26) describes conflict as a goal-directed activity, designed to improve the position of one party at the expense of the other. Simmel in Coser (1972:34) describes conflict as the element that regulates relationships and the means by which society holds itself together by establishing consensus within groups.

Furthermore, it has been argued that conflict, given the right context, is fundamental to society, as it provides the atmosphere within which debates are held and decisions taken; and that if there were no conflict over the immediate goal, the ultimate goal which emanated from the immediate goal would not have existed (Powelson 1972:54). Most people tend to remember only the conflicts that are painful; conflict itself is a normal part of being human. It is normal in relationships for differences to occur occasionally, just as it is normal in businesses for changes in goals and directions to occur. The advantages of conflict are numerous: they foster awareness that problems exist; and the discussion of such problems can often lead to better, quicker and more efficient solutions. Challenging old assumptions can lead to changes in out-dated practices and processes. Conflict brings about creativity in finding the best outcomes and raising awareness of what is important to individuals.

Authors such as Dahrendorf argued that social conflict is a creative force, suggesting a complete theoretical reversal. In his words, "not the presence but the absence of conflict is surprising and abnormal, and we have good reason to be suspicious if we find a society or social organization that displays no evidence of conflict ... we must never lose sight of the underlying assumption that conflict can be temporarily suppressed, regulated, channelled, and controlled, but that neither a philosopher-king nor a modern dictator can abolish it once and for all" (Dahrendorf 1968:127). Michael Nicholson further asserts that contrary to

earlier expectations, the analysis, prevention, management or resolution of conflicts does not aim to eliminate conflict, or to eliminate opposing interests. Its aim is the search for such forms of conflict behaviour which allow a non-violent handling of interest oppositions in an orderly, pre-arranged process, the course and result of which will be accepted by all parties involved (Nicholson 1992:11).

The dominant thoughts and propositions of writers of conflict, then, have been to explore the benefits of conflict and its adequate management for the well-being and benefit of society. Walker saw conflict as a normal, inevitable feature of organizations. It is neither good nor bad; its outcome depends on how it is handled (Walker 1997). Mark Howard Ross adds that conflict is meant to be a mechanism for resolving internal differences (Ross 1993). This line of thought was further reflected in Tjosvold (1990), who added that benefits can accrue from a conflict situation, by increasing awareness of what problem situations exist, motivating organizational members to consider problems, promoting change, enhancing morale and cohesion, stimulating interest and creativity as well as strengthening relationships.

Rudolph Rummel asserts that the idea of conflict is basic to our understanding and appreciation of our exchange with the reality of human action and that conflict can be treated broadly as a philosophical category, denoting the clash of power against power in the striving of all things to become manifest. To him, the concept of conflict is multidimensional; it can envelop a family of forms. We select one, depending on our needs. He defines conflict as a balancing of vectors of powers, of capabilities to produce effects. He quickly adds, however, that conflict is not a balance or equilibrium of powers. It is not a stable result; rather conflict is the pushing and pulling, the giving and taking, the process of finding the balance between powers. Conflict is the process of powers meeting and balancing. To understand conflict involves untangling the powers involved (Rummel 1976).

Africanist scholarship followed similar directions. The ethnographic and social anthropological schools of structural functionalism have contributed an enormous body of scholarship about "traditional" African societies and how they processed conflict (Gulliver 1963; Bohannon 1957, Schapera 1959; Nadel 1942). Given that conflict is apparently unavoidable, it is necessary for parties involved to be able to recognize conflict, to view its constructive as well as destructive potential and to learn how to manage conflict, by applying practicable strategies to acheive its resolution.

3.3 Theoretical Review

This section of the research states the theoretical orientations that will underpin the explanation of identity conflict in the Niger Delta region. To this end, we shall explore different theories to explain the reasons for the conflict.

The first theory to explore is the micro theory (which focuses on individuals and their interactions). The theory asserts that the root causes of war/conflict lie in human nature and human behaviour, and that an important relationship exists between intrapersonal conflict and conflict that pervades the external social order. The theory further posits that "group identity is an important part of the self-concept; people generally attribute value to the group to which they belong, and derive self-esteem from their sense of belonging to that group" (Roberts et al., 1999: 303).

Closely linked or interrelated to the micro theory is the macro or classical theory, which has often been associated with the exercise of power and the use of force in inter-group relations (William 1998). The argument of macro theorists is that the roots of conflict stem from group competition and the pursuit of power and resources. Classical theory capitalises on observations of group phenomena for single events in order to study the problem in depth and to determine the importance and relationships of many variables, rather than using few variables for many cases.Macro theory contains an important set of concepts that can be

derived from the study of ethnic conflict. Donald Horowitz (1985:5), in his seminal work on ethnic conflict in the developing world, describes the framework in which ethnic conflict occurs as follows: "Control of the state, control of *a* state and exemption from control by others are among the main goals of ethnic conflict." Since one of the key objectives of ethnic conflict is to seek control of the state in order to meet their needs, there is usually a clash with the opposing group. Horowitz (1985:8) further explains: "In severely divided societies, ethnicity finds its way into a myriad of issues: development plans, educational controversies, trade union affairs, land policy, business policy, and tax policy".

Characteristically, issues that would elsewhere be relegated to the category of routine administration assume a central place on the political agenda of ethnically divided societies. Horowitz distinguished between ranked and unranked systems. Ranked systems are societies in which one ethnic group is in complete domination of another. Unranked systems are composed of two ethnic groups with their own internal stratification of elites and masses. Horowitz (1985:31) describes the consequences of such conflict as: "*When ethnic violence occurs, unranked groups usually aim not at social transformation, but at something approaching sovereign autonomy, the exclusion of parallel ethnic groups from a share of power, and often reversion - by expulsion or extermination - to an idealized, ethnically homogeneous status quo ante."* Regrettably, there are no simple solutions to ethno-national conflict. This is because if they were, societies which are severely divided, such as Rwanda, Sri Lanka, Cyprus, Lebanon and Northern Ireland, would have enjoyed relative peace.

Walker (1994:46), another theorist of ethnic conflict, believes that observers often attribute ethno-national conflict to other, less salient elements such as language, religion, customs, economic inequality, or something else less tangible. But what is fundamentally involved in such a conflict is a divergence of basic identity which manifests itself in the "us-and-them" syndrome. Although elements such as the ones already mentioned are also significant to ethno-national conflict, it is the opposition of national identities which define the conflict.

Ethnicity is a primordial affiliation, in the sense that it is connected to the things people cannot live without, among them being traditionality, the persistence of the past into the present and a sense of collective self-consciousness.

Another issue which resonates from the Niger Delta conflict is communality. Ethnic affiliations are highly charged and, on some accounts, non-rational. Ethnic conflict entails a clash of cultures. It pits against each other people whose values are in conflict, who want different things and who do not really understand each other. Groups in conflict usually know each other rather well, and either do not like what they have experienced of each other, or they fear the traits and ambitions of the other group(s) that threaten them. Conflicts occur when a person or a group feels that their sense of self is threatened, or denied legitimacy or respect. One's sense of self is so fundamental and so important, not only to one's self-esteem but also to how one interprets the rest of the world, so that any threat to identity is likely to produce a strong response.

The fact that in historical Niger Delta conflicts there is a predominant theme of resistance to subjugation or domination, as discussed in chapters two and four, leads this research to examine the Enemy System Theory, which was developed to help explain intractable conflict. The theory was also used to explain the Cold War in the early 1990s before the collapse of the Soviet Union. The theory is a fusion of concepts from developmental psychology and international relations. The argument of the Enemy System Theory is the hypothesis that humans have a deep rooted psychological need to dichotomise and to establish *enemies* and *allies* (Volkan 1990). This is an unconscious need which feeds conscious relationships, especially in our interactions within groups.

An exploration of this theory is especially important with regard to the formation of ethnic or national group identities and the examination of group behaviour in the Niger Delta conflict. Identification with these ethnic or national groups largely determines how the parties involved in the conflict relate to people within their *ingroups* as well as people in

their *outgroups*. How the masses within each group perceive themselves and their relationships with groups that they are associated with helps to determine whether their relationship will be based on cooperation, competition, or conflict. This is also determined by the historic relationships between these groups.

Several concepts have been identified in the Enemy System Theory. One such concept is that of identity. Humans identify themselves as individuals and as members of groups of individuals. These groups can be acquired at birth, such as race, or through association within society, such as a group of workers or athletes. Developmental psychologists have identified the human need to dichotomise by attaching 'good' qualities with what we identify as ours, and associate 'bad' qualities with those of our outgroups, thus consequently, developing a sense of *us* and *them* (Volkan 1990:125).

Another concept is that of *ethno-nationalism*. Ethno-nationalism is the identity of an individual to their ethnic or national group. The emotions associated with ethnic identity are usually very strong and powerful. Ethnic identities are often seen as extended kinship identities; giving a sense of a wider 'family' which contributes to a sense of belonging. The organising of individuals and/ or communities into different groups often results in the existence of groups in a state of competition. This competition can be either *adaptive*, such as the Olympic Games, or *maladaptive*, such as the conflicts in the former Yugoslavia, Lebanon, Sri Lanka, Northern Ireland and the Niger Delta. When groups are under political, economic, ecological, or military stress, they can become malicious. There is a tendency to strike at out groups when this occurs. As Mack explains, "The central problem in efforts to understand enmity between ethno-national groups is the location of the *source* of the hatred or antagonism" (Volkan 1990:125). The source of such enmity can often be traced to some historical animosity as discussed elaborately in chapter two.

Yet another concept is *ethnic victimisation*. Montville defines the concept of ethnic victimisation as the state of mind when the security of their ethnic group is shattered by

violence and aggression. Depending on the circumstances, these groups often feel that their very survival is at stake. Mack defines the concept as: "the incapacity of an ethno-national group, as a direct result of its own historical traumas, to empathise with the suffering of another group." Therefore, victimised groups do not see beyond their own pain and anguish. These groups do not take responsibility for victims created by their own actions. This is a very important concept, particularly because it enables *a terrorised victim to become a terrorist*, with little guilt about committing violence.

Another element of this concept is the common theme among ethno-national terrorist groups that *passivity ensures the continuation of victimisation* (Montville 1990:170). Therefore, in order to prevent the group from being victimised, the group, or militant elements thereof, continue their (often unjustifiable) activities in the name of group preservation. A concept that is related to victimisation is the *chosen trauma (*Volkan 1990:39*)*. A chosen trauma is an event whereby a group is badly victimised. The group usually undergoes a complicated mourning process as a result of this traumatic event. The group then goes on to become obsessive about the trauma and often feels a sense of entitlement over past wrongs. Aggressors and terrorists often focus on these chosen traumas to justify their unjustifiable acts. Indeed, it is not uncommon for terrorist groups to name their organisations after chosen traumas. This victimisation cycle of 'reciprocal hostile actions' helps to explain the depth of both the zero sum nature of the conflict, as well as the problems associated with the minority model.

Marshall Rosenberg (2003:3-7) corroborates this assertion by adding that violence is a tragic expression of unmet human needs. The expression of violence explains the complexities of group behaviour, particularly with regard to antagonistic group relationships as argued by the enemy system theory. Identity conflicts evoke zero sum positioning, greater levels of emotion and more complex dynamics (Zartman and Anstey 2008). Oversimplified notions of 'black and white', 'good and bad' and 'friend and foe' are a reaction to complex

dynamics inherent in the process of shaping identities and identity conflicts. The structural nature of identity conflicts is often characterised by asymmetry. The weaker side can capatalise by displaying a greater sense of commitment to balance the forces of the stronger side. When ethnic groups are victimized, their sense of identity is endangered on an individual and group level.

This ethnic victimization often leads to what John E. Mack calls the *egoism of victimization* (Volkan 1990:125). With each group committing violence against the other, the zero sum nature becomes self evident. The victimisation of each group fuels its fear of being an endangered minority group. This fear of annihilation coupled with the egoism of victimisation lead the group to further acts of aggression against the other group. Meanwhile, the other group as the target perceives the same fears of annihilation and thus the cycle is repeated. This complicates the search for solutions as each group seeks to blame the other for their aggression, while ignoring their own responsibility in the perpetuation of the cycle.

Comparable to the propositions of the micro theory, which asserts that conflicts at all social levels are due to inherent human aggressiveness and those of the macro theory, which states that conflicts are due to the emergence of inappropriate social institutions and norms, the human basic needs theory propounds that humans have certain basic needs that they try to fulfil at all costs. These include basic needs such as identity, security, recognition, development, as well as basic physiological and physical needs. The theory implies that aggressive interactions and conflicts are the direct result of some institutions and social norms that are incompatible with inherent human needs and that such need and norms, which are frustrated by institutions, require satisfaction (Burton 1997).

The theory emphasizes that as long as the conditions that negate or frustrate basic human needs are in existence, neither rehabilitation nor deterrence can permanently alter behaviour. This theory further argues that an individual will find the norms of society in which he lives

(be it primitive, traditional or industrial) to be inappropriate because these norms cannot be used by him to secure his needs. He will, instead, invent his own norms and prefer to be labelled deviant or disruptive, rather than forego these needs, and if an attempt is made to subordinate his values to social values, there will be responses that are damaging both to the individual and, through him, to the social system (Burton and Dukes 1990: 83).

The focus on satisfying human needs is not associated only with John Burton. In his Pyramid of Human Needs, Abraham Maslow (1954) was the first to talk about the hierarchy of needs, stating that some needs are more urgent than others. In the same vein, the capability approach advocated by Martha Nussbaum (2000:16) focuses on human rights in terms of the capabilities of people. It does not look at the function alone but on what a person can do and the opportunities that are made available to the person. It also looks at what a person can be (Nussbaum 2000:16).The theory presents a philosophical approach to morality and rights fulfillment. Though Nussbaum uses this theory to discuss women's lesser opportunities globally, the theory can also be explored and applied in the discussion of the rights of the Niger Delta people to resource control.

Adopting the universalistic approach, Nussbaum argues that notwithstanding the diversity of cultures in the world, human capabilities cut across cultures, irrespective of the nationality, colour, gender, ethnic background or culture of the individual; she also states that there must be a basic standard of life that an individual must not be allowed to fall below. "A hungry stomach would be a hungry stomach anywhere in the world no matter the culture" (Nussbaum 2000:18). In her list of capabilities, she further argued that every human being should be able to have a decent meal, protection against bodily harm and sexual abuse wherever he or she is.

The person should also be able to use the senses, be able to have emotional attachments, affiliations, be able to reason, live and enjoy his/her environment. She goes further to state that the list is "to provide a philosophical underpinning for an account of core human

entitlements that should be respected and implemented by governments of all nations" (71). The "Capabilities Approach" constructed by Nussbaum is a way in which women can ascribe universal capabilities in order to elevate women to an equal place in the world.

3.4 The Applicability Of The Theories To The Niger Delta Conflict.

In discussing the various theories in the preceeding sections, one can identify a number of characteristics that are also features of the Niger Delta conflict. The fact that there are characteristics common to these theories and the actual ongoing conflict may be used as pointers suggesting the applicability of these theories to the Niger Delta conflict.

In the Niger Delta conflict, major distortions of the perception of the presumed enemy are prevalent, especially between the host communities, the government and the oil companies. This behaviour leads to the psychological need to dehumanize the other and create an "us" and "them" dichotomy, as discussed in the enemy system theory. Furthermore, the enemies are stigmatized as outsiders, or those who do not belong to the community, power hungry folks, dominants and evil incarnates. This social dichotomy and attitude belie the formation of national, ethnic or group identities and behaviours, as well as determine whether group relationships will be based on cooperation or conflict.

The Niger Delta people are scared of being dominated by the major three tribes of the country; this has been documented in several declarations as well as being noted in the Willinks review of 1957. The history of the Niger Delta represents a story of minority groups who have always been "afraid of ethnic domination and discrimination in development" (Crowder 1962:264). This is as a result of marginalization and relative deprivation from successive governments in Nigeria (See Suberu, 1996: Osaghae 1998). Research has shown that such deprivations and neglect resulted in the mobilization of ethnic groups to use all available means to fight for their unmet human needs. This is further supported by the various agitations in Nigeria's Niger Delta which date back to the colonial

era, when the fear of domination and neglect by the major ethnic groups in the country triggered demands for state creation, causing the colonial government to establish the Willink Commission to inquire into these fears and demands (Willink Commission Report, 1958:94-95). State creation was seen by the people of the Niger Delta as a guarantee of development and a shield from ethnicity-based political domination.

Another theme noted from the theories is the significance of group identity. The macro and micro theories state that group identity is an important part of the self-concept; people generally attribute value to the group to which they belong and derive self-esteem from their sense of belonging to that group. These theories also help to locate the root of violence, whether humans possess either biological or psychological characteristics that predispose them towards aggression and conflict. Closely related to the macro and micro theory is the enemy system theory, which combines concepts from individual and group psychology. Thus, the theory is predicated on the relationships between intrapersonal concerns, the individual within their environment, as well as the interaction of individuals within groups and the actions between those groups.

The Enemy System Theory offers a sophisticated theory of conflict which explains difficult problems such as militancy/terrorism and the depth of ethnic conflict. The Enemy System theory is significant, in that it helps to tie together the micro and macro levels of analysis by introducing key multi-level phenomenon. Furthermore, this theory helps to explain why territory is so important to ethnic groups in conflict and in particular to those groups with claims to territory.

Yet another theme from the theories reviewed here is the legitimacy of the actors or parties in the Niger Delta conflict. Given a situation where trust is lacking between the parties involved in the conflict, according any legitimacy to the role of the government will be a herculean task. Also in mediation, the issue of trust between the parties is of paramount importance. When trust levels are high, parties are less defensive and more willing to share

information at the mediation table with other parties as well as at private sessions with the mediator. Alan Gold (1981) put it succinctly when he said, "The key word is 'trust' without it, you're dead, without it, stay home" (Gold 1981: 8). It is important to emphasize here that, following years of broken and deceptive promises, the host communities are not sure anymore of the sincerity of the parties, especially the government. (See chapter two generally for more details). Tajfel (1981:320) highlighted the importance of stability and legitimacy with regard to majority / minority group relations thus: "There is little doubt that an unstable system of social divisions between a majority and a minority is more likely to be perceived as illegitimate".

In the Niger Delta, recurrent injustices combined with the perceived illegitimacy of the state by the minority community have resulted in the ongoing intractable conflict in the region since the 1950s. This assertion is supported by the rise in the activities of militias in the Niger Delta conflict. The rise of ethnic militias is related to the emergence and increasing radicalisation of ethnically based liberation movements in the Niger Delta, whose foundations and orientation seem predominantly violent (Akinwumi 1999: 138–149).

Closely related to the lack of trust/illegitimacy is the frustration that sets in, potentially leading to aggression and violence. This frustration arises as a result of there being a gap between what people feel they want or deserve and what they actually get. Although frustration does not always lead to violence due to the presence of other variables such as the fear of sanctions, the linkage cannot be disputed (Berkowitz 1989). The targets of violence in this context are the individual, institution or organization, perceived to be the cause of deprivation, or those related to it (Faleti 2006: 47).

The human needs theory addresses the Niger Delta's issues as it recognises the parties' needs. Satisfaction of the various parties' needs is paramount in finding a sustainable and culturally adaptable solution to the region's conflict. This is because as Edward Azar notes, "It is the denial of human needs, of which ethnic identity is merely one, that finally emerges

as the source of conflict, be it domestic, communal, international, or inter-state" (Azar 1990:146). Kelman added that identity, security and similarly powerful collective needs, and the fears and concerns about survival associated with them, are often important causal factors in inter-group and inter-communal conflict. The frustration of basic human needs is the ultimate source of much violent conflict, particularly among ethnic groups (Kelman 1997:195).

Where an individual or a group of people lack the capacity to escape frustration on their own and government policies either fail to assist them to do so or end up reinforcing their frustration, they will invariably devise other means of satisfying the underlying need that caused the frustration. The implication is that the conflict is transformed from one phase or stage to another, as the people respond to changing situations of frustration in society.

Furthermore, the construct of 'human needs' helps to eliminate the sense of mutually exclusive goals. Rather than fight over the resources in the region, the situation shifts to one in which all parties seek to fulfil their needs, such as security, identity, recognition and development. These needs are not satisfied at the expense of the other party, but are realised along with the other parties' needs. These needs are not mutually exclusive or gained at the expense of another; they are universal. The Human Needs theory further offers insights into a range of peace building processes that are involved in "the reduction of both direct and structural violence" (Christie 1997: 315-332).

The researcher is inclined to argue that a fusion of the Enemy System Theory and Human Needs Theory offers the most comprehensive and objective explanations of the Niger Delta conflict. However, explanation is not enough. Burton's Conflict Resolution Theory provides a holistic approach to conflict resolution. It challenges the assumptions of Western political thought that power is based and exercised through elites who establish norms of behaviour. However, it remains to be seen whether this approach will be accepted by the participants in the conflict and used to their benefit to resolve it. This is because research has also shown

that the fear of annihilation and the egoism of victimisation led the parties to further acts of aggression against each other (Ibaba 2011). This complicates the search for solutions as each group seeks to blame the other for their aggression, while ignoring their own responsibility for the perpetuation of the cycle (see chapters two and four for details). The frustration of not satisfying these needs leads to further aggression and subsequently, conflict.

3.5 Conclusion

This chapter has discussed the ubiquitous nature of conflict as a double-edged sword, with both beneficial and detrimental effects. The Niger Delta conflict is the embodiment of such a paradox - like the Chinese character that defines the concept of crisis, which is represented by the characters for danger and opportunity. Morton Deutsch (1973) argues that the negative or positive nature of conflict is determined by people's behaviour; it is not an inherent quality of conflict itself (Deutsch 1973). Some behaviours produce dysfunctional, destructive and unproductive responses which degenerate sufficiently, to the point that parties forget the substantive issues and transform their purposes to getting even, retaliating or hurting the other party. Other behaviours produce functional, constructive and productive responses which appropriately balance the interests of both parties to maximize the opportunities for mutual gains (Wilmot and Hocker 1998).

What is proposed in this thesis is the notion of conflict resolution and management through social integration and interdependence, through the corridor of alternative dispute resolution model. The micro theory added an important dimension to our understanding of conflict, by putting complex situations into workable models that stood up to empirical analysis. Also the theory is useful to the extent that it assisted us in our attempt to impose some objectivity on specific situations. Within the macro theory, there are important sets of concepts such as ethnicity and sectarianism that can be derived from the study of ethnic conflict. Whether one

defines the Niger Delta conflict as ethnic (between the minority tribes and the majority tribe of Ibo, Hausa, and Yoruba) or as sectarian (between Host communities and IOC's/ Government), it makes little theoretical difference as the conceptions for ethnic and sectarian conflict operate in the same manner. What is important is that these groups of people have categorised themselves as distinct groups and that they view each other as the out group or enemy (the enemy system theory).

The Enemy System Theory introduces the human need to dichotomise and thus create enemies and allies. Both the Enemy System and Social Identity theories stress the importance of self esteem and positive identity, particularly with regard to relations between in-groups (allies) and out groups (enemies). Human needs theory hypothesises that there are certain irreducible human needs which must be met in order for societies to function without maladaptive conflict. Burton's conflict resolution theory recognises these needs and suggests ways to accommodate them analytically and non-coercively.

The various theories examined in this thesis have attempted to address the specific elements of the conflict in all its complexity. However, most fail to achieve a level of comparison or abstraction that would enable them to be more objective and to take a more holistic approach. In view of this vacuum, this thesis goes on to explore other theories such as the mediation theory and indigenous theory such as the Ubuntu theory to find a viable solution to the conflict.

Chapter 4: Evaluating Viable Alternative Models: The Diagnosis Phase

*"The international community is faced with a wave of new conflicts. Taken together they amount to nothing less than an epochal watershed: a time that future historians may describe as the moment when humanity seized or failed to seize the opportunity to replace obsolescent mechanisms for resolving human conflict (*Renner 2011: 35*)".*

4.0. Introduction:

As discussed previously, the region's conflicts are multidimensional and frequently involve complex interactions between many parties. However, for analytical purposes it is useful to identify the parties to the Niger Delta conflict as: The Federal/State government, multinational oil companies, and host communities (including militants and women groups). The interactions between the actors/parties are frequently crucial in determining the terms on which the conflict will be resolved.

These interactions are also influenced by the level at which the conflict occurs, the relative level or status of the disputants and their relative power. This chapter, in a bid to seek a viable model for managing the Niger Delta conflict, discusses the relevance of the search, highlighting alternatives to the extant approaches and, where appropriate, drawing lessons from extra-legal best practice in making suggestions for further development of the law and practice of dispute resolution.

The approaches employed in this chapter are two-fold: diagnosis and prognosis. The first step is to examine the conflict management strategies which existed before now. These strategies refer to the internal mechanisms used by the various parties in resolving/managing the Niger Delta conflict in the past. As elaborated in chapter two, the wanton destruction of lives and properties as a result of the incessant violence in the Niger Delta region and elsewhere in the Nigerian nation calls for the need to look into conflicts and their management. Conflict as discussed in chapter three is inherent in every state or nation, however an appropriate strategy or method will work in managing, if not resolving, the

differences, provided all the issues are dealt with. The need to explore these past strategies is also predicated on not only the determination that the effectiveness of the management of the Niger Delta conflict is itself largely dependent on how well the causes of the conflict have been understood, but also the need for finding an alternative or more appropriate method for managing conflict. To do justice to this exploration, I have examined it from the viewpoints of the various parties/stakeholders to the conflict.

Also considered is the conduct of litigation in Nigeria in terms of how it affects time and cost, and how it contributes to the clogging up of the judicial system. Adopting a comparative approach points to socio-ethical, political and economic factors that may undermine the suitability and workability of litigation in the African context, and traces a trend for the invention and integration of home grown, context-specific methods of dispute resolution discussed in chapter seven into Nigeria's justice system. The decision to explore litigation as a conflict management tool is predicated on the fact that in Africa, the justice system has been and substantially remains the major process for dispute resolution (Gadzama 2006).

In addition, this chapter will explore the various processes of ADR, finding mediation as the most viable model. The purpose of this research is not just to find an alternative to litigation or adjudicatory measures, but also to explore appropriate dispute resolution processes. The main idea is to modify the whole dispute resolution system, including litigation, to make it more suitable for the parties to the conflict/disputes. The word "appropriate" must be emphasized when considering two important objectives of the reasearch: creating a dispute resolution system that is *appropriate for a given legal system* and culture and matching each instance of conflict to an *appropriate dispute resolution procedure*. Furthermore, the search for an alternative hinges on the determination that since World War II, the necessity for challenging the dominance of Western interpretations of peace has become increasingly palpable. A viable alternative will then be an exploration and adoption of western and non-

western processes. To do this, explorative and investigative studies became important (see chapter six for field findings) in view of the fact that in Nigeria at the time of writing this work, there was not much relevant information available in the public domain.

4.1. Extant Approaches In The Niger Delta Conflict

Following the exploration of the region's history, it has become clear that the Niger Delta's conflict is an identity conflict, which affects patterns of exclusion and solidarity and provides a basis for both social cohesion and conflict. As discussed in chapter three, human needs theorists and practitioners believe that the frustration of needs, such as identity and recognition, underlies many social conflicts. Since such needs are non-negotiable, they argue, an inability to attain these needs often leads to intractable conflict.

However, other theorists and practitioners stress that there is cultural variability in the ways that needs are understood, as well as in the ways in which they are satisfied (Avruch 1998). Past experience, for example, is an important influence on a conflict's intractability. Groups pass on the heritage of suffering and of enmities arising from historical traumatic events (Volkan 1988). These events that shape contemporary identities are kept alive in families and are sometimes aroused and amplified by political leaders, intellectuals and other influential persons. This mind set leads to groups adopting an adversarial attitude, as well as having a lack of trust towards members of the other groups (the Nigerian government and the oil companies).

4.1.1 Strategies Adopted by Host Communities

Following the long years of neglect and subjugation, as discussed in chapter two, the various Niger Delta communities are now under the perception that the Nigerian government is in connivance with the oil companies to deny them their rights to their environments, and that the government is not being sincere with them in terms of the various pledges it has made to alleviate the region from its present neglected conditions. The host communities have

resolved to take their destinies into their own hands by employing strategies and tactics ranging from 'reactive pacifism' to 'reactive militancy' (Onosode 2003: 111- 115). This has taken the form of demands by groups for political empowerment, increased fiscal allocation to compensate for resource exploitation and environmental degradation, resource control and accelerated development. The Niger Delta struggle by host communities was first seen as a mere verbalization of the demands of the region's elites, but subsequently it developed into a mass protest whose demands, methods and strategies of struggle had been transformed considerably.

The struggle has gone from one stage to the other. At the first stage, the struggle was oriented towards obtaining group rights to self-determination, equity and justice. The second stage saw the emphasis shift towards mass communal, ethnic and pan-ethnic mobilization, and the creation of linkages and platforms for general mass action by youths, women and community members. Third, there was a change from the culture of accommodating the region's elites with the state and MNCs to that of direct challenge and confrontation. Fourth, there was an incorporation of additional methods of activism into the struggle to include the extra-constitutional, extra-legal and cultural. Fifthly, there began a regime of violent and armed resistance by youth militias and militant groups, principally in response to State repression and corporate violence; these activities were part of a concerted effort to force concessions in respect of self-determination, regional autonomy, resource control and greater oil based benefits. See Table 4-1 and Table 4-2 for details of the different attacks on oil companies below (Osaghae 1998: 1-24).

Furthermore, a broad programme of disrupting oil production was embarked upon in Ogoniland in the early 1990s by ethnic groups from Ijawland, Isokoland, as well as other areas of the Niger Delta (Nzeshi 2002). A regime consisting of the occupation and shutting down of oil facilities, abduction of MNC staff, hijack and seizure of MNC helicopters and boats, stoppage of production, as well as other related activities were undertaken by youth,

women and community activists from 1997 (Abubakar 2003). By September 1999, about 50

Shell workers had been kidnapped and released in the name of the struggle (Arnold 2000:

224). The objective was clear: 'if they [the host communities] do not benefit from the oil

output, then they [the host communities] will stop the oil from being produced' (Arnold

2000:224). In addition, individuals and groups struggle to control and dominate

opportunities and benefits. The emerging greed, corruption and distributive conflicts

underpin numerous incidents of community disturbances and criminal violence in the

region. Ibeanu (2002:165) describes the situation as a matrix of concentric circles of payoffs

and rewards built on blackmail and violence.

Table 4-1 Selected Cases of Youth Actions in Respect of Oil Based Resource Benefits (2000–2003)

S/N	Incidents/ Time	MNC	Community/ Youth Group/ Ethnic Group/State	Demands
1	Invasion of Qua Iboe Terminal, Seizure of 3 Vessels, Production Disruption/April 2000	Exxon Mobil	Community Youths/Ibeno Community/Aqua Ibom State	Electricity
2	Occupation of Shell Rigs at Tunu and Opukulli, 165 staff held hostage/July–August 2000	Shell	Militant Youths of Egbema, Agalabiri and Agbichiama Communities/ Bayelsa State	Jobs
3	Stoppage of work on Gas Project, Shut down of 5 flow stations/ January 2001	Shell	Youths of Odidi/ Delta State	Facilities, registration of indigenous contractors
4	Seizure of Shell Housing Estate, Kolo Creek Camp/February 2001	Shell	Youths of Otuasega/ Bayelsa State	Employment, scholarships and environmental compensation
5	Sealing off of Off shore Oil rig, Hostage of 88 workers/April 2002	Chevron/ Texaco	Ilaje Youths/ Ondo State	Employment
6	Occupation of Etobele Flow stations/ May 2002	Shell	Ogboloma Youth Federation, Ijaw/ Bayelsa State	Employment, scholarships
7	Abduction of staff/ July 2003	Chevron Texaco	Egbema National Front, Youth/ Delta State	Development and empowerment
8	Invasion of premises/ August 2003	Oil Servicing co.	Itsekiri Community Youths/Delta State	Employment

Sources: Abugu 2000; the Guardian 26.04.2002.

Table 4-2 Selected Cases of Abductions/Kidnapping for Ransom (2002–2003)

S/N	Action/ Date	MNC/Oil Servicing Co.	Youth Group/Ethnic Group/State	Ascertained Purpose	Outcome
1	Hostage taking of 10 workers/ April 2002	Shell	Militant Youth Gang, Ekeremor LGA, Ijaw/ Balyesa State	Ransom Demand for NGN 3.1m.	Resulted from failure to yield to alleged frivolous demands
2	Kidnap of staff/ June 29–July 2003	Oil Servicing Co. working for Shell	Ijaw youth militants in Bomadi/Burutu LGAs/ Delta State	Demand for NGN 25.4m	State Government Intervention/ Negotiated release after 14 days
3	Kidnap of 9 crew and 4 military escorts of oil barges/ November 11–13 2003		Ijaw Militants	Ransom/ Other demands	Released 2 days later after threats by State Government/ Security Agencies
4	Kidnap of 14 workers/ November 2003	Chevron Texaco	Militant Ijaw youths/ Bayelsa State	Ransom demands	Intervention of State Government
5	Kidnap of 19 oil workers	Nobel Drilling/Prospecting.	Ijaw Militias/ Delta State	Ransom demands	Intervention of State Government
6	Kidnap of 7 workers/ November 28–December 2003	Bredero Shaw Oil Servicing Co. (Shell)	Militant Ijaw Youths/ Delta State	Ransom demands for USD 5m.	State Government Intervention/ Negotiation
7	Murder of 7 workers and military personnel/ April 2004	Chevron Texaco	Militant youths along Benin River area/ Delta State	--	--

Sources: Williams 2000; Agency France-Presse 2003.

4.1.2 Strategies Adopted by Multinational Oil Companies.

Several multinational oil companies operate in the Niger Delta region. These are:

- Mobil Producing Nigeria Unlimited (Mobil), formerly known as Mobil Exploration Nigeria Incorporated Mobil;

- Chevron Nigeria Limited (Chevron) the third-largest oil producer in Nigeria;

- Shell Petroleum Development Company (SPDC);

- Elf Petroleum Nigeria Ltd (EPNL Elf);

- Nigerian Agip Oil Co Ltd (Agip).

Shell is the longest-established international oil company in Nigeria. Known at first as Shell D'Arcy, it was granted exploration rights in Nigeria in 1938. In 1956, Shell was renamed the Shell-BP Petroleum Development Company. Since 1973, the Nigerian Federal Government has owned shares in the company, nationalising BP's shareholding in 1979. Today Royal Dutch Shell operates through several companies in Nigeria, most notably the Shell Petroleum Development Company (SPDC), Nigeria's largest private sector oil and gas operator. SPDC is a Shell-owned company operating a joint venture agreement, in which the State-owned Nigerian National Petroleum Corporation (NNPC) holds 55 per cent, Royal Dutch Shell 30 per cent, Total/Elf Nigeria 10 per cent and Agip 5 per cent.

As highlighted previously, the management of the Niger Delta conflict is dependent on the perception of different stakeholders, as well as the intensity of the conflict. For a better understanding of the paradigm shift in the conflict and how petro-business manages the correlated threats, it is important to discuss briefly some of the relevant characteristics and features of the pre-1990 situation (see Frynas 2000; Omeje 2004).

Prior to the 1990s, conflict relating to oil in the Niger Delta was largely latent, marked by the occasional non-violent protests. Violent protests were rare and sporadic, and it was largely a phase of structural violence. As a result of this, oil companies' security programmes were low profile in the pre-1990 era, mostly involving limited perimeter fencing around office premises and major production facilities and relying on non-arm-bearing supernumerary police, the so-called "Spy police". Oil companies' developmental assistance to the oil-bearing communities was basically low-profile, mainly business-motivated (e.g. the construction of an access road to a major company's production facility)

and in some cases, mere charity-driven philanthropy. The initial tendency of oil firms operating in the region was to hide under the cloak of oppressive laws governing the oil industry (Okoko, cited in Agbo and Ofuokwu/ 2008:82). This was followed by a regime of cash payments to communities, both as ecological compensation, appeasement, pacification and incorporation (Oduniyi and Nzeshi 2004).

There was a palpable developmental neglect of the oil-producing area, as well as a lack of knowledge and understanding of the effects of oil exploration in the Niger Delta till the late 1980's. However, from the 1990's, the level of understanding of the environmental issues improved, following the 1992 Earth Summit on the Environment. As a result of this increased awareness, embodied by the late Ken Sarowiwa of River State, environmental protection and remediation became a vital issue. With this consciousness, oil companies adopted new approaches to their security, such as 'communitization', privatization and corporatization of security. Security 'communitization' was the term used to denote the contractual engagement of members of the local oil communities to provide security for oil installations and operations within their localities. Corporatization of security, also known as "corporate militarism", refers to the increasing empowerment of some large business corporations to operate their own security outfits or to run (to all intents and purposes) a detachment of the State's defence forces assigned to protect the corporation's personnel and property by bearing the responsibility of its equipping, funding and/or commanding.

Notwithstanding all these militarised or community security provisions, the conflict situation did not abate. The reason was that these new approaches to security adopted by the multinational oil companies also had their problems. For instance, the communitization programme, though partly regarded as an employment generation device, also ostensibly compounded the security problems of both petro-business and the oil-bearing communities, especially where the youths who formed the security team of oil company facilities were also members of the militants who engaged in attacks against the oil companies (Omeje

2006). One example of this was the involvement of an armed gang that kidnapped 14 Chevron Texaco workers in November 2003 were said to be members of a security outfit recruited from the communities to guard facilities in the Foropa district of Bayelsa State (Agency France Presse 20 Nov 2003).

Further, the corporate security provided by oil companies created a security danger for the Nigerian State. With the shrinking authority and legitimacy of the State and Federal Government in relation to the conflict, when contrasted with the expanding power and quasi-governmental functions of petro-business, especially during a period of rising oil revenues, there was an increased risk of abuse of these security practices. Shell, for instance, was implicated in an abortive deal to import firearms in 1995 worth over US$500,000, including 130 Beretta 9mm calibre sub-machine guns, 200,000 rounds of bullets and 500 smoke hand grenades, to strengthen the security provision capacity of its apparently non-arms bearing Spy police (Frynas 2001:51). There have been several allegations of oil companies doling out large sums of money to their local vigilantes for the purpose of acquiring firearms to fight rival gangs and to strengthen their capacity to provide security to their oil installations.

Following the unbending resistance of oil-bearing communities and the steady international condemnation of the policies of the government and oil companies in the Niger Delta, the IOCs changed their tactics, having realized the unsustainability of their approaches based upon campaigns of violence and divide and rule. For instance, the giants like Shell have been forced to shut down operations in many parts of the Delta, costing them an estimated $1 million daily (Ibeanu 1993). They have begun to preach a new "community-based" approach to their activities in the Niger Delta. Shell Petroleum Development Corporation (SPDC) has affirmed that they have begun to lay the groundwork for a major shift in their strategy towards sustainable community development, such as the granting of scholarships, the establishment of health facilities and health programmes and the construction of skill

acquisition centres. Omiyi, Shell Nigeria Managing Director, Shell Petroleum Development Corporation (SPDC), spent $32 million on 129 community projects and carried out various awareness campaigns in 460 Communities in 2005 (Macaulay 2006: 36). However, it is believed that the attempts at corporate social responsibility by the Oil Companies are being overstated and that their actual activities fall far short of what is expected of them (Mathiason 2004, SPDC 1995:1).

These efforts are termed tokenist by communities, who view them as paltry when compared to the perceived value of resource exploitation by the oil companies and the Federal Government (Okocha cited in Yishau 2008:79). This view was corroborated by Friends of the Earth, who stated that these companies engage in 'Feelgood projects' such as academic scholarships and playgrounds to divert attention from the serious health and environmental impacts caused by their activities. According to Omojola (Omojola 2007:39), "oil companies' insensitivity to the plight of Niger Delta people continues to over-shadow the little good done by them through employment opportunities, provision of healthcare facilities and other corporate social responsibility programmes".

4.1.3 Strategies Adopted by the Nigerian government.

Petro-business in Nigeria, especially the upstream or exploration/production sector, is dominated by the big Multinational oil companies (MNOCs) such as Shell, ExxonMobil, ChevronTexaco, Agip and Elf. These companies operate joint venture production arrangements with the Nigerian National Petroleum Corporation (NNPC) representing the Nigerian government, in which NNPC is always the majority equity shareholder (with between 55 and 60 percent of the equity). Hence, in a bid to protect its equity interests, the oil-dependent Nigerian State usually attempts to settle the conflict between the oil companies and their host communities in favour of petro-business, often adopting legislative as well as military means. More often than not, the State's measures have aggravated the

conflict. The management strategy of the Nigerian government is contingent upon the following perceptions.

The Nigerian government sees the activities of protesting oil communities and the armed militias as acts of economic sabotage designed to endanger the main source of national revenues. Since Nigeria is an oil-dependent nation, with oil accounting for over 80 percent of Federal Government of Nigeria's revenues and 95 percent of foreign exchange earnings, any act capable of resulting in the disruption of oil production is perceived a threat to the survival and wellbeing of the country. The Nigerian government interprets the activities of some of the armed groups as acts of criminality and insubordination, challenging the Government's power in the Niger Delta and thus threatening national stability and security. As a result of these perceptions, the Federal Government management style is characterised by the following (Ibaba and Ikelebge 2009).

4.1.3.1 Military Tactics

The Federal Government management style has been that of repression and suppression, especially during the military regimes. Military rule commenced in Nigeria on January 15, 1966 when a military coup d'état, led by Major Chukwuma Nzeogwu, overthrew the government of Prime Minister Abubakar Tafawa Balewa. It continued through the short-lived regime of Major-General J. T. U. Aguiyi-lronsi (1966), the regime of Lt. Colonel (later General) Yakubu Gowon (1966 - 1975), which also witnessed the Nigerian Civil War (1966 - 1970), and the regimes of Brigadier (later General) Murtala Mohammed (1975 -1976) and Lt. General Olusegun Obasanjo (later General) (1976 - 1979).

The civilian administration that followed under President Shehu Shagari (1979 - 1983) was overthrown by a military coup on December 31, 1983. Thereafter, successive military regimes were headed by Major-General Mohammadu Buhari (1983 - 1985), Major-General (later General) lbrahim Badamasi Babangida (1985 - 1993), General Sani Abacha (1993 - 1998), and General Abdulsalami Abubakar (1998 - 1999). In between the Babangida and

Abacha regimes, there was a brief civilian Interim National Government (ING) installed by Babangida and headed by Chief Ernest Shonekan (August - November, 1993). Since May 29, 1999, when President Olusegun Obasanjo succeeded Abubakar, Nigeria has been ruled by a civilian regime, although Obasanjo was previously a General in the Army. Thus, by May 1999, the military had ruled Nigeria for approximately thirty years. Lands and backyards were being divided, partitioned and allocated to Lagos and Abuja in the name of oil blocks and wells without the knowledge and participation of Niger Delta peoples' (United Nations Human Rights Council Geneva, February, 2009).

These management strategies from the government can be classified into two different groups. The first involved a number of *ad hoc* measures, which included the use of force through the Nigerian police, as well as the military to quell violent uprising in a bid to subdue the aggrieved people into quiescence (Dokubo 2004: 4). The standard response of the government involved the militarization of the area in order to crush community protests, so as to ensure the protection of oil facilities and the continued flow of crude oil. For instance, soldiers were on occasions sent into communities to raid, kill, maim and set villagers' houses on fire. This was the popular management style, particularly during military rule. Military operations such as Operation Sweep, Operation Fire-For–Fire, Operation Hacurri No.1 and No. 2, Operation Restore Hope, and Operation Flush 1, 2, and 3 are just a few of the high profile security initiatives launched by the State against the Niger Delta region on the sight of any uprising (Douglas 2004).

Following human rights groups such as Amnesty International's crusade against brutality and inhumane treatment of communities, the present democratic government has had to take steps to get avoid resorting to such brutal control measures to subdue such uprisings. Nigerian security forces, particularly the police, have been accused of serious human rights abuses and activists had suggested that the government was doing little to address issues of impunity and corruption within the Nigerian Police Force. In 2007, the U.N. Special

Rapporteur on Torture reported that "torture is an intrinsic part of how law enforcement services operate within the country" and called on the Nigerian government to criminalize the practice (United Nations 2007).

4.1.3.2 The Viability of Probes/Panels of Enquiry

Generally, probes /investigations are a core part of governance and public office management. They are tools used all over the world to get to the roots of an incident. The thrust of probes or investigations is to make sure the causes of a problem are known, and persons behind are made to be accountable. In Nigeria, the stream of probes with no definitive outcomes has eroded the citizens' faith in the process. A typical example is the Oputa Panel.

In June 1999, just a month after the President Olusegun Obasanjo administration came on board, the Presidentset up the Human Rights Violations Investigation Panel popularly referred to as the Oputa Panel, to look into human rights abuse(s) in Nigeria. Prior to setting up the panel, the nation had been shaken to its roots by human rights abuses, especially during the successive dictatorial administrations of Generals Buhari, Babangida and Abacha. Nigerians saw the Oputa Panel as an opportunity to address the wrongs of the past. While the panel worked tirelessly and produced its findings as it was directed to, according to its mandate, in the end, nothing came of the report, as some powerful Nigerians, who felt threatened by the outcome used all means at their disposal, including court orders, to stop it. This was just one of a chain of probe panels whose reports were never published or implemented

Since the failure of the Oputa panel, the nation has witnessed at least 400 such unproductive probes (Probegate 2011). The Technical Committee Report (2008) set up to look into the plight of the Niger Delta issues and suggest a way forward in the Niger Delta made the following point: "It is clear that though governments, since 1958, have set up very high powered committees to look into the problems of the Niger Delta and the committees have

submitted far-reaching and comprehensive reports, they have suffered the same fate: non implementation". While some recommendations have been considered, often they have been taken out of context and implemented piecemeal, or without the required enthusiasm, consistency and monitoring policies in place to ensure the desired result. Some of the reports were not even touched at all; no White Paper was issued, and no follow-up implementation and monitoring mechanisms (Probegate 2011). The current quagmire in which the people of the Niger Delta region find themselves, that has led them to resort to violence, kidnapping, oil theft, illegal bunkering and inter-and intra-community suspicion and conflicts, is a result of the non-implementation of the recommendations of various reports on the Niger Delta. Insensitivity, neglect and at times, marginalisation of already powerless and devastated communities have made it possible for political opportunists, bad leaders, corruption, waste, institutional decay and inefficiency to thrive in the Niger Delta (Technical Report 2008).

In addition to the observations of the technical report, there has been a lack of a conflict resolution model that is structured, viable, sustainable and culturally adaptable to the region. The practice of responding to conflict only when it occurs is not only non-viable, but it breeds "conflict entrepreneurship". The fact that there is no process on the ground to manage any conflicts implies that once there is a conflict in any part of the country, a commission of enquiry is set up constituted by the same elders, rulers and politicians who have been accused of instigating such conflict to enrich themselves (Onosode 2003).

The second management strategy is based on the 'paradigm shift' to the new understanding that the essential part of the puzzle that will allow the IOCs to operate peacefully in the Niger Delta and make a more meaningful contribution to the Nigerian economy is community development projects. Such projects have covered areas such as the provision of social and economic infrastructure, compensation for polluted land (though it can be debated how successful compensation has been on occasions due to disagreements over the

rate of compensation which is decided by government and payment delays), youth skill acquisition programmes and scholarships for students of Niger Delta origin (Okoh 2002).

4.1.4 The Viability of Litigation in the Niger Delta Conflict

Litigation as an adversarial process of dispute resolution involves a situation where the parties use the State courts to assert their legal rights (Menkel-Meadow 1999). In the light of the parties or stakeholders involved in the Niger Delta conflict, as discussed in chapters one to four, the suitability of litigation is questionable in many ways. Generally, the method available for resolving disputes between two or more parties from the same country is through that country's courts. But when a dispute arises between parties of different countries, as is the case in the conflict at hand, the parties are faced with making the difficult choice of which country's domestic courts to use for the resolution of that dispute.

Assuming the parties can reach an agreement on that front, they are then faced with other issues such as the jurisdiction of the courts, the laws of the country and dissimilarities in legal systems. The laws relating to jurisdiction of courts in a given country are not made in cognisance of transnational disputes; they are designed to resolve domestic disputes, that is, disputes arising between two parties of the same country, hence adjudicating between parties from different jurisdiction can be difficult. In terms of dissimilarities in legal systems, where, for example, one country might practice the common law system (as is the case in Nigeria) and the country of the other party (such as is the case in France) the civil law system. This again presents another significant challenge, notwithstanding efforts by many international organisations and institutions, with unification or uniformity of different legal systems still a distant dream (Unitare 2001).

Furthermore, the unsuitability of litigation as a conflict management tool or model is predicated in the determination that litigation is seen by the communities as vindictive, complicated, expensive, and not fostering wide participation by stakeholders. Trials are

offender-centred and the deterrent effect of punishment remains largely unproven. Even where the victim's desire for justice is assuaged through the punishment of the offender, this often undermines the equally important goal of promoting victim-offender reconciliation and restitution. Therefore, the adversarial system appears to be a cure that often leaves society worse off than the ailment, especially in the context of post-conflict fragile peace which necessitates non-violent co-existence between hitherto warring groups. The misfit between Western law and African society is captured by Idowu William in these words "… In the West the judicial system is constructed after the manner of winner takes all, in African jurisprudence, what rules is the idea of no victor, no vanquished" (William 2001: 13-14).

Additionally, the uneducated rural dweller in Nigeria is "litigophobic" and would rather take a matter before a council of elders, a chief or a spiritual leader for counselling and resolution. Even among the educated, a man who takes his brother or associate to court is seen as an enemy for life, due to the battlefield psychology associated with litigation. The lawyer who should be a problem solver is often seen as part of the problem, sapping litigants of their hard-earned entitlements through exorbitant legal fees (Uzoechina 2008: 12).

Moreover, the fact that litigation is ostensibly directed at addressing narrow procedural and legal issues instead of resolving underlying problems relating to policy, it often times fails to resolve the real differences between the contending parties. For example, a challenge to setting up an oil exploration plant may be based on the granting of a licence without holding a public hearing, but the policy questions at the heart of the controversy (e.g. should the plant be built at all? What are the alternatives for supplying energy needs?) are rarely addressed by the courts and therefore such questions do not get resolved. In addition to the points already discussed, the following section details other explanations for the

incompatibility of litigation as a basis for the resolution of oil and gas related conflict in the Niger Delta region.

Slow Process: Courts can be slow in arriving at decisions in disputes brought before them. The oil industry is one which involves huge investment, and is under constant pressure to produce; each day in which there is no production as a result of dispute, results in losses which run into millions of dollars (Roberts 2004:313). The average life span of a court case in Nigeria from commencement at the trial court to judgement at the Supreme Court is about 16 years (Osinbajo 2004: v-vi.)   In addition, a 2006 survey of 200 cases in Lagos State of Nigeria that went from different High Courts in the Federation to the Supreme Court was undertaken. The outcome was that it takes an average of 10 years for a criminal case to go from the High Court to the Supreme Court. The figure is 14 years for a civil case, and 18 years for land cases. This shows the inadequacy of the justice system and how it has effectively become an obstacle to efficient justice delivery. A *locus classicus* in this respect is the case of <u>*Ojinnaka Uzoechina* v. *Sunday Ononye (*Suit No: 0/185/75).</u> The case commenced in 1975 at the State High Court. 32 years after its commencement, the case is still being heard at the High Court after being transferred from one judge to another.

Fascinatingly, the original parties who are long deceased have been substituted with their surviving offspring. Unnecessary delays such as these may occur in Nigeria and other countries where the judicial system requires reform. The much-needed reform must include areas such as increased funding for the provision of technology/ ICT services and training so that services that are currently delivered manually can be done technologically to expedite the justice process (Uzoechina 2008).

Rigidity: The court follows very rigid procedures that in certain circumstances may not meet the peculiar needs of the Oil Industry. For instance, where a key witness to an oil dispute is abroad, the courts (with few exceptions) will have to hold the case till he returns.

As discussed above, the same antidote may apply, in addition to a reform of the civil procedure of the court.

Neutrality Concerns: oil companies are always unwilling to submit disputes to the national courts in the developing countries in which they operate, because they do not trust the competence or independence of the judges in these countries.

Lack of Confidentiality: Litigation is typically conducted in public and proceedings and judgement will be matters of public record.

Cost: Litigation is generally more expensive than an alternative dispute resolution process. In most jurisdictions, considerable sums of money are spent in case filing fees, hiring of lawyers.

Damage of Relationships: Thomas Walde notes that litigation tends to make it much more difficult for relationships to continue thereafter. This is because court processes are adversarial in nature. Litigation breeds mutual antagonism. The participants in the oil industry are repeat players and it is in their interest to preserve their relationships (Frynas 2000).

In 1998, the Shell Petroleum Development Company (SPDC) in Nigeria had about 500 cases pending in the Nigeria law courts. About 350 or 70% of these cases were related to oil spill compensation claims. During the same year, Chevron was involved in 200 cases in the courts. About 180 of these cases were related to oil spill compensation claims (Frynas, 2000). In 2003, SPDC had 221 oil spills and paid out US$3.2m as compensation (Shell Petroleum Development Company, 2003). Between 1999 and 2003, SPDC alone had 1426 oil spills. The upsurge in court cases (especially compensation claims) in the oil-bearing Niger Delta of Nigeria has once again called into question the effectiveness of the present legal system. The institutional and structural weaknesses in the judicial system have led to a situation where in most cases; disputes spend an embarrassingly long time in court. The

convoluted court processes and strict reliance on formality and rigid procedure which are some of the features of common law have contributed to worsen the situation.

Having explored the different approaches /methods employed by the various parties, where different strategies have been employed at various points in time following the realization that a particular method has failed to work, it calls for a structured, *proactive* approach to conflict management rather than a *reactive* one. The next step, therefore, is to embark on a diagnostics phase in order to arrive at a viable model.

4.2 The Diagnosis of a Viable Alternative Model

As part of the process to diagnose the existing situation and come up with a viable model for the Niger Delta conflict, it became necessary for the researcher to explore the viability of an alternative model in Nigeria as well as to propose what such a model might look like. To do this, a detailed documentary analysis was conducted of Nigeria's needs and its legal and business environments.

The following questions guided my research in this assessment phase:

- What are the current problems experienced during the resolution of commercial disputes in the country?

- Can these problems at least partly be ameliorated by introducing mediation or other ADR methods?

- Are there appropriate preconditions to start a mediation project in the country, and if yes:

- What is the detailed plan of action?

- What are the obstacles to implementation and what is the plan to overcome those obstacles?

All these questions have been answered by the various pieces of World Bank and USAID sponsored research on ADR in Nigeria. One of such sponsored research projects led to the setting up of the Lagos Multi-Door Courthouse (LMDC), the first court-connected ADR centre to be established in Africa on 11 June 2002, which has helped in freeing the court's judicial resources for those cases which could not be resolved by the parties themselves. Thus, the Multi-Door Courthouse has become a convenient dispute clearinghouse for Nigeria's bogged down courts system. Disputing parties also have the option of participating in an informal, yet structured process that reduces the costs, time and emotional strain that are usually associated with litigation. Between 2002 and 2006, the LMDC handled a total of 268 cases, with a turn-around time of 3 months from filing to case disposal. In one case, a trial judge referred the parties, one of whom was Nigeria's former Vice President, Dr. Alex Ekwueme, to the LMDC after 17 long years in court. The matter was settled the same day, to the surprise and relief of all parties (Uzoechina 2008).

In furtherance to this diagnostic exercise, the following factors were also explored:

Adequate legislative framework: in terms of existing laws relating to the practice of ADR, there is an adequate legal framework to support ADR in its entirety. For instance, the Constitution of the Federal Republic of Nigeria 1999: Section 19(d) provides that*: The foreign policy objectives shall be – (d) respect for international law and treaty objectives as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication*. The Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria (LFN) 2004 Part *I:* Sections 1 to 36 provides for Arbitration, *Part II:* Sections 37 to 42 provides for Mediation/Conciliation, *Part III* Sections 43 to 55 provides for International Commercial Arbitration and Conciliation, *First Schedule provides* for Arbitration Rules, *Second Schedule* provides for Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958. *Third Schedule* provides for Conciliation Rules (see appendix for legal framework on ADR in Nigeria).

In addition, the objective of the efforts to reform and harmonize Nigeria's Arbitration and ADR law initiated by the then Minister of Justice and Attorney General of the Federation, Chief Bayo Ojo, SAN, in conjunction with USAID-Nigeria reforms Project is to bring it in line with its progenitor, the UNCITRAL models (UNGA Resolution 57/18 of 24 January 2003). In fact Rules 15(3) (d) and 55(1) of the new Rules of Professional Conduct for Legal Practitioners 2007 make use of ADR where relevant.

The existence of a culture of dispute resolution: from the historic examination of mediation and other forms of dispute resolution approaches in the Niger Delta (which is discussed in detail in chapters five and seven), it is clear that the Niger Delta does not lack a dispute resolution process; rather what is lacking is a structured and amenable process, capable of dealing with a greater number and variety of conflict situations.

Perceived need of mediation: There is a perceived need for mediation in the country, especially in light of the fact that mediation is an effective means of handling complex multiparty disputes (such as those between Host communities and Multinational oil companies). The importance of mediation or any other concensual method is important, especially in view of the different strategies employed by the various parties as discussed previously.

Access: One crucial issue associated with the established mediation centres in the country is their lack of accessibility to Niger Delta host communities. The fact that highly hostile commercial environments, such as the Niger Delta, which are more in need of such mediation services, have not been taken into account in Nigeria's map of mediation is worrisome and must be rectified. The prospect of travelling long distances to take advantage of mediation services might prove daunting to the host communities and is bound to involve great expense that may negate the cost benefits of mediation. Increased access of disadvantaged groups (such as those communities in the Niger Delta) to these services can reduce high level of tension and promote long-lasting relationship between stakeholders in

the Niger Delta region. It would also modify the culture of dispute resolution based on adversity and hostility.

ADR experience: as discussed in the research, the country has practiced ADR for many years and as such has the relevant experience.

NGOs and international organizations: both the World Bank and USAID have sponsored ADR projects in the past and are willing to engage more in terms of related projects. In that light, Nigeria benefited from the Rule of Law Assistance Project, which is being funded by the United States Agency for International Development (USAID). With the support provided by this project, the Nigerian government established three pilot courts in Abuja, Kaduna and Lagos, specifically for providing ADR services in those parts of the country (Kekere-Ekun 2003; Sotuminu 2002). As research has shown, the best process for a particular dispute will depend on the parties concerned, the interests at stake and the resources involved. Although time and cost are significant considerations, the quickest and cheapest method may not always be the best.

Having explored the various factors as part of the viability assessment process, I will state here that it is not possible (or desirable) to lay down rigid rules as to when each method of conflict resolution should or should not be employed. This is because, when dealing with disputes over natural resources, cultural values and principles are potentially vital considerations, the reason being that conflicts are culturally sensitive issues and the context in which the conflicts occur is of extreme importance. This view was captured in the 1992 Rio Declaration on Environment and Development which emphasized that indigenous people and their communities should be recognised and their identities supported due to the vital role they play in environmental management and development in terms of their knowledge and traditional practices.

4.3 The Development of ADR (western) in Nigeria

Nigeria is home to both regional and national centres for arbitration, as well as other ADR methods, and as such is one of the most accommodating countries in West Africa for Alternative Dispute Resolution. The judicial framework necessary for the support and further development of ADR exists in Nigeria, which is party to the following treaties and conventions – the ICSID (Washington Convention) 1966 and the New York Convention, (Recognition and Enforcement of Foreign Arbitral Awards) 1958.

In Nigeria, the scope of Alternative Dispute Resolution evolves mostly around the process of arbitration. After the amalgamation of the North and South in 1914, the first and formal statute introduced in Nigeria was on Arbitration. It was re-enacted as the arbitration ordinance (Act 1958) replaced by the arbitration and Conciliation Act 1988 known as the arbitration and Conciliation Act, Laws of the federation 1990 with provisions on conciliation.

The 1958 Act, which consisted of 19 sections, provided only for domestic arbitration. It is to be noted that by some coincidence, earlier that year, on 10th June 1958, the Convention of the Recognition and Enforcement of Foreign Arbitral Awards, otherwise known as the New York Convention, came into force. Nigeria being a colony of the British at the material time and not having enacted any law relating to International Commercial arbitration could not subscribe or accede to the convention. It is not known whether the British, on behalf of Nigeria, subscribed to it pursuant to Article X of the convention, which provides that:

"Any state may, at the time of signature, ratification, or accession, declare that this convention shall extend to all or any of the territories of the International relations of which it is responsible".

Nigeria has however adopted the convention by Section 54(1) of the Arbitration and Conciliation Decree 1998. The said Act is divided into four (4) parts and contains 58 sections.

1. Part one deals on arbitration.

2. Part two deals on conciliation.

3. Part three deals on additional provision on arbitration and conciliation.

4. Part four deals on miscellaneous.

According to Section 28 of the Act, This Act may be cited as the Arbitration and Conciliation Act and shall apply throughout the Federation.

Mediation, conciliation and arbitration are the most common forms of ADR in Nigeria, though in an extremely limited manner in terms of scope and usage. In other words these processes are used mainly for commercial purposes, such as in investments and breach of contract issues, rather than for the purposes of resolving communal, ethnic or religious conflict. Such techniques as early neutral evaluation, mini-trials and mediation-arbitration can be said to have had an even more limited application to disputes in Nigeria (Hubbell 1997:10). However recent happenings have added impetus to the need for further development of these forms of dispute resolution.

The Abuja and Lagos Multi-Door Courthouses (AMDC and LMDC), established in 2003 and 2002 respectively, are breakthrough institutions in providing ADR services, and there is currently a bid to replicate the same system in all the States of the federation, with Kano and Akwa- Ibom joining the elite league of judiciaries with court connected ADR centres. The Multi – door courthouses maintain a panel of mediators made up of reputable professionals and retired judges trained for ADR proceedings.

The formal introduction of ADR in Nigeria is a clear step in the right direction bound to improve access to justice of her citizens, amongst other things. However, one crucial issue to explore is the fact that highly hostile commercial environments, such as the Niger Delta, that are more urgently in need of these services, have not been integrated into Nigeria's map of mediation centres.

The application of ADR in urban Nigeria in recent times has been focused more on arbitration related to court annexed and investment related issues. The application of mediation or any other form of ADR in ethnic/communal conflict is yet to be explored. It is in view of this fact that this research is proposing the choice of mediation as a tool for resolving the Niger Delta conflict. This is also why the various processes of ADR as discussed below is not discussed here in detail considering that they have not been explored yet.

However, the choice of mediation in the next chapter is predicated on the fact that mediation as a consensual model is suitable for ethnic/communal conflicts. Mediation offers multiple and flexible possibilities for resolving a dispute as well as giving parties control over the resolution. Through this process, multifarious and multi-factional conflicts will be resolved as parties are given the opportunity to reach a decision that they own themselves, through which they will ensure its workability.

4.4 Conclusion:

In order to develop a viable and sustainable conflict management framework, there is need for adequate analysis of existing methods. Also for conflict to be effectively handled, its nature must be fully understood before making conclusions about the conflict itself. Sometimes these conclusions are very helpful, but at other times they can limit one's ability to understand what lies behind a conflict and what alternatives exist for dealing with it. As

the ability to understand conflict in a deeper and more powerful way develops, it enhances the ability to handle conflict effectively and build a lasting and sustainable peace.

Too often conflict resolution practitioners explore conflict in isolation from its historical roots and as a result are baffled by the stubbornness of the players. Conflicts cannot be solved without an understanding of the complicated systems of interaction that have developed over time and the degree to which the conflict itself has become part of the disputants' identity. The discussions around the root causes of the Niger Delta conflict in chapter two and the theoretical underpinning discussed in chapter three helps to explain the behavioural patterns of the various parties, buttresses the mind set and perception/interractions of the various parties and how they have processed the Niger Delta conflict in the past.

The way to use ADR as an option of "first resort" to prevent conflict escalation in the Niger Delta is by designing a framework for dispute resolution. To do this, there is need for the adoption of a proactive and structured approach rather than a reactive, *ad hoc* approach to disputes. It is often not enough to settle one particular dispute when many more are likely to arise in the future. This is also because disputes come in different mixes and layers, as explored in chapters two, three and four. Consequently, it is not enough to agree on a single dispute resolution procedure because a procedure that is satisfactory for one dispute cannot be satisfactory for all disputes. In addition to this, a procedure that is appropriate at one stage of a dispute may not be appropriate at another stage of the same dispute. And finally, a procedure that leads to successful resolution of *some* of the issues in a dispute may not successfully resolve *all* the issues of that dispute.

Developing a conflict resolution model offers a practical response to the Niger Delta's conflict as it consists of successive safety nets that can resolve a dispute before it develops into an intractable conflict; negotiation, then mediation, which is then followed by settlement conference, which in turn progresses either to advisory arbitration or to litigation.

Chapter 5: Mediation - Westernised Form

5.0 *Introduction*

As the heading indicates, this chapter concentrates on the westernised form of mediation, in direct contrast to the indigenous equivalent, which will be discussed in chapter seven. The proposal for the development of a westernised model is premised on the fact that indigenous/local/customary conflict resolution method on its own is inadequate in tackling the Niger Delta conflict, which requires a technical, expert inclined, scientific and specialised approach, due to the conflict's nature (involving Multi-national companies, dealing in a product that is in high demand globally). It is also being proposed after consideration of the potential negative impact that incorporating foreign elements (such as expert witnesses) might have on the indigenous system. Another significant factor supporting the proposal of a westernised process is the status of some of the parties involved in the conflict, such as the multinational oil companies as well as the Nigerian government, who may not concede completely to the indigenous process, having embraced and imbibed westernised business and lifestyle practices.

The relevance of Western mediation is hinged on its flexible nature, which does not require any commitment in advance by the parties to accept the mediator's decisions. The field findings in this research confirm that the practice of mediation in communal conflict is very limited and as such the practice needs to be adopted more widely. This is not to say that other types of ADR would not be possible or should not be explored for use in the context of the Niger Delta conflict resolution process. On the contrary, by expanding the repertoire of dispute-addressing practices available to those involved, the ADR process experience can only be enriched, an increasingly important requirement as the population and industries within the Niger Delta continue to diversify.

5.1 Historical and Anthropological Review of ADR

The modern ADR movement, which was born in the United States during the 1970s, originated amidst criticism of the adversarial nature of litigation, aided and abetted perhaps by a loss of faith in adjudication as well as a decline in confidence in the competence and professionalism of lawyers. In Shakespearean days, Shakespeare's King Henry VI, Dick the Butcher, offered Jack Cade the following memorable suggestion: the first thing to do is, let us kill all the lawyers (the lawyers here representing the forces of legal order and not evil). Charles Dickens (1853), in the same vein devoted a whole novel to tell the tale of an interminable law suit, Jarndyce and Jarndyce, which grinds through the court process so slowly that by the time the law suit is concluded, there is nothing left of the inheritance the disputants were arguing about.

Further to this argument, over three decades ago, Professor Frank Sander (Harvard University, 1979) pleaded with American lawyers and judges during the Pound Conference to re-envisage the civil courts as a collection of dispute resolution procedures tailored to fit the variety of disputes that parties bring to the justice system. In line with Sander's vision, the American Bar Association took a proactive role in the process and created the Centre for Public Resources (CPR) which was set up specifically for the provision of ADR services. ADR blossomed from a desire for greater judicial harmony, efficiency, and access to justice.

Subsequently, ADR was codified in 1990, when the U.S. Congress enacted the Administrative Dispute Resolution Act (Public Law: 104-320). The passage of this Act, perhaps more than any other event, signalled the Federal Government's general acceptance of, and preference for, the use of ADR methods to settle contract disputes. This action was followed by an Act of Congress in 1990 which compelled federal agencies to use mediation in certain civil cases before going to court. Many states passed laws making mediation a mandatory requirement under certain circumstances. In the private sector, many large US

and multinational companies signed a mediation pledge to settle disputes via mediation before resorting to the courts. The Administrative Disputes Resolution Act of 1990 briefly lapsed in 1995, but was permanently reauthorized as the Alternative Dispute Resolution Act of 1996. The surge in popularity and support for ADR was not confined solely to the US; several other countries had similar experiences while continuing to develop new and creative ADR processes and applications. Canada, New Zealand, Australia and the United Kingdom have become pioneers in the field.

There has been a growing use of ADR to aid decision-making between stakeholders in resource management, and global businesses have taken a serious look at ADR as an effective means of resolving cross border contract disputes. Several countries have institutionalized ADR as the primary source for conflict resolution, especially in the area of commercial contract disputes between buyers and sellers, and particularly in the public sector, consumer affairs, interstate commerce, international trade, environmental regulation, workplace issues and divorce.

In the United Kingdom for instance, the Advisory, Conciliation and Arbitration Service (ACAS) was set up in 1974 to deal with industrial disputes; at the end of the 1980s commercial mediation services became available, a development that caused the Lord Chancellor to remark in a television interview, "Mediation and other methods of resolving disputes earlier, without going to court, produce satisfactory results to both sides are, I think, very much to be encouraged" (Acland 1990:5).

In May 2011, the government launched a new Dispute Resolution commitment plus guidance for government departments and agencies, replacing the Alternative Dispute Resolution Pledge that was launched in 2001. Baroness Scotland, Parliamentary Secretary for the Lord Chancellor's department, made clear that although local authorities are not bound by the UK's government pledge to use ADR, they are still expected to consider using mediation where appropriate. She cited Lord Woolf's <u>Cowl vs. Plymouth City Council</u>

judgment, which emphasized that the courts now expect local authorities to show that they have at least considered using ADR to resolve a dispute and that litigation should be seen as a last resort. In Canada, a notable move toward the use of ADR has been adopted by the Canadian Revenue Authority (CRA).

Also in the European Union, some of the impetus for encouraging ADR was not only drawn from the practical problems associated with the court systems but also from the fact that access to justice is considered a fundamental right enshrined in the various international instruments in effect within the European Union, most notably the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union. Thus, the right to valid remedies has been declared by the European Court of Justice to be a general principle of Community Law. Accordingly, various European nations have undertaken programs to promote and utilize ADR in various ways, like the setting up of a consultative council on family mediation, the allocation of financing for ADR structures (such as Consumer Complaint Boards) and the provision of ADR-related vocational training programs, information campaigns and mandatory legislation (EU Green Paper 2008:13).

The green paper of the EU is evidence of the growing interest in ADR in the European Union, which has happened for three main reasons. Firstly, there has been an increasing awareness of ADR as a means of improving general access to justice in everyday life. Secondly, ADR has received close attention from the EU Member States, many of which have passed legislation encouraging it. Thirdly, ADR has repeatedly been declared a political priority by institutions within the European Union, in whose interest it is to promote alternative techniques such as these to maintain an environment propitious to their development.

The rise of the ADR movement in Australia is a reflection of increasing consumer rights consciousness in various areas of society and the questioning of traditional forms of conflict

management overseen by a justice system which was considered over-burdened, costly and inaccessible. The ADR movement has been gaining popularity, and a movement that started as a means of addressing some of the perceived shortcomings of the judicial system has generated interest in a variety of fields (such as education, society, environment, international, and gender concerns). The use of ADR in a range of dispute setting has grown swiftly in contemporary times and has been institutionalised to a great extent through the introduction of legislative schemes, as well as through the development of professional bodies which have fostered the use of ADR processes. The 'renaissance' of ADR occurred concurrently with the development of community justice centres to resolve neighbourhood disputes in the 1970s and 1980s. As a result, its use spread into other areas, such as family, environmental, commercial and industrial disputes. Astor and Chinkin observed that ADR enthusiasts were sometimes strange bedfellows, coming from within the legal system and from its critics; from government agencies as well as from opponents of bureaucracy who supported community empowerment.

There are three main areas of focus for modern ADR - interests, rights, and power. Power based ADR was considered most costly, followed by rights; interest based ADR was thought to result in lower monetary and relational costs, higher satisfaction with outcomes and less frequent reoccurrence of disputes (Ury et al, 1988). Deutsch's seminal discussion on the alternatives to litigation in two-and multi-party conflicts gave rise to a body of literature primarily in the field of law which explored different facets of ADR (Jackson 1997). Though theories, approaches and outcomes vary greatly, there is a consensus that conflict is everywhere, that it is not necessarily bad, and that it is important to attend to it in some manner (Chicanot and Sloan 2003).

5.2 Processes of ADR

Generally, ADR processes are marked by their voluntariness, flexibility, privacy, non-judgemental nature and party participation in problem solving. Since the parties become part

of the solution to their problem, there is almost a tendency to see them as offering fool proof solutions to the vicissitudes associated with the court system (Gadzama 2004). ADR is a convenient tag for a wide spectrum of dispute resolution options or mechanisms which exist as supplements to traditional litigation (and arbitration). The processes are designed to aid parties in resolving their disputes without the need for formal judicial proceedings.

Furthermore, ADR provides an opportunity to resolve disputes creatively and effectively, using the process that best handles a particular dispute. It is useful for resolving many disputes that never get to court and can potentially be applied in settling 90 to 95 percent of cases that are filed in court today (Aina 2003). Even where there are no delays in litigation, ADR is a necessary component of justice delivery. This is in the light of the fact that not all disputes seek to establish legal right and wrong; most disputes are interest-based and as a result will be resolved only when there is mutual satisfaction of the interests of the parties involved. In relation to this research, we shall look at the different ADR processes to enable us to see which of these will serve as the viable model(s) for the Niger Delta conflict. The processes explored may not have practical application in the western/modern sense but as it applies to an indigenous setting. This is because, as discussed in this research, with the Niger Delta's potential as the hub of a diversified national energy industrial sector (based on its vast crude oil/gas reserves and production infrastructure) as well as its agricultural endowments, an equitable dispute resolution mechanism, in the form of a hybrid as discussed in chapter eight is imperative.

5.2.1 Arbitration

Arbitration is one of the various methods of dispute resolution and very popular in international commercial transactions. Arbitration is a voluntary method of ADR which can be applied to both domestic and international contracts and is founded on the present or future agreement of the parties to submit any dispute between them to arbitration. The basis for proceeding to arbitration is the arbitration agreement or the arbitration clause, which has

been voluntarily executed by the parties. In Nigeria, arbitration is often perceived as a first step to litigation, and the arbitral process often becomes entangled in the extremely protracted and cumbersome process of litigation.

The judicial process itself presently lacks the capacity to give efficient support to the arbitral process (Fagbohunlu 2006). An arbitration process in Nigeria is often followed by a litigation process, which takes an average of 9.3 years to progress via the High Court to the Supreme Court, to either enforce or set aside the arbitration award. 19 years after the Arbitration and Conciliation Act (ACA) was passed, it is clear that the legislation has not achieved the objectives that inspired its enactment. Outmoded concepts and definitions have prevented the arbitral process from keeping pace with contemporary trends in international trade and commerce (Idornigie 2002).

5.2.2 Negotiation

Professor Frank Sander, an ADR proponent defined negotiation as "communication for the purpose of persuasion" (Goldberg, Sander and Rogers 1992:17). Principled negotiation focuses on the underlying interests of the parties as distinct from their conflicting positions on the issues and uses a problem-solving method characterized by brainstorming for outcomes to which both parties can say "yes" (Fisher, Ury, and Paton 1991). Parties negotiate whenever they are involved in direct discussions with a view to reaching an agreement. Parties to a conflict would usually first explore the chance of resolving the dispute themselves. Direct negotiation between the parties (or their representatives) is at the heart of all participatory alternatives. Since negotiation is a consensual process which requires willingness by both parties to attempt resolution by this method, negotiation will not be possible if the relationship between the parties has broken down beyond a certain point. Parties will then explore the mediation process for further solution.

5.2 .3 Mediation

Mediation is negotiation assisted by a third party. Sometimes the disputants are unable to reach a mutually satisfactory agreement, either because they lack good negotiating skills or because they become emotionally attached to their case. In such case, a third party neutral (usually referred to as mediator, conciliator or facilitator) may be called in to help them overcome such challenges (Dean 2000). Mediation can also expose the true strengths and weaknesses in the positions of the parties and how they contrast to the assumed positions that both parties might believe they have in litigation. The role of the mediator is not to take decisions on issues or to determine right and wrong, but to help disputants resolve their conflict consensually.

Mediation is a response to the financial cost and emotional stress to contractors, owners, developers, design professionals and others who resort to arbitration or litigation to resolve their disputes. Mediation is a confidential process and the parties and their lawyers are required to sign an agreement to that effect. Mediation allows the business executive to minimize legal costs, control the decision-making process, avoid most of the emotional stress as well as maintain business relationships, and provides the most rapid process for full and final resolution of disputes.

5.2.4 Mini-Trial/Executive Tribunal

Mini-Trial is a non-binding mechanism which uses an enlarged forum of executives and senior managers to assist the parties to a dispute to gain better understanding of the issues involved and to be able to enter into settlement negotiations on a more informed basis. The process involves exchange of information before a panel comprising representatives of the disputants (corporate bodies or institutions) who are authorized by the parties to the dispute to reach a settlement. This gives them the benefit of an open and receptive mind in listening to presentations by their legal advisers and, with the assistance of the neutral third party; they are better able to make a cost-benefit analysis of the options placed on the negotiation table (Brown and Marriott 1999).

5.2.5 Early Neutral Evaluation/Expert Appraisal

Generally a respected member of the legal profession with experience in the substantive area in question gives a brief, objective but non-binding opinion early in the dispute. He (or she) identifies the main issues, explores the possibility of settlement and assesses the merits of the claims. Thus, he provides the parties with neutral standards against which they can assess their positions and chances (Uzoechina 2008).

5.2.6 Private Judging/Rent-a-Judge

This method combines elements of neutral facilitation and case evaluation. Another variant of this process in some jurisdictions is referred to as Rent-a-Judge, which makes use of retired judicial officers as third party neutrals. This species of private adjudication is yet to take root in Nigeria. The abbreviated process provides the parties with an opportunity to test the strengths and weaknesses of their case.

The simulated courtroom scenario provides reality testing and the judge usually gives an opinion on how the case would be decided in court, with a view to enhancing subsequent negotiations between the parties. Depending on the success or otherwise of such venture, the judge's decision, by statute, could be made to have the legal status of a real court judgement, as can be the case in California, United States. The potential and wealth of knowledge that has been acquired by some of our retired-but-not-yet-tired judges are being grossly underutilized. This step might be considered risky and to have far-reaching implications, given the level of corruption in high places in Nigeria. However, the promise it holds far outweighs the risk (Uzoechina 2008).

5.2.7 Settlement Conference/Stakeholder Conference

A settlement conference is a meeting of all the necessary parties to a dispute; parties who have a direct or remote interest in the case, and other parties whose interests may be affected by a resolution of the dispute. The convener is usually an authority figure who commands

the respect of the parties and who can use the auspices of his good office to get the various parties to commit to settlement. It is usually employed in settling political disagreements and community disputes. A settlement conference is usually convened for multi-party, complex-issue disputes where a straightforward mediation process will not address all the issues sufficiently.

Thus, it may involve different levels of deliberative dialogue, co-existential negotiation, caucusing, counselling, and mediation, and combine these processes to varying degrees as the case develops. Flexibility and dynamism is the rule. Having looked at the various ADR options, I shall add that there is no watertight compartmentalization of dispute resolution processes, as various processes can be combined creatively depending upon the nature and complexity of the case at hand. For instance, a party may institute action in court in order to compel another unwilling party and, realizing that litigation is a gamble, submit to mediation (Lit-Med) or explore the option of an out-of-court settlement (Lit-Neg).

Parties to litigation may even end up at a negotiating table where, after judgement has been delivered, there is a need to detail the unexpressed obligations of each party, agree on a timeline for complying with the judgement of a court, and foster better relationship between the parties (Uzoechina 2008).

Mediation does not determine who is wrong or who is right but focuses on what has happened in the dispute or complaint purely as a basis for negotiating for the future. Mediation aims to maximise the parties' interests and this may be done by taking into account remedies and concerns not recognised by the Courts. The process is not bound by rules of substantive or procedural law and is often referred to as 'interest' rather than 'rights' based. To this end, I shall discuss the theoretical underpinnings of mediation as the chosen viable model.

5.3 Theoretical Framework On Mediation

The process of the review here involves two themes; the first relates to an explanation of the models and styles of mediation that are presently being promoted in the literature in an effort to capture some of the current thinking around the practice of mediation. The second theme relates more specifically to global trends emerging in the field of mediation and dispute resolution and reflective thinking about its future.

According to Andrew Pirie (2000) the theoretical foundations responsible for the development of ADR are very crucial. This is because they form the underlying knowledge base which provides the essential framework for policy makers and practitioners in choosing the appropriate processes. In furtherance to this assertion, there has been a relentless search for a viable theory of ADR.

Research has shown, however, that many ADR practitioners have deemed the search for such a theory unnecessary or irrelevant. Their argument is based on the fact that as practitioners they are likened to the technician who uses whatever 'tool' may be appropriate for the job at hand and if one 'tool' proves inappropriate, and then the technician may resort to another. This they regard as an intuitive aspect of the practice, born out of experience, familiarity and self-confidence in their role.

Theory is partly a systematisation of practice. It provides reasons and justifications for why particular ADR tools are appropriate for certain given circumstances but perhaps not for others. In view of this need, I shall endeavour to explore some of the theoretical bases of mediation. To do this I shall engage in an examination of the current thinking around mediation models.

Laurence Boulle (1998) discusses four distinct models of mediation, the settlement, facilitative, therapeutic and evaluative, and makes the point that mediators in practice might make use of two or more models. The main objective of settlement mediation is to

encourage incremental bargaining towards a central point between the two parties' positions; in order to achieve this, the mediator works to bring the parties off their positions to a compromise.

In the facilitative model, mediators are encouraged to focus primarily on helping the parties identify and express their interests and needs, assuming that this will bring to the surface common ground and highlight areas for trade-offs and compromise. Evaluative mediators try to provide disputants with a realistic assessment of their negotiating positions based upon their legal rights and entitlements but within an anticipated range of court outcomes; this is a common approach where parties are in conflict over a single issue - often money. Finally the therapeutic model focuses on dealing with the underlying causes of the problem with a view to improving future relationships between the parties.

Many mediators continue to identify with a particular model in their practice; others have found that their styles are an amalgam of various models. For instance, Insight mediators work on the assumption that conflicts are maintained by feelings of threat; the Insight mediator works to help parties examine and understand their underlying values and threats, both real and perceived. The difference between the Insight model and the Interest-based problem solving model is, according to Picard and Melchin (2007), the Insight model is relationship-centred rather than problem-centred and assumes that parties must not only explore the problem, but move through the problem and beyond it to understand "the deeper cares, concerns, values, interests and feelings that underlie the problem".

Conversely, Bush and Folger's (1994) work on transformative mediation contrasts the practice of mediation with the traditional problem-solving approach and explores the transformative potential of mediation. According to Bush and Folger, the goal of problem-solving mediation is generating a mutually acceptable settlement of the immediate dispute. They see problem solving mediators as often highly directive in their attempts to reach this goal - they control not only the process, but also the substance of the discussion, focusing on

areas of consensus and "resolvable" issues, while avoiding areas of disagreement where consensus is less likely. According to them, although all decisions are, in theory, left in the hands of the disputants, problem-solving mediators often play a large role in crafting settlement terms and obtaining the parties' agreement. In contrast, there has been a progressive move towards managing conflict at a deeper level and encouraging mediators to explore the "spiritual" side of mediation, as evidenced by some of the recent literature on mediation from the USA and the emergence of the Harvard Negotiation Insight Initiative, led by Erica Ariel Fox.

Kenneth Cloke (2002) offers another vision of mediation practice and conflict resolution which aims at examining the essence of the process rather than focusing on the procedure itself; Cloke sets out to challenge mediators to question their own assumptions about how conflict should be handled and notes that mediation is about "respect, honest and empathetic communication, trusting collaborative relationships, responsibility, forgiveness and closure" (Cloke: 119). In the more complex "The Crossroads of Conflict" (2006) Cloke encourages mediators and parties in conflict to improve their dispute resolution skills by travelling "the path of transformation and transcendence of wisdom, spirit and heart" (1). Cloke does not address litigated disputes and so the direction that is set out in the book would be more difficult with disputes that have reached court or with people who do not have an ongoing relationship.

Within the modern mediation movement, there is a variety of models being practiced and researched. Maureen Peeler (2003) remarks that a lack of clear process definition leads to disparate practices; Nadja Alexander (2003) goes on to comment that whilst disparate practices reflect mediation diversity, they also pose a real problem for quality control and mediation promotion amongst consumers. Mediation growth and application is very much influenced by the context in which it takes place. Alexander (2002) points out that mediation and ADR have grown rapidly in many common law jurisdictions such as USA,

Australia, Canada and England and less quickly in civil law jurisdictions such as Germany, Austria, Denmark, Belgium, Germany Switzerland and Yugoslavia with the exception of the Netherlands and South Africa. Alexander further suggests that despite the differences between various countries in their developmental stages, universal themes exist around such issues as the debate on standards for mediation practice and accreditation, how to determine the suitability of a dispute for mediation, flexibility versus regulation, and how to mobilize mediation practice in the shadow of the court. In regards to process, the debate continues about the practice of mediation versus the theory of the process, this being more obvious in court-related mediation where lawyers or judges play a role.

Another key issue is whether the policy aims of mediation, such as improving access to justice, reducing court waiting lists and increasing consumer satisfaction with the legal system, have been, or even can be met. At the practice end of the spectrum, Alexander observes that mediators, regardless of accreditation training, tend to mediate in a way that reflects their previous training, whether as lawyers, engineers, social workers, psychologists or academics. The debate continues as to whether lawyers, or those with a social-work or psychology background, make better mediators. Although the design of best-practice formula for mediation models and systems cannot be significantly dependent on the nature of the legal system in which they operate, Alexander points out that there is a risk in merely reproducing policy and making international comparisons without asking which success stories will or will not translate.

Research shows that debates over standards of mediation continue unabated and work has progressed in the development of these. For instance, in 2001, the US Uniform Mediation Act was adopted which promotes the use and uniformity of mediation in the USA; also in the same year, a comprehensive Report to the Commonwealth Attorney General NADRAC (National Alternative Dispute Resolution Advisory Council) in Australia provided a framework for the ongoing development of ADR, including guidelines for developing and

implementing standards and a requirement for a code of practice and its enforcement through appropriate means. The report makes further recommendations in relation to complaint handling, self-regulation, statutory provisions, accreditation, means for attaining and maintaining practitioner standards, infrastructure, resources and improved data quality.

Academics and practitioners have been reflective in exploring the field of mediation and ADR through ongoing debate. At the Keystone Conference (2006) 106 senior mediators, leading thinkers, writers and teachers met to consolidate their collective wisdom and to give advice to the next generation. Their purpose was firstly, to take stock of how the field has developed over the past three decades; secondly, to assess the field's current strengths and weaknesses; and thirdly, to prepare a statement of best counsel and guidance to the next generation of policy-making and policy-influencing practitioners.

Regardless of the context in which the ADR professional practices theirpreferred model of mediation, the message is clear; there is a sense that mediation and ADR need to look beyond the superficial aspects of conflict and to move into a realm that explores conflict at a deeper level for disputants. The challenge, as Mayer (2004) points out, is that the field of conflict resolution needs to broaden the definition of its role and become conflict engagers.

5.3.1 Theoretical Criticisms of Mediation with Minority Ethnic Groups

There are several criticisms levelled against mediation as a viable method of dispute resolution in a conflict involving minority groups such as the Niger Delta communities. The two key theories criticizing the effectiveness of the mediation process on minority groups are the psychological theory of prejudice, which posits that mediation creates an environment that is highly conducive to the exploitation of racial prejudices and power imbalances, and the pro-rights theory, which believes that mediation weakens the ability of minority groups to instigate social change.

5.3.1.1 The Psychological Theory of Prejudice

This school of thought is based on psychological findings of the works of Richard Delgado on the origins of prejudice (1985). According to Delgado, in the short term, the selection of a particular model of dispute resolution can do little to counter the deep-rooted prejudices that stem from either historical currents or an authoritarian personality. He added that prejudices that result from social psychological factors are relatively controllable.

Delgado's principal criticism of mediation is based on the fact that the informal atmosphere of mediation breeds an ideal setting for prejudice and other intolerant views to flourish, due to the lack of formal rules, procedural safeguards or avenues for recourse, which thereby renders minorities and other groups entirely vulnerable to exploitation. He further asserts that if one of the parties involved in the mediation is from a historically disadvantaged group, as in the case of the Niger Delta people, then the environment of mediation enables the other party to either act on their inherent prejudices or exploit the balance of power in their favour. For these reasons, Delgado suggests that it is far better for members of minority groups to seek recourse through the judicial system (Delgado, Dunn & Hubbert, 1985).

5.3.1.2 The Pro-Rights Theory

This second school of thought advocates that the formality, procedural and adversarial nature of courtroom litigation creates a forum that is preferable to that of mediation in conflicts involving members of a disadvantaged group. Supporters of this school of thought argued that mediation became popular with government and court authorities just when an increasing number of minorities and other disadvantaged groups began to use the court system to pursue their claims**.** Hence according to them, mediation is an effective way to control or undermine this "rights explosion," in order to maintain the present status quo. For instance, feminist scholars such as Catherine MacKinnon and Anne Bottomley argued that

the increasing use of mediation in the context of family law began when feminists began to make progress in having the court system treat issues of women's rights as public and not private matters. Consequently, it was alleged that mediation was a way to put women's rights back behind closed doors (Shulman and Woods, 1983: 4 Women's Advoc. 3).

The pro-rights theorists feel that mediation effectively avoids a discussion of the principles, values and power imbalances that inherently underlie a conflict. They emphasized that the informality and compromise of mediations mistakenly encourage parties to believe that consensus on social and political values exists, thereby undermining the will of these groups to seek broad social change. The pro-rights theorists further assert that the courtroom provides a better arena for minority and other disenfranchised groups to address these types of power and socio-economic imbalances. In summary, the pro-rights theorists believe that it is only through the adversarial process that minorities and other historically disadvantaged groups will achieve social change. The arguments put forward by both theories as highlighted above are very instructive; however there are some issues which need to be dealt with to show that not all the criticisms are applicable in all cases.

5.3.1.3 Responses to the Criticisms: The Paradox in the Niger Delta

The argument in favour of the adversarial process as highlighted by the theories above is premised on the apparent ability of the procedural rules of formal litigation to create an "equalizing" atmosphere in the courtroom that increases the ability of minority groups to receive fair treatment. It has been argued that these same rules and procedures, praised as being capable of protecting minority groups, are the same used to exclude both women and those of colour entirely from the judicial process.

Moreover, the assertion that the courtroom is an "equalizing" forum ignores economic realities that indigenous people are faced with since, in the litigation process, those with greater financial resources will often have the advantage. These theorists, we believe, have not critically accessed the depth and the intractability of racial prejudice in the Niger Delta

conflict. If they had, they would have realised that the legal procedure is very unlikely to be able to eradicate the impact of racial bias.

According to Reva Seth, all that the courtroom procedures might be able to do is to control or mask the appearance of blatant forms of racism and segregation (2000:3). Standpoint theorists Harding (1991) and Haraway (1991) have raised questions in this light. They insist that there is no neutral, value-free place on which to stand and make judgments, and emphasize the determining effect of the situation from which the world is perceived and known (Davies and Seuffert 2000). Thus, power and neutrality are intertwined. Delgado (1992) notes: "stronger parties have managed to inscribe their views and interests into 'external' culture, so that we are now hooked with that way of judging action. First, we read our values and preferences into the culture; then we pretend to consult that culture meekly and humbly in order to judge our own acts. A nice trick if you can get away with it".

Greatbatch and Dingwall (1989) through a number of empirical investigations of mediator neutrality have also shown that mediators influence the content and the outcomes of mediations; by selectively creating opportunities for the parties to pursue certain outcomes during mediation, mediators end up exerting pressure towards the outcomes they favour. Neutrality in mediation has been shown to function as a rhetorical device that obscures the operation of power in mediation (Cobb and Rifkin 1991; Mulcahy 2001). It has further been argued that unless mediators are aware of and act to deal with such manifestations of power, dominant narratives will colonize alternative narratives, and mediation will become a method of entrenching dominant power structures, not a forum in which diverse voices, such as those of minority peoples, can be heard (Cobb and Rifkin, 1991; Delgado 1992; Cobb 1993).

In the light of the impediments to mediation in the Niger Delta conflict that have already been discussed, a possible approach (if applied properly) could be to ensure that mediators are made aware of their possible influence of their conduct on the mediation process.

Having an understanding of their own cultural identities and assumptions will enable them use that knowledge to work effectively with those who do not share the same cultural norms. Rather than impose an unfamiliar way of working, these mediators could seek to make use of conflict-handling practices that are already embedded in the cultures of the parties with which they work. Lederach (1995), for example, uses Paulo Friere's idea of *conscientization*, "a…. process of building awareness of self-in-context that produces individual growth and social change." By doing this, partties will be able to think carefully about what is appropriate input and how they can ethically minimize their input and maximize the control of the parties (Lederach 1995:130).

5.4. The Viability of Western Mediation in the Niger Delta Conflict

The role of the mediator is to facilitate communication between the parties, assist them in focusing on the real issues of the dispute, and generate options that meet the interests or needs of all relevant parties in an effort to resolve the conflict". Ogunyanwo, (2005:27) defines mediation as "a voluntary (unless ordered by a court), non-binding, private dispute resolution process in which a neutral person, the mediator, helps the parties try to reach a negotiated settlement". Finally the Centre for Effective Dispute Resolution (CEDR 2004: 26) defines "Mediation as a flexible process conducted confidentially in which a neutral person actively assists the parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of resolution."

Thus, mediation is more likely to produce a result that is mutually agreeable, i.e. win/win, for the parties. Because the parties work together to come up with a mutually agreeable settlement, compliance with the mediated agreement is usually high. This also results in fewer costs, because the parties do not have to seek out the aid of an attorney to force compliance with the agreement. The voluntary nature of mediation was substantiated by Kalevi Holsti (1966), who notes that from a bargaining point of view, third party

intervention into a conflict or crisis may provide a feasible avenue of retreat for governments that wish to withdraw gracefully without appearing to back down before a threat from the main opponent. A compromise yielded to a third party may be easier to arrange than withdrawing in the face of the enemy. The beauty of the mediation process as highlighted by Holsti is that the process is concerned not only with the physical damage caused by the conflict, but also with the psychological damage.

Yet another relevance of mediation in the Niger Delta context is the financial consideration in pursuing a case in the courts or by other means. While a mediator may charge a fee comparable to that of an attorney, the mediation process generally takes much less time than moving a case through standard legal channels. Taking less time means spending less money on hourly fees and costs; in particular, the reduced cost as well as the decreased formality of mediation are seen as factors that are likely to encourage minority groups like the Niger Delta people, as well as others who have been hesitant to take their issues to court due to the litigophobia as well as the battlefield psychology associated with litigation and other adversarial processes.

Also mediation is relevant in dealing with identity driven conflict as in the Niger Delta, The picture of conflict in the region, as discussed in chapters two, three and four above, presents a complex picture; however in principle, it does not differ from conflict in other regions or societies. A closer look at conflicts in the region also reveals the place of ideals of harmony and group consensus as it relates to the basic cultural orientation and institutional premises of the region and the ways in which they are worked out in different concrete situations.

Within the framework of these orientations, the ideals of group harmony and rights to benevolence constitute important components that greatly influence the definition of conflicts and their resolution process.These ideals are evident in the modes of processing and resolving conflict, as discussed in chapter four. Firstly, these ideals show themselves through the strong tendency to minimize the legitimacy of open and direct confrontation.

Secondly, they show in the tendencies to minimize the definition of differences of interests and opinions in terms of outright conflict or confrontation. And finally, they show in the tendency to resolve many such differences in seemingly informal ways, based on the assumptions of solidarity and harmony between the contestants.

These themes do not constitute a mechanism that automatically inhibits the development of conflict. Rather, they constitute a reservoir of powerful themes that can be mobilized in situations of conflict. Activation of these themes of harmony as component models of conflict resolution, as proposed by this research, builds on the very strong predisposition, rooted in the basic conception of self, society and nature inculcated through socialization, education and communication.

Although these conceptions do not guarantee automatic compliance from the different communities, they do define the criteria for the legitimisation of the group's conflict processing. Block (2008) claimed that mediation can more effectively resolve conflicts when it enhances shared, if initially less salient, aspects of the disputants' identities. When the disputants possess an aspect of a shared identity, mediation can enhance its relevance, particularly when the mediator shares the same identity.

The author's argument is premised on the fact that:

•	A successful mediation/ negotiation between disputants are more likely when they share some aspect of their identity. This success is not dependent on whether the issue is negotiated or mediated with or without outside help; idiosyncratic factors might produce a favourable negotiation context when the disputants have some commonality.

•	Because the parties share some aspect of their identities, the mediator can strategically employ identity appeals to enhance this aspect, producing better results.

The identity mentioned here does not relate to the needs of the parties; neither does it relate to ethnic affiliation, but to the perceived values or history that binds all the parties. History here refers to the many years of association sharing a common commodity - the Niger Delta oil and gas.

5.5 The Viability of Mediation in Natural Resource and Related Conflicts

Alternative dispute resolution techniques, particularly mediation, have attracted global attention as a cheaper, faster and more satisfying way of reconciling and managing conflict situations in comparison to litigation. Increasingly, international petroleum contracts in China, Bangladesh and many other Asian countries provide for amicable settlement of disputes through mediation or conciliation. The relative structural and procedural advantages which mediation has over litigation recommend it very highly (Maniruzzaman 2003:197). To this end, I shall discuss below the advantages of mediation in natural resource related conflicts.

First is the timely and cost-effective nature of mediation, which is commonly noted as being faster than litigation in reaching a final resolution. An example which aptly demonstrates the pace of litigation is the high profile Nigerian case of <u>Shell Petroleum Development Company v. Farah</u> (1995) concerning compensation for oil pollution damage, which is reported to have lasted over 22 years.

Natural resource related conflicts are complicated and time consuming, involving technical details that require not just any judge but a skilled mediator in that particular field. An instance is the judgement by Mr Justice Creswell who delivered a masterly judgement in a commercial dispute over the quality of pipe supplied for a subsea pipeline. In simplified terms, the first 15% of his lengthy judgment was introductory, the next 70% was metallurgical analysis, and the final 15% was his conclusion. Why did such a dispute have to be decided by a judge?

Another very high profile oil and gas case was that of the Amoco CATS pipeline where the House of Lords had to address, in effect, two key issues concerning a gas transportation agreement: (i) whether or not a subsea tie-in valve had been serviceable and (ii), if so, what were the commercial consequences? Why was the House of Lords asked to make a decision about the serviceability of a valve? The reason why this case was sent to the House of Lords is not very clear, especially in the light of the fact that the two leading judgments were effectively 'non-legal', referring to almost no statute or case law but instead referring repeatedly to "commercial man" or "rational businessman", all within the context of the Oil and Gas industry (Dundas 2003).

The second advantage of mediation is the fact that it is interest-based and not position-based. Mediation affords all parties the opportunity to express their views and collaborate towards positive outcomes. When parties are in conflict, each focuses on its own position and are unable to see a clear solution that will allow them to get what they want. People naturally focus on their own needs and fears and are unable to recognize that it is possible for each person to be satisfied by the outcome. It is evident that mediation will be more suited to the Niger Delta conflict, as it may provide more satisfactory results than court adjudication since mediation need not be restricted merely to the consideration of legal issues and remedies. Mediation can also protect the interests of all parties involved, due to the fact that it is more prone to an "interest-based" (rather than "rights-based") approach to problem-solving. Such an approach is likely to produce an outcome that is more satisfactory to the parties involved, and hence result in a higher level of compliance with the agreement reached.

Thirdly, mediation will help parties continue and maintain their business relationship; this is especially important in the context of the Niger Delta where the parties need each other to carry on. The mediation process will allow the parties to work together towards a resolution while maintaining the dignity and privacy of such sensitive issues.

5.6. Appointment / Role of the Mediator

A vital point to bear in mind when considering the mediation process in the Niger Delta concerns the choice of a mediator. Factors that need to be taken into account when making this choice include the disputants' perception of the mediator's impartiality, the mediator's degree of influence over the disputants and the effect of the mediator's implicit bias. In protracted conflicts such as in the Niger Delta, where the parties have suspicion and distrust of each other, only intermediaries that understand the cultural nuances of the conflict as well as those who enjoy the "Confianza" (something more than 'trust') of the antagonist can help to carry out intermediary roles successfully.

The choice of a suitable panel of mediators has been an issue for debate in different circles over the years. In North America, the mediator is usually expected to be both neutral and impartial. This means that the mediator has no connections to any of the parties and does not overtly favour one side over the other. This "outsider-neutral" conceptualisation of mediation suggests that the mediator should come from outside the conflict situation, and have no commitment or connection to either side.This line of thought has been criticised by many theorists, who point to the fact that the complexity of international and intercultural disputes calls for a greater variety of mediator roles. The assumption that a successful mediator must come from outside the conflict situation is further challenged in light of the fact that the detached and rational mediator may not always be appropriate, insofar as he/she fails to take into cognisance certain cultural needs and values.

For example, in collectivist societies such as the Niger Delta under the indigenous system of conflict resolution, where it is important to preserve hierarchies, harmony and trust, face-to-face relations are a usual part of political, economic and social exchange. In Central America, for example, people prefer mediators who are involved in the community and hence in the conflict itself. The same issue will play itself in the Niger Delta where the choice of mediator can be a divisive issue. Those in favour of the indigenous /customary

process will advocate for an insider. However in a country where politicians and oil companies can buy any leader, who names his price, many have lost faith in the indigenous system and parties such as these will ask for a neutral outsider who will not concede to bribery and corruption.

Nevertheless, in an ideal situation under the customary setting, parties look for persons they respect and can trust and whom they know the other party to the dispute also trusts. This sort of person is expected to provide the needed orientation and advice, and typically maintains an ongoing and enmeshed relationship. Because conflicts do not occur in a vacuum, there are always other parties who know about or are concerned with the outcome, or whose influence can be brought in to mobilize and influence disputants. External support will be required in terms of providing finance, facilities and technical assistance. In their approaches to mediation, the Life and Peace Institute and John Paul Lederach advocated that external actors should be limited to facilitation roles.

5.7. The Interplay of Cross Culturalism

Also vital in the mediation process in the Niger Delta is the interplay of culture and its diversity relative to its external parties. Dodd (1998) defined culture as "the total accumulation of an identifiable group's beliefs, norms, activities, institutions, and communication patterns" (1998:6). This definition implies that culture is an attribute of a group, and also acknowledges the fact that there may be as much variation within the group as between different groups. Cultural diversity can contribute immensely to any community through its scope for adding creativity, building intercultural harmony, offering diverse points of view and new perspectives, and adding to productivity by integrating these human capital assets. Culture plays a central role in the political, economic and social life of communities. Faure and Sjöstedt (1993) explained that "culture may determine the whole outlook of mediation, that "cultural background, conditions how the parties perceives issues, other parties, as well as their intentions" (1993:3). In the same vein, Weiss (1994:51-61),

emphasizing the importance of cultural perceptions on the negotiation process lists issues such as "the parties' basic conception of mediation, their orientation toward time, their willingness to take risks, their protocol, and their decision-making style". This view was also corroborated by Fisher (1980) who argues that conflicting beliefs, morals and methods of communication, all rooted in culture, influence negotiations in various ways. Some of these include shaping the individual's perception of the situation, assigning meaning onto the other party's actions and leading the individual to inaccurately interpret the motivations of the other.

It is generally agreed that culture is a neglected aspect of conflict resolution; however cultural mismatch and misunderstanding are additional confounding factors that complicate communication and create misperceptions that sometimes hinder finding a mutually acceptable compromise. This is especially true when an external third party, often from another cultural background, is added to mediate between the conflicting parties, as is sometimes the case in the Niger Delta where Multinational oil companies operate. The term "cross-cultural" is interchangeable with intercultural, multicultural and transcultural. Samovar, et al (1981:35) stated: "Intercultural communication is the overall encompassing term that refers to communication between people from different cultural backgrounds".

The importance of culture in mediation is in view of the disparity which exists between the parties in the conflict and the interplay of multiculturalism which exists amongst the diverse Niger Delta communities, who themselves speak up to 250 different dialects. It becomes vital to ask the question: Does the indigenous model, which is highly preferred by indigenous people as can be seen in the field report below in chapter six, have any negative impact on the internationalization or possible implementation of mediation in multicultural settings? This question is vital in the light of the fact that there have been debates amongst academics and practitioners as to viability of mediation in multicultural settings. A study conducted by Gehm (1990) found that among the 555 eligible victims willing to participate

in Victim-Offender Mediation, 47% of them were more willing to participate if the offender was white as were the victims.

In the same vein, Ann Bottoms (2003:110) argues that restorative justice is unlikely to work as well in contemporary (urban/multicultural) societies as it does in more traditional ones. This is because according to her restorative justice, even in traditional societies, only works well if the victim and offender have either a "thick" (familial) or "thin" (cultural) relationship with each other. In multicultural modern societies there may be no relationship at all, other than that related to the criminal event. Bottoms, (2003:110) argues that any attempt to use a "blanket delivery of restorative justice will always achieve modest and/or patchy results". Similarly, Umbreit (2001:66) argues that in multicultural society the cultural background of victims, offenders and mediators are often different which if not carefully handled carries a risk of miscommunication, misunderstanding or, worst of all, revictimisation. The emerging discourse in the literature appears to point to the fact that indigenous mediation might be difficult to implement in multicultural settings.

Admittedly, cross cultural mediation may not be as easy as it sounds because indeed, the negotiation process is often more difficult than that of imposing a settlement. However, Llewellyn and Howse (2002:10) suggest that it is worthy of the effort given that negotiated resolutions tend to last because the processes through which the parties are to negotiate a resolution may be the issue between the two groups. The case of the Niger Delta and its western MNOC's thus requires that the different communities or cultures come together to agree upon the details of the mediation model before such a process begins.

An important dimension of culture in the Niger Delta is the existence of two groups (the western and the indigenous group) and the extent to which members identify with the group (collectivism) as opposed to identifying themselves as individuals (individualistic). This identification is very crucial and significant to note in designing any model.

LeBaron added that cultures affect the ways we name, frame, blame and attempt to tame conflicts. Whether a conflict exists at all is a cultural question. In an interview conducted in Canada, an elderly Chinese man indicated he had experienced no conflict at all for the previous forty years (LeBaron and Grundison 1993:116). It was argued that this expression was largely due to the conception of what conflict was to him; people of other regions might have answered the same question very differently. In the same way that there are manifold definitions of "culture", there is a dizzying array of cultural differences.

Conversely, Michael Desch (1998:141-170) is highly critical of culture as a key to conflict management. There is the fundamental challenge around defining the term 'culture'; Desch stated that "definitions such as collectively held ideas, beliefs, and norms that cultural theorists commonly use are so broad and imprecise that they have proven difficult to operationalise". Desch further added that cultural theories fall short because they tend to analyze single cases as opposed to looking at trends over a number of representative conflicts. Desch's arguments, though valid, are not so convincing. Culture is a crucial part of the conflict management process. Misunderstandings between parties, emanating from a lack of cultural awareness and understanding, often create breakdowns in communication that contribute to the failure of the process. Culture plays a role throughout the entire process - from the start to the outcome.

One salient point to note on the role of culture is the need to be culturally fluent. Cultural fluency means developing the ability to understand the cultural assumptions upon which the behavior and thinking of your international colleagues rests. Of equal importance is the ability to understand the myriad of subtle and not-so-subtle ways we are all influenced by our own culture. Cultural fluency is also the appropriate application of respect, empathy, flexibility, patience, interest, curiosity, openness, the willingness to suspend judgment, tolerance for ambiguity, and sense of humor.

Cultural fluency has been argued as one major key that can unlock the hidden complexities of culture in developing a viable model for the Niger Delta. Cultural fluency, though sounding simplistic, when viewed properly emerges indeed as one of the major keys to unlocking the doors of stereotyping and other vices. Generalizations about how people from a specific culture may think or act can lead to inappropriate stereotyping, gross injustices and incorrect (and possibly disastrous) actions. In addition to cultural fluency, it has been argued that the following measures will also help to manage the interplay of cross culturalism in the Niger Delta conflict.

Learning the cultural stereotypes about the culturally different parties to the mediation.Investigating the actual people involved, as well as the problem, before running into conclusions or hasty generalisation. Being flexible, i.e keeping an open mind and an understanding that the parties may well act differently and that the stereotypes may be useful in the mediation.These measures will often produce inspiring and practical concepts and solutions not thought of within mainstream culture.

Gleaning from the foregoing, the Niger Delta diverse communities can all live and interact with each other through recognition, respect and appreciation of the diverse cultures and belief systems that exist amongst them all. This notion was well expressed by Magnus Marsden when he said: *"Balance is based on the understanding that all forms of life and all peoples are intrinsically complementary, and will flourish if the domain of each is perceived and respected"* (Marsden, as cited in Oman 2004:83). The way to manage diversity successfully amongst the cultures and traditions in the Niger Delta is by maintaining the balance between unity and diversity. Bending towards unity results in uniformity and sameness, at the expense of our human uniqueness and distinctiveness; erring on the side of diversity magnifies differences and separation at the expense of a common, shared humanity.

Managing diversity means acknowledging people's differences and recognizing these differences as valuable; it enhances good management practice by preventing discrimination and promoting inclusiveness. Hence diversity is dependent on a given community or group who, though sharing similar values, differ on such values as is shown through behaviour. It is therefore argued that rather than use the golden rule we may use the platinum rule: "treat others as they want to be treated". Moving from a frame of reference from what may be the default view ("our way is the best way") to a diversity-sensitive perspective ("let's take the best of a variety of ways") will lead to a more effective in a multicultural setting such as the Niger Delta.

5.8 The Role of Power in Mediation

One of the main criticisms leveled against mediation as a dispute resolution mechanism is the claim that it cannot lead to "fair" outcomes when there are considerable power imbalances between the parties, and that it only benefits stronger parties who tend to take advantage of their position to coerce their weaker adversaries, leaving them worse off with less than they would have received in a formal adjudication (Levine 1984). Robert Baruch Bush and Joseph Folger referred to this as the "oppression story" (Bush and Folger 1994:15). The basic claim of the "oppression story" is that mediation is a perfect instrument for stronger parties to impose their will upon weaker disputants. This account argues that the "informality" and "consensuality" of the mediation process accentuate power imbalances between the parties; that this informality "denies the weak party the right to a system of checks and balances"; and that the "self-posturing 'neutrality' of the mediator" gives him or her "an excuse to avoid applying pressure on the stronger party" (Pinzon 1996:11).

"Oppression stories" critics tend to equate power with the resources - especially the financial resources - of the disputing parties. Likewise, they imply that the outcome of mediation will be determined by the parties' power endowments. These assumptions fall short in several respects. First, they fail to recognize that power derives from many sources. Studies on

power resources in negotiation reveal its inherent complexity. The word power often has negative connotations, with a feeling of danger and manipulation. Power can also have positive and constructive aspects (Coleman, 2000; Lewicki, Saunders and Berry, 2010). It can be used for motivating others and delegating authority, or to work with others. The ethics of power lies not in power itself but in the motives and values of the user. Fisher (1983) identifies six elements of negotiating power: skill and knowledge, a good relationship, a good alternative to negotiating, an elegant solution, legitimacy, and commitment. Similarly, Robert Adler and Elliot Silverstein (2000: 1) distinguish between personal, organizational, informational and moral power.

In the light of the Niger Delta conflict, the perception of power is not different from the oppression story in terms of the belief that the outcome is a function of the parties' resources. Moreover, according to Jeffrey Rubin and William Zartman, (1995) "one's aggregate power position, using power as resources, is not an accurate indicator either of the power of the parties going into negotiations or their perception of their power relationship." These authors mention two elements that should preclude us from equating power with party resources. Firstly, the possibility of obtaining power from an external source and the effect that the scope of the parties' concerns will have on their relative power. And secondly, the perception of equal power as necessary for a fair mediation.

Rubin and Zartman (1995) argued that "equal power does not lead to a more effective negotiation" because "symmetry in conflict situations tends to produce and reinforce hostility and prolong negotiations". They argue that symmetrical negotiations go "less smoothly than their asymmetrical counterparts" and produce "less mutually satisfactory outcomes less efficiently (p288).". Similarly, public policy interests do not always demand total bargaining parity between the parties.

The Niger Delta host communities, just like the "oppression story", assume that the Nigerian government and multinational companies (the "stronger" parties) tend to use their

power to impose a solution on weaker parties. The existence of power does not entail its exercise. As Adler and Silverstein (2000:4) argue, "disproportionately greater power on the part of one party in a negotiation often reduces the likelihood of a favourable outcome for the powerful party". Weaker parties tend to offer great resistance to attempts by the stronger party to use power to impose an outcome. They will typically respond "not by acting submissive, but by adopting appropriate countering strategies of their own". Moreover, a weaker party who becomes aware of a power ploy would likely be reluctant to accept a proposal from the stronger party. Adler and Silverstein note that weaker parties "may be so suspicious of the stronger parties' intentions that they will refuse to agree even to terms that most observers would characterize as reasonable (p 5)".

According to Michael Foucault, (1980) whose views have had a broad impact on the study of power relations in social science research, "power doesn't only weigh on us as a force that says no, but it traverses and produces things" and "needs to be considered as a productive network which runs through the whole social body, much more than as a negative instance whose function is repression" (p 197). Similarly, Pinzon (p 11) argues that "power is not only what many bargaining practitioners and theorists believe it to be-a negative, forbidding, repressive force" - "rather it is fundamentally concerned with bringing forth things, opening new sources of knowledge, generating satisfaction".

Following Foucault's account of power as a productive force, the true potential of mediation lies in moving the dispute process from a "power over" stance, where power is used to dominate the will of another, to a "power with" approach, where power means focusing the parties' abilities on the achievement of a commonly agreed resolution. Foucault further noted, "Power is not to be taken to be a phenomenon of one individual's consolidated and homogeneous domination over others", it "must be analyzed as something which circulates", as something "never localized here or there, never in anybody's hands, never appropriated as a commodity or piece of wealth" (p 197). Joan Kelly claims that power is

"not characteristic of a person" but instead "an attribute of a relationship" (1995:86). Power, as these authors argue, should be seen as an emerging, changing, relational and multidirectional force.

Having looked at the various assumptions of power as it relates to the mediation process, the question that comes to mind is how power imbalances can be managed in the asymmetric Niger Delta conflict. This is because parties to mediation calculate the likelihood of their success and establish their bargaining positions based on the relative power of the other party. The multinational in Nigeria enjoy political dominance, by virtue of the joint ventures which they operate with NNPC. Without effective support from the government, or technical assistance, the Niger Delta communities are in an inferior power position to the companies. In the event of an environmental dispute therefore; community groups are obliged to accept whatever "gestures" of compensation are made by the Oil Companies. Disruptive violence is increasingly taking hold as a formidable tool to cushion this power deficit, creating a pseudo-balance with the politically dominant OGCs.

It is a clear fact that there are imbalances of power in the Niger Delta conflict, however, the consensual nature of mediation, rather than accentuating power imbalances, can equally protect against the dangers of domination by one party. To do this, the mediator has a vital role to play in ensuring that the parties have real control over the outcome. Mediation though may not eliminate power disparities; however it can reduce them as parties focus on joint solutions rather than hurting each other, as the mediators help 'weak' parties realize the power of the mediation process to obtain optimal solutions, and finally as the mediators help 'strong' parties realize the joint gains and low costs of mediated outcomes not obtained by unilateral imposition.

Riskin (1994:62) argues that the central quality of mediation lies in "its capacity to re-orientate the parties toward each other by helping them to achieve a new and shared perception of their relationship that will redirect their attitudes toward one another.

Chornenki (1997:168) adds that "it is the voluntary joining together of parties in the pursuit of a joint problem-solving exercise rather than their successful domination of another that is at the heart of interest-based mediation's true 'promise". Since the degree to which each of these features is present in mediation could differ, it is the mediator's responsibility to make sure that the process is fairly conducted, that the parties understand the voluntary nature of the process, and that a decision cannot be imposed on them by the mediator or by the other party.

The mediator has a central role in preventing power abuses and any tendency on the part of one party to dominate the other. For instance, in explaining the basic ground rules of the process and conducting the discussions, the mediator should make sure that the parties understand the voluntary nature of the process: that they cannot be forced into a settlement and must agree on any settlement terms. Similarly, by focusing on specific issues and the parties' interests and needs, the mediator can prevent the dialectic of adversarial opposition and encourage the parties to engage in a common search for a mutually satisfactory, or at least bearable, solution for both sides. A mediator who fears that one party might take advantage of the other should be able to stop the mediation and even refuse to continue. In addition, techniques such as the use of multiple mediators to reduce the impact of an implicit bias, the use of pre-mediation to deconstruct a client's dominant narrative, and final agreements which are written in a balanced manner will contribute in the aim of coming up with an amicable solution.

This research argues that another means of managing the power imbalance in the Niger Delta is by developing a local capacity and basic institutions. This model should ensure that it strategically accesses and mobilises localities, communities and sections of society like elders and women who are willing to be involved in the process, since they are also crucial parts of the attaining peace process. In addition, the strategies that will be used to define

plan and implement the mediation initiatives will be derived using local languages, customs and images.

The need to tailor tools to the local environment is also underscored by the fact that the Niger Delta itself is not homogeneous in terms of language, ethnic or cultural makeup. For example, Rivers State is pluri-ethnic, comprising of at least ten different cultural groups, with at least six major languages, each with their own range of distinct dialects. And Rivers is just one of the nine States that make up the Niger Delta.

Currently there are struggles between different levels of leadership at the State and local levels for power and influence, not to mention the intergenerational conflicts within communities. Youths are seen by elders as disrespectful and troublesome, while the youth leaderships continue to consider community leaders as a weak and greedy lot who do not want them to partake in the "national cake" (money that accrues to the community by way of royalties). In the same vein, women believe that their views are hardly taken into consideration in a male-dominated society.

5.9 Conclusion:

Following the discussions in the various chapters above, and having identified the Niger Delta conflict as an identity- ethnic related conflict, it is clearly supported by research that the conflict in the region is not always directly connected to issues of the distribution of wealth and power. Rather, its defining trait is that it depends in all its phases, from onset to escalation to dispersion or resolution, on the dynamics of the identities of the parties involved.

Developing a conflict resolution model or framework for the Niger Delta conflict, entails dealing with all the multifarious issues highlighted, such as culture, and power. Conflict resolution literature reveals a range of understandings about the nature of culture and power,

and the way these elements are operationalised in the practice of mediation carries implications for its success or failure.

Power equates with dominance and dominance is strength (Chornenki 1997:162). The western views (individualist) as discussed are definitely different from the indigenous views (communalist). The question that came to mind was how a "power with" attitude can be fostered between disputing parties through the use of mediation.

There is both danger and opportunity in verbalising the power dynamics inherent in any conflict. As can be deciphered from the previous analysis of culture, the silent web of meaning that blends cultural practice, conflict, and power into a mediatable event is a dangerous undercurrent. Whether articulated or left invisible, culture and power differences are integral to the resolution of conflict through mediation (Foucault, 1978:95) "Where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power". The multiple discourses of power mimic to some extent the multifaceted discourses of peace, which silently manoeuvre power, often in search of social equilibrium (Foucault, 1978:95).

In view of this understanding, a viable model will be looking beyond positions to the interests underlying the parties is a technique of finding common ground between the opponents, since there are usually some shared interests present. Some of those interests can even be satisfied without causing any damage to the party's position. To achieve this, awareness of the interests of the other party will enable parties to understand the concerns, challenges and views of the other party and start thinking towards the lines of inclusivity and recognition, thus de-escalating the conflict situation.

Chapter 6: Field Findings

6.0 Introduction

In the multi-billion dollar oil and natural gas industries, the financial stakes of decisions and business dealings are enormous to all the parties involved. Stakeholders need enhanced certainty, better and quicker decisions, more procedural flexibility, cost savings, and other efficiencies. More effective, expanded use of Alternative Dispute Resolution (ADR) will enhance the competitiveness of energy markets and deliver significant improvement to the way in which regulatory and commercial disputes get resolved.

Given the identification of mediation as the viable model, it became necessary to conduct field research to assess the knowledge, acceptability and viability of mediation by the parties to the conflict. The basic goals of this chapter include: gathering of facts; writing field reports; arriving at a reasonable conclusion and (where necessary) advising on policy issues relating to conflict management in Nigeria (in particular) and the rest of the world in general. The ability of the researcher to be able to carry out the above functions clearly is dependent to a large extent on the choice and understanding of the research methodology that would be able to answer "how? " and "why?" respondents say what they said. Hence, the researcher was motivated to doing some element of both quantitative and qualitative research, as opposed to purely quantitative research. This motivation comes from the observation/belief that rich descriptions of the social experience of the research respondents (parties in conflict) are valuable for this study

This chapter investigates the opinions of respondents in the scope of the research as it relates to the viability and acceptability or otherwise of mediation as an alternative to adversarial approaches. To do this, this chapter discusses the methodologies employed in exploring the various research questions, principally the viability of mediation in the Niger Delta conflict. The researcher justifies why the methodologies used were chosen, compared

with other likely methods. The philosophical dichotomy between the use of qualitative and quantitative research methodologies are discussed, specifically considering the epistemological arguments.

The researcher also describes the strengths and limitations/weaknesses of the methodologies used. The description of the research subjects, ethical issues considered in this research and the sampling techniques used by the researcher are also discussed. In so doing, this chapter relates the findings from the qualitative interviews, questionnaire, focus groups, documentary analysis and the quantitative survey analysis, supplemented by secondary data, in order to come up with a holistic view of all parties.

6.1. The Relevance of Field Work to this Research:

The involvement of parties in the Niger Delta conflict is highly crucial, especially as it relates to gauging out their acceptability and willingness to the proposed model. Also because the active participation of parties in the dispute resolution process, especially has been an issue of interest and therefore has been generating a considerable debate among academics and professionals globally on the need to involve parties in the design and development of the conflict resolution process.This ideological debate is of interest in this study, and to the advancement of mediation in particular, because the success of the mediation model proposed in this work will hinge on the willingness of the parties to concede (Morgan 2005).

The significance of field research is predicated on the need to search for an alternative to the strategies employed by the various parties to the conflict, as discussed in chapter four above. The relevance of fieldwork to this research also hinges on the fact that there has not been any research in the public domain on the application of mediation in resolving ethnic/communal resource related conflict or any other conflict in Nigeria. In addition, although certain planning decisions and cost estimates can be made through 'paper' or 'desktop' assessments, there are certain limitations on the level of accuracy and degree of

guarantee that can be provided through a 'paper-only' assessment, hence, the importance of this field work.

Hence the fieldwork has enabled the researcher to evaluate the understanding of the parties of the concept of mediation and its viability in the resolution of the conflict, as well as test out the performance of the proposed systems under site-specific conditions (specimen testing). Finally, information / data gathered from this study have been fed back into the planning and design process of the hybrid model which this research has developed.

6.1.1 Defining the Geographical Locations

The field research was undertaken in three cities in the Niger Delta region, namely Port Harcourt in Rivers State, Warri in Delta State and Yenagoa in Bayelsa State. The capital cities of the various states were chosen due to their centrality as well as their multi-ethnic setting. These geographical locations were chosen due to the particular ethnic communities who predominantly live in those areas. Also, these three states formed the core Niger Delta states from which the bulk of Nigerian oil is produced (Sala-i-Martin and Subramanian 2003).

6 1.2. Methodology and Approach

According to Krauss (2005:758) research methodology is based on the epistemological philosophy of knowledge of how we come to know what we know. It poses the questions of: What is the relationship between the knower and what is known? How do we know what we know? And what counts as knowledge? (Krauss 2005: 759). The answers to these questions Krauss argues lie in understanding the differences in epistemologies among research paradigms, which begin primarily as a philosophical exercise of whether there is one knowable reality or there are multiple realities of which some individual knowledge can be acquired (Krauss 2005: 759).

Krauss further notes that in the positivist paradigm, the object of study is independent of the researcher; knowledge is discovered and verified through direct observations or measurement of phenomena (empiricism); facts are established by taking apart a phenomenon to examine its component parts whereas, in alternative view, according to the naturalists or constructivists, knowledge is established through the meanings attached to the phenomena studied (i.e. researcher interacts with the subjects of study to obtain data). Inquiry thus changes both researcher and subject and knowledge is context and time.

Given the importance of the above epistemological arguments to the exploration work conducted in this research, a wholly quantitative or wholly qualitative research was rejected, as it would not have provided insights into why the respondents said what they said or optimize the data collection process for a fair generalization to the larger population (which of course is important for any exploratory research such as this, and success indicator for any social policy decisions). To be able to balance these goals, the researcher thus used both the qualitative and quantitative methodologies to optimize the data collection process, as well as enhance the richness of the data collected.

Furthermore, Denizen and Lincoln (1989:237) argued that qualitative research involves an interpretive, naturalistic approach to the world, and qualitative researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people associate with such things. Holmes et al (2005) further pointed out that qualitative research will be used if the researcher wants to understand a phenomenon about which s/he knows very little, or when s/he does not have a complete knowledge of a particular entity. As a result, two types of research instruments were used, interview and questionnaire techniques, to provide research credibility as well as reliability.

Combining the use of interviewing and questionaire techniques operates on the premise that understanding emerges most meaningfully from an inductive analysis of open-ended, detailed and descriptive data gathered through direct contact with participants. The case

study discussed in chapter seven was instrumental in exploring to discover how each of the tribes/communities processed disputes. The purpose of the interviews was to flesh out descriptors and perceptions of the process, with the objective of coming to a greater understanding of current and potential delivery, monitoring, measurement, and communication mechanisms most appropriate for the proposed framework.

The outcome of this study was used to develop both a western and an indigenous mediation model for the Niger Delta conflict, which will also serve as a template for other parts of the country. Furthermore, the study involved surveys of the existing indigenous conflict resolution mechanisms, through interviews with community elders, militants (both repentant and current), youth groups, women and plenary discussions with peace committees among the study communities (Denzin and Lincoln 2000). In addition, an in-depth analysis of relevant secondary data sources, such as published and unpublished books, magazines and journals, were utilized. The study also reviewed the literature on how indigenous communities processed disputes from secondary sources: textbooks, academic journals and internet database.

The methodological approach collected three types of information from respondents:

•   Individuals were asked for generalised information on types of disputes and how these disputes are resolved in their communities;

•   Particular cases were investigated through interviews and informal conversation with parties and those involved in resolving the dispute; and finally

•   Opinions, thoughts and feelings about dispute resolution and suggestions for ways forward were sought from community members based on the belief that communities are better able to understand and analyse their own problems (and to identify ways of improving such situations).

6.1.2.1 The Questionnaire Method

Asking questions is an obvious method of collecting both qualitative and quantitative information from research subjects. Most social researchers often choose to interview the respondent or ask respondents to complete the questionnaire (Akinkoye 1994), or it can even be done by giving them questionnaires which let them say what their meanings are or choose between meanings given to them as possibilities (Krauss 2005). Using the questionnaire thus enables the researcher to organise the questions beforehand and receive replies without actually having to talk or personally interview every respondent. So, one significant feature of using the questionnaire to the researcher is its impersonality, because the questions are pre-designed/formatted. They do not change according to how the replies develop, and they are the same for each respondent, and the researcher posing the questions is remote.

Similarly, the responses can be completely anonymous, allowing some probing questions (especially in semi-structured questionnaire) to be asked with a fair chance of getting a true feedback. Another significant feature justifying the choice of this method is that doing survey research in a fairly large region like the Niger Delta, the questionnaire method becomes expedient because there is no geographical limitation with regard to the location of the respondents: they can be anywhere in Nigeria so long as they can be reached either by post, telephone, or email. Moreover, it is relatively cheaper for the researcher (considering the funding constraint in conducting this study) in terms of cost of administration, time and the intention of the researcher to solicit data from a fairly large representative sample of the population. It is also important to note that time taken by the respondents reading the questions, checking facts and pondering on the questions before completion tends to lead to a more genuine and accurate data. As a method of data collection, the questionnaire is thus a flexible tool.

However, while questionnaire instruments are relatively cheap and are effective in preventing the personality of the researcher having effects on the results, they do have certain limitations. For instance, there are problems in gaining the required response from illiterate respondents, especially as the questionnaires tend to be answered and returned by the more literate groups of the research populations (see Akinkoye 1994). The researcher was mindful of this and was prepared to use face-to-face interview methods to gain access to illiterate respondents if they participated in order to avoid sample bias. Furthermore, in self-administered questionnaires whereby respondents are left on their own to fill in the answers, lack of enthusiasm and undue procrastination very often lead to very low rates of returns of completed questionnaires (Akinkoye 1994).

Experience from the pilot test has also shown that respondents leave some questions unanswered because the researcher is not there to urge them to provide answers. On the other hand, while it is common to have all questions answered by respondents, falsifications do frequently occur, either because of the desire to impress the researcher or for other reasons. Thus Akinkoye (1994) argues that there is also the probability for respondents of low status to give false description of their academic qualifications or occupations. Closely related to the above argument is that in self-administered questionnaires the researcher is not sure about the degree of independence of the respondents who returned completed questionnaires because their friends, relatives and/or other persons could have been present while completing the questionnaire. These people might influence the answers given. In fact, people around the respondent could dictate answers to him/her if they know the answers. However, this issue has been handled by the researcher in this study under the reliability section below.

6.1.2.2 Why Use Semi-Structured/Open-Ended Questions

The use of semi-structured/open-ended interview/questionnaires has attracted interest, and they are widely used in both qualitative and quantitative methodological discussions (Flick

1998:76). Uwe Flick argues that this interest is linked to the expectation that the research subjects' viewpoints are more likely to be expressed in a relatively open manner. According to Flick (1998:77), other justifications for the heavy use of this method are that: non-direction is achieved by several forms of questions, because unstructured questions are asked and increased structuring is introduced later during the interview to prevent the researchers' frame of reference being imposed on the research subject's viewpoint. In addition to the non-direction, is the criterion of specificity, which according to Flick meant that the interview questions should bring out the specific elements that determine the impact or meaning of an event for the research subject, in order to prevent the interview from remaining on the level of general statements. Merton and Kendall (1946:552) thus suggest that specifying questions should be explicit enough to aid the research subject in relating his/her responses to determinate aspects of the research situation and yet general enough to avoid having the researcher structure it.

Another important justification for using semi-structured/open-ended questions is what Flick (1998:78) refers to as the criterion of range, which aims at securing that all aspects and topics relevant to the research question are mentioned during the research interview. On the other hand, the researcher's step by step task to cover the topical issues (which Gray 2004 calls the Zone of Validity) by introducing new topics or initiating changes in the topic is also important. To do this, Flick argues that the researcher should lead back to topics that have already been mentioned but not detailed deeply enough, especially if he/she has the impression that the research subject is leading the conversation away from a topic in order to avoid it.

Another justification for the use of semi-structured/open-ended questions is what Flick (1998:78) calls the depth and personal context on the part of the researcher. By this Flick meant that the researcher should ensure that emotional responses in the interview go beyond simple assessments of pleasant or unpleasant. The goal of this, Merton and Kendall

(1946:554) argues, is to encourage a maximum of self-revelatory comments concerning how the research situation was experienced by the research subject. Flick (1998:79) thus suggests some non-directive style or strategies that researchers could use in doing this, for instance: focus on feelings, restatement of implied or expressed feelings and referring to comparative situations. Additionally, in semi-structured/open-ended questions, Flick (1998:84) argues that theory driven, hypotheses-directed questions are easily asked. The essence of this is that questions could be oriented towards the scientific literature about the topic or asked based on the researcher's theoretical presuppositions. Moreover, if concrete statements and context of experiences about an issue are the aim of the data collection (as is the case in this research), Flick (1998:95) argues that semi-structured/open-ended questions should be considered as the preferable method.

6.1.2.3 The Interview Method

In view of the limitations of the questionnaire method, the researcher also chose the use of interviewing method. The interview method according to Akinkoye (1994) is very appropriate in largely illiterate populations such as those in developing countries; who might not be able to read or write down their opinion with pencil and paper. So the researcher's purpose of using the interview method is in accordance with Patton (1990:5), who argues that researchers use the interview method to find out what is in and on someone else's mind. We interview people to find out from them those things we cannot directly observe. The appropriateness of interviewing method in this study therefore is to be able to tap the feelings, expectancies and opinions of respondents who might be participating in this research but would be unable to express those feelings on paper because of their level of literacy.

In addition to the above reasons, the strengths of the interview method according to Hughes (2002:210) are:

- located in face-to-face encounter with respondents

- large amounts of expansive and contextual data are quickly obtained

- it facilitates cooperation from research subjects

- facilitates access for immediate follow-up data collection for clarification and omissions

- useful for complex interconnections in social relationships; data are collected in natural settings; good for obtaining data on non-verbal behaviour and communication

- facilitates content analysis and triangulation; facilitates discovery of nuances in culture

- Useful for uncovering the subjective side of respondents amongst other factors.

6.1.2.4 Structure and Substance of the interviews and Discussions

The interviews were always preceded by a short introduction by the researcher, outlining the purpose of the interview and an overview of the research. Issues of confidentiality were addressed, and participants were asked if any information they chose to share should be kept confidential. The interviews and discussions in this study were structured and participants given a planned set of questions which guided the process or session.

The structured interview method was adopted for several reasons. Firstly, in view of the fact that this research is geared towards ascertaining the viability of mediation in the region's conflict, an unstructured questionnaire might have left this session unguarded, and as a result, lead to a long and uncontrollable argument, bearing in mind the sensitive nature of the conflict. Hence, the structured/semi structured interviews and questionnaires helped to guide the respondents to talk about particular aspects of the issue at a time. Secondly,

because it was structured, the research assistants who were writing during the process were able to supply answers accordingly. The interviews/focus groups' session were not taped, for obvious security reasons. Notes were however taken, which were transcribed later that day, an activity that would take from one to two hours. It was found to be very useful to transcribe the interview on the same day, so that reflections and additional notes on the context of the setting were made. It is important to add that though the interviews were guided by a list of questions, they usually ended with the conversation becoming loose and flowing, where the researcher felt that respondents just wanted to express their feelings.

6.1.2.5 The Focus Group Method

Focus groups are group discussions, organised to explore a specific set of issues. Focus groups are distinguished from tbe broader category of group interviews by 'the explicit use of the group interaction' as research data (see Merton 1956 and Morgan 1988: 12) Even when group work is explicitly included as part of tbe research, it is often simply employed as a convenient way to illustrate a theory generated by other methods or as a cost-effective technique for interviewing several people at once. The researcher chose this method in order to work with pre-existing groups - clusters of people who already knew each other through living, working or socialising together. We did this in order to explore how people might talk about conflict within the various and overlapping groupings within which they actually operate. By using pre-existing groups such as university students, we were able to tap into fragments of interactions which approximated to 'naturally occurring' data. The fact that research participants already knew each other had the additional advantage that friends and colleagues could relate each other's comments to actual incidents in their shared daily lives. They often challenged each other on contradictions between what they were professing to believe and how they actually behaved.

6.1.2.6 Justification for the chosen Methodology:

The choice of the triangulated method is predicated on the determination that according to O'Donoghue and Punch (2003), triangulation is a "method of cross-checking data from multiple sources to search for regularities in the research data. By combining multiple observers, theories, methods, and empirical materials, I hope to overcome the weakness or intrinsic biases and the problems that come from single method, single-observer and single-theory studies. It poses the questions of: What is the relationship between the knower and what is known? How do we know what we know? And what counts as knowledge? (Krauss 2005:759). There are five objectives for combining such methods in a single study. These objectives are:

•   Triangulation in the classic sense of seeking convergence of results.

•   Complimentary in those overlapping and different facets of a phenomenon which may emerge.

•   Developmentally, wherein the first method is used sequentially to help inform the second method.

•   Initiation, wherein contradictions and fresh perspectives emerge.

•   Expansion, wherein the mixed methods add scope and breadth to a study.

Miles and Huberman (1994) further suggest that the question that needs to be asked in qualitative research is how valid and reliable the researcher is as an information-gathering instrument. Some of the criteria are: familiarity with the phenomenon under study, conceptual interests, a multidisciplinary approach and good investigative skills.

6.1.2.7 What other methods could have been used

Hypothetical case scenarios could have also been used for this study. That is, the researcher could have designed hypothetical or fictitious case studies of conflicts which would have

been described or presented to the respondents to comment or give their opinions about, and to see if such cases would have been suitable for mediation. While this option would have elicited interesting responses from disputing parties and conflict professionals, it was rejected because responses generated from such fictitious scenarios would have been remote especially from the parties. Outcome of such research would have been similar to an ordinary public opinion poll survey (POPS), and would have been time consuming for the researcher.

Another method which would have been used is the observation methods-participative/covert observation (Gray 2004). This method could have been used by the researcher to ascertain what parties want from the other party for example, what the host communities wanted from the Nigerian government and oil companies. However, this approach would not have yielded much positive or fruitful data since there are no mediation options in communal/identity based conflict at the moment. Furthermore, using this approach would have been problematic because it would have involved lots of travel which were not budgeted for in view of limited funds.

6.1.2.8 The limitations of the chosen triangulation methodology

Notwithstanding the justifications for the methodology chosen for this study as highlighted by the researcher above, there are some limitations in any research methodologies. For instance, it is hoped that the questions in the research instruments are answered freely by the research subjects, because as Flick (1998:94) argues, on the way to securing topically relevant theory-driven and hypotheses-directed questions (such as this study), usually bring about some problems. These problems according to Flick (1998:94) include problems of mediating between the input of interview schedule and the aims of research question on one hand, and the research subject's style of presentation on the other.

One problem that the researcher encountered is the question of if and when to inquire in greater detail and to support the respondent in roving far afield, or when rather to return to

the interview schedule when the respondent is digressing. That is, the choice between trying to mention certain topics given in the interview schedule, and at the same time being open to the respondent's individual way of talking about these topics and other topics relevant for him/her (for instance, respondents in this study often appear to associate the meaning of mediation to the indigenous/ customary dispute resolution mechanisms in Nigeria). These decisions of moderation, which can only be taken in the interview situation itself, require a high degree of sensitivity (on the part of the researcher) to the concrete course of the interview and the respondent. In addition, it requires a great deal of overview of what has already been said by the respondent and its relevance for the research question in the study. Thus Flick (1998) suggests that a permanent mediation and steering between the course of the interview and the interview schedule is necessary by the researcher, though Kvale (1996) warns against applying the interview schedule too bureaucratically.

6.1.2.9 Data Reliability and Validity

Two concepts which must be considered in any research study are validity and reliability. Patton (1990:55) gave a concise statement on the need for valid and reliable research results: "Both qualitative-naturalistic inquiry and quantitativeexperimental inquiry seek meaningful, credible, valid, reliable, accurate, and confirmable findings". Data reliability (trustworthiness or credibility) and validity were strengthened by triangulation of research methods using a range of techniques.

The pragmatist perspective allows for a mixed method approach (both qualitative and quantitative research methodologies and methods). Mixing methods strengthens research and allows for diverse levels of analysis by neutralizing biases inherent in each method and by enabling triangulation and further development of, or insight into, one method from the other (Creswell 2003). According to De Vos and Fouche (1998:83), validity refers to whether or not a data collection instrument actually measures the chosen concept, and

whether the concept is measured with accuracy. In qualitative inquiry, the researcher is the chief instrument in the data collection process. This fact brought Gay (1996:217) and Patton (1990:11) to observe that there is a high correlation between the validity and reliability of a qualitative study and the methodological skill, competence, experience and dedication of the researcher. It also follows that validity is affected by the biases which the researcher possesses (Borg et al, 1993:215).

Although the term mixed methods is the most common term applied to this type of research, it has also been referred to as multi-method, convergence, integrated, and combined research (Creswell 2003). By combining multiple observers, theories, methods, and empirical materials, I hope to overcome the weakness or intrinsic biases and the problems that come from single method, single-observer and single-theory studies.

In this study, credibility was obtained through the careful handling of the collected data. The research team endeavoured to record the information as accurately as possible. Credibility was also gained through the rapport maintained by the researcher team and the respondents. Because the respondents knew the researcher in a friendly and informal way, there appeared to be a relationship of trust during the interviews.

6.1.3 Subjects Selected for the Research

Identification of key knowledge holders was undertaken by a variation of the 'network selection method', also known as the snowball method. A preceding group names each successive participant or group or individual, so the key actors are based on participant referrals (Goetz and Lecompte 1984 cited by Cizek 1992: 42). The village chief and the village organizer were employed to identify persons with specialised knowledge, and then such persons nominated as having such specialised knowledge were then used in information gathering. In some cases, such specialised persons presented themselves to the researcher because they had a story to tell.

6.1.3.1 The Role of the Research Team

The research team was made up of one project co-ordinator and two research assistants. The co- ordinator's role was to generally oversee the research. The research assistants employed during the period of this field trip assisted the researcher to understand the context/ culture of the communities researched, gave practical help in finding documents and people, built rapport with respondents, took notes during focus group sessions and helped in organising the sessions (taking care of logistics).

6.1.3.2 Situating the Researcher

I am an insider researcher. An 'insider' is a researcher who conducts a study that is directly concerned with their community (Stephenson and Greer 1981). I am originally from Rivers State in the Niger Delta region of Nigeria. I grew up in a rural setting though in the Town of Buguma in Asari toru local government before moving down to Port Harcourt, the capital city of Rivers State for my undergraduate studies and then Abuja, the Federal capital Territory of Nigeria for my Bar exams before leaving for the UK for my post graduate studies. This urban/rural insider/outsider contrasting locales offered me a wide spectrum of learning around the trials and triumphs of inter-group, cross-cultural, and identity-based communication, understanding, and conflict. Taylor and Bogdan (1984:243) made this observation: "Early practitioners suggested that the marginal person, the one caught between two cultures, has the greatest potential to become a good qualitative researcher…" This statement implies that the cross-cultural exposure of the researcher is an asset to the implementation of this methodology, as well as the purpose, of this study. Hence as an insider, I undertook an 'explicit research role in addition to the normal functional role' (Coghlan and Holian 2007: 5).

The motivation to be an insider researcher is the passion to facilitate change to enhance peace in the region; hence, I felt that the field of ADR/ mediation would be a good area in which I can pursue my interest in peace and justice within some kind of scholarly framework. For instance, Moore (2007) identified the need to improve governance practice

and performance through doctoral research in the charity organisation in which he was Deputy Chief Executive.

Further, as an insider, the researcher occupied a unique position in order to undertake this study. Not only did the researcher have insider knowledge, it further enabled the researcher have easy and quick access to people and information. Notwithstanding the researcher's role as an insider, ethical considerations were taken into cognisance, (see chapter 1 section 1.8) along the lines of (i) the collaborative process and how confidentiality can be maintained; (ii) how informed consent can be meaningful as the project evolves; and (iii) how doing harm to others can be avoided as a consequence (Coghlan and Brannick 2005).

Given that the researcher's insights as an insider, the researcher was critical of this research work, from the understanding of a range of perspectives so as to take a balanced view and recognize the opinion of others. To do this, reasons that are compelling (including research evidence) to substantiate personal views (See findings below).

6.2. Stages in the Field Work.

The field work is divided into two parts: the preliminary and the main stage. The stages are discussed briefly below to give the reader an insight to what areas or issues dealt with at each stage.

6.2.1 Preliminary Stage/ Preparations: The Pilot Study

In order to prepare for the main field study, a pilot study was undertaken in July 2010, with the following aims:

- To determine how research participants could be accessed;

- To investigate and explore the understanding, awareness and application of mediation by stakeholders in the Niger Delta region;

- To understand what the field looked like in order to make logistical plans and budgets relating to such issues as transportation and how to overcome language, access and cultural barriers.

The design of the various questionnaires and interview was undertaken by the researcher, who also listened to professional advice from her supervisors to use simple words and avoid academic concepts and jargons in the wording of questions; they also advised that it is important to avoid leading questions such as those which assume a particular answer is appropriate. These reliability and validity checks are in line with the suggestion of Oppenheim (1992:128).

The researcher having designed the questions and test ran with colleagues during discussion sessions, the research team proceeded to the field (see scope of coverage). I commenced the pilot study from the airport as soon as I landed in the Port Harcourt international Airport in River state with the taxi driver, one Timothy, who informed me that the government has commenced the amnesty programme for the militants who have laid down their weapons when further asked if these are the real militant I was informed majority of the militants in the camp are all unemployed youths who have used this opportunity to receive the handouts the government have promised to pay the militants .

The taxi driver gave me useful information as to the different personalities to meet for a clearer picture of the conflict in the region. After several appointments and personal visits to the office of a prominent member of the Rivers State government, I was able to have audience with him to discuss the governments' plan to manage the conflict. I was told the government has made several attempts at settling the conflict but all these plans have been bedevilled by insincerity, lack of transparency and distrust on both sides i.e. the Nigerian government and as well as host communities and their representatives. As planned, we administered the various questions. Furthermore, I was referred to the Niger delta technical committee report which made amongst other things the need to engage host communities in

meaningful and dialogue. This recommendation was also one of the recommendations of the International Crisis Group (ICG) on the Niger Delta. Their recommendation was for the federal and oil-producing state governments, various interest groups in the Niger Delta and the transnational energy companies operating in the region, to encourage negotiations and promote mediation remarkably, and to support a "credible, independent judicial mechanism to adjudicate compensation claims"(International Crisis Group 2006). In addition, as planned in our pilot study plan, I organised focus groups in Rivers and Delta states. We could not hold a focus group in the Bayelsa states because they had gone on summer holiday by the time we were able to get appointment with any of the officials, who were due to return in October 2010 which fell outside our pilot study period.

The initial findings from the pilot study showed that the question of viability was not the main issue, but understanding and awareness of mediation was the main issue. Thus, there was a need to figure out how to manage this issue at hand. One possible option was to conduct an awareness/ training on mediation. However, considering time as well as financial constraints associated with conducting the awareness and training on what mediation is, the researcher navigated around this seemingly difficult task by developing a flow chart (see Figure 6-1). The flow chart enabled the researcher to explore other possible options. The need for the exploration of other options is as a result of the limited knowledge of mediation in its western form.
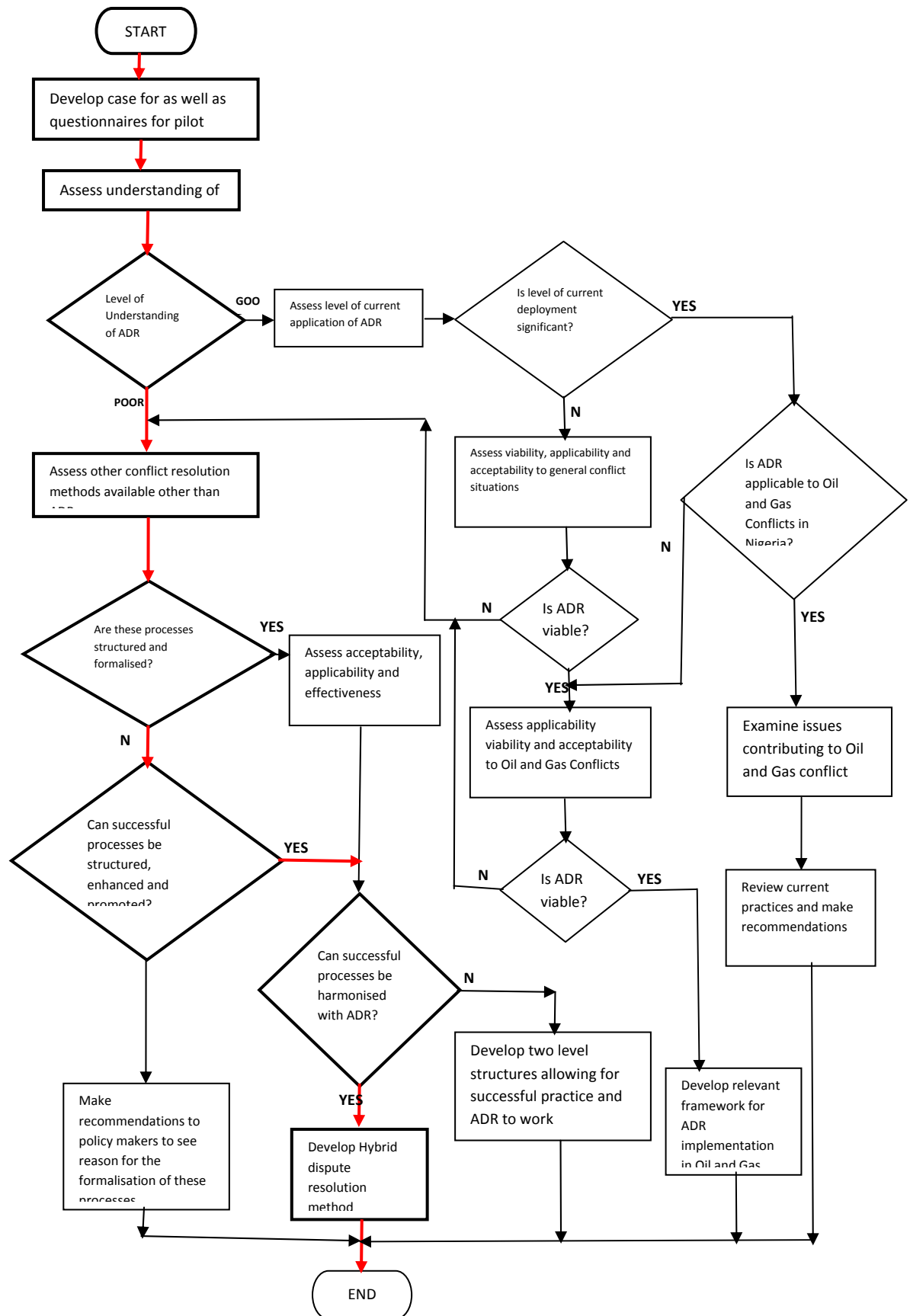
Figure 6-1 Flow Chart showing possible research route to ascertain viability of ADR in resource conflict

6.2.2 Main Stage

The main stage was divided into first and second stages. The first stage involved a re-designed set of questionnaires, interviews and focus group discussions conducted in the Niger Delta area to ascertain the general knowledge, perception and experience of respondents on other conflict management methods in the light of the lack of understanding of mediation. The need for redesigning the questionnaires and the various discussions is as a result of the outcome of the pilot study as discussed above. The response of legal practitioners, judicial officers, youth groups, policy makers, the military, and oil company representatives- Nupeng and Pengassan, points to the indigenous method of settling dispute as the preferred model (Miles and Huberman 1994). The levels of knowledge, experience, and awareness on the development of these other methods were measured here. The *dependent variable was* considered around levels of satisfaction and dissatisfaction which was identified based on the *answers given* and the *background of the respondents*.

The study in the second stage involved conducting surveys of the existing indigenous conflict resolution mechanisms through interviews with community elders. The research team administered questionnaires and conducted survey and interviews on the various respondents such as traditional rulers, for in-depth analysis of themes, challenges, results and positioning. The in-depth information helped the researcher on the case study on the two tribes' discussd in chapter seven. The researcher could not conduct the scheduled interview with militants and representatives, due to the security situation as at the time of the survey.

6.2.3 Responses from the Various groups

6.2.3.1 Interviews and focus group discussions among the youths:

Consent was obtained through the head of school, and access was granted. The focus group meetings were held in universities in the various States (Rivers and Delta) as mentioned above, except Bayelsa due to security problems. It was necessary to maintain a high level of flexibility in using interviews and focus group discussions to collect data in these settings. The study built in the educational variable in the questionnaire to ascertain respondent's level of academic and educational achievements and how this social status might influence their responses as regards their acceptance and willingness to concede to mediation. On a number of occasions, the research team commenced with a small number of students and all of a sudden, the classroom was full. The advantage with this was that we were able to sample a wide range of opinion across not limited to just the Niger Delta region but the nation as a whole. The reference to the nation here is in the determination of the multicultural/ethnic/tribal composition of the student respondents who are students in those schools sampled. Another advantage is that it afforded the researcher information which further buttressed the findings and information for other chapters such as the militarisation of the region, the reasons for youth's involvement in militancy and distrust amongst the parties.

In fact, many students enjoyed the sessions, because they were given room to air their views on what should be done about the on-going conflict in the region which impacts on their studies, especially school closure due to insecurity. This flexibility was very useful, in that some information prevalent in the various communities were brought to the fore. For instance, one of the respondents, FG1 (For purposes of concealing their identities I shall number them (FG1 means focus group) indicated that he was a youth leader in his community and as such there are some elements of entrepreneurship in the Niger Delta conflict. He stated that some politicians and community leaders did sensitise the youths from time to time to stir up violence, so as to attract either the government or Oil

Company's attention to pay some money or even ask them to set up panels of enquiry to look into the unrest. The respondents attributed the escalation of violence to the militarization of the region. In fact, some asserted that it led to some gang formation in a bid to defend their communities from such attacks.

6.2.3.2 Interview with Policy Makers in Rivers State

One policy maker we interviewed was a one-time governorship aspirant of the opposition party. His opinion regarding the Niger Delta was that nothing much can be done until fundamental issues are dealt with as prescribed by various committees and panels of enquiry. He further added that trying to look for a conflict process without dealing with these issues is like taking paracetamol to cure headache without curing the underlying sickness, malaria. Our second respondent was a serving commissioner in the State; he opined that the pace of violence is as a result of many unfulfilled dreams among the youths, and if the government start to look inward, the answers they seek are not far away. When asked if he has heard about mediation and whether or not mediation will be viable? He replied that yes he has heard about mediation that in his opinion the underlying issues in the Niger Delta conflict are real and need to be dealt with.These underlying issues are some of the issues this research has discussed in the various chapters of the thesis especially in chapter two.

6.2.3.3 Interview with Oil Worker's Representatives

There are two groups representing oil workers in Nigeria. They are Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and Nigerian Union of Petroleum and Natural Gas Workers (NUPENG). These two unions were interviewed to know their views on what the oil companies are doing with regard to the conflict in the region. 10 (20%) from this group out of the 50 respondents we had in our study as stated in the table above indicated interest in ADR. One of the interviewee, the leader of Nupeng, when asked about the conflict, responded that the Nigerian government should start dealing with the

conflict themselves and that this is not oil Company's issue, although it affects them adversely. However, he added that he has heard of mediation, but does not know how it works; though he is very conversant with the traditional process. He further added that if structured and applied in all sectors, conflict can be minimised. Hence from the perspective of the oil workers and the multinational companies, the Niger Delta conflict is purely an internal (Nigerian government) affair and as such, the oil and gas sector should not be dragged into it.

6.2.3.4 Interview with Judiciary/ State House of Assembly

In a bid to hear the input from the judiciary as well as the lawmakers, we administered questionnaires to the various departments (of both the judiciary and the State House of Assembly). From the responses we obtained, it was clear that very little is known about mediation, although the officer who dealt with the questionnaire on behalf of the Ministry of Justice admitted having been sent on a training but does not know the practicality of it to the Niger Delta conflict. The legal department of the State house of assembly in Rivers State also admitted no knowledge of this. For this group not much was obtained from them, since they had very little knowledge of mediation. However, they admitted that their knowledge of ADR was quite minimal as such they may not be able to say if mediation is a viable model or not. One of the respondents mentioned that as law makers they have been slated for training on it and hope to make laws to back its implementation if mediation can solve the Niger Delta conflict.

6.2.3.5 Interview with Conflict Professionals

We administered several questionnaires to several conflict professionals and NGOs, but few responses were obtained. However, we interviewed the director of the Lagos Multi door courthouse, and from our discussion, she is very much aware of the lack of knowledge of mediation and in fact generally ADR. She added that the government is doing its best to sensitise all beginning first with the judicial officers. We also interviewed the Director as

well as the registrar of the Chartered Institute of Mediators and Conciliators in Abuja. Again they agreed to the need for mediation to be introduced in the Niger Delta conflict and that it is viable, but willingness of the parties involved is very crucial from their experience.

6.2.3.6 Interview with the Nigerian Air force and the JTF:

Following unrest in the region, the Nigerian government responded in 1991 by deploying military troops to the region to arrest the escalating crisis. The Federal Government troops known as the 'Joint Military Task Force (JTF)' or 'Operation Restore Hope' were primarily assigned to protect oil installations and restore peace in the region, however the Task Force appeared to go an extra mile, which resulted in indiscriminate killings of the 'militants' and civilians including women and children and destruction of property worth millions of Naira in the Niger Delta. We interviewed some of the officers in the Nigerian Air force on the role of the JTF and their impact in the Niger Delta conflict. The response we got was that the Niger Delta conflict is more political that than anything due to the commodity (Crude Oil) involved. The JTF when asked why they engaged in such atrocious activity, they said they acted under authority.

They however admitted that they have no idea of mediation, but will think that any other process other than violence if parties agree to it might work better. Captain CY opines that "the Niger Delta conflict is more political than anything with the minority tribes been suppressed by the major tribes and that the spate of destruction is so high".

6.2.3.7 Interview with Women's Group

The women groups (though not registered yet are recognised in their various communities), were interviewed to know what role they played in recent times, following their role in Pre-colonial times in managing conflict. Their response was that the conflict impacts them more than any group. They suffer from gross exploitation, loss of viable farmlands and water pollution. During military occupation of communities, women suffer psychological,

emotional and physical impacts. They are raped and maimed. They suffer as their sons get arrested and killed; they also feel it most when their brothers, husbands and lovers are tortured, maimed and killed. However, their understanding of mediation is similar to the traditional process of dispute settlement, and they argued that any process should include them and that they have what it takes to manage the conflict. One of the respondents, Mama Mary by name stated that "why is that that they will not listen to us but when trouble (conflict) comes we suffer more. I prefer the village settlement but they must include women too."

6.2.3.8 Questionnaires for Lawyers

We explored three different law firms (Ibinabo Chambers Station Road, Wifa Chambers in Azikiwe Road and Aluko and Oyebode Chambers D-line), all in Port Harcourt. These were selected based on their involvement/ experience with community and oil related issues) to ascertain their knowledge of ADR and whether or not mediation is viable in the Niger Delta conflict. We applied the interview/questionnaire method, and from the answers we obtained, knowledge of ADR is poor and in some cases is mistaken for plea bargaining. However, while they have all heard of ADR, they are yet to explore its use in any conflict situation. They argued that both the government and the oil companies often times prefer the litigation route, especially the oil companies as it enables them buy time so as to carry on with their exploration work, while the case is been adjourned for months and years in some cases. One of the lawyers from the different law firms chosen added that "I am not familiar with the workings of the ADR process but if it will work better for disputants as in the Niger Delta conflict, I wander how it will be structured and when it will become effective.

6.2.3.9 Knowledge of Mediation of Traditional Rulers

The same line of questions was put forward to traditional rulers, and similar answers as above were given. Traditional rulers, though not aware of the western mediation process, are very conversant with the indigenous process. Respondents agreed that the traditional process

was prevalent, in comparison to litigation, and that this helped them and their forefathers work with the other parties to define issues for discussion, indicating that it improved their relationship and that court is the last resort. They further added that their role had been ignored; hence the state of violence in the region which they feel was due to the depletion of traditional values and ideals.

One of the respondents, Chief TJ says "because they forsook the forefather's ways of doing things, we and our children are not at peace anymore, with guns and other amunitions flooding our creeks and communities". His view was quickly corroborated by another respondent Mr Ibama, "that the Whiteman's way of dealing with conflict is not good for us and because of the problem with it; people leave their quarrel (misunderstanding) to fester for a very long time. The consequence as we all know is a prolonged conflict".

6.3. Quantitative Field Findings

For this study, the researcher anticipated a total valid response of 80 respondents. For this reason, a total number of 100 questionnaires (see Appendix for different questionnaires for the different groups indicated in the scope above): each group was administered with a number of questionnaires as indicated below. However, out of the 100 questionnaires, a total of 50 were certified as valid responses for analysis because some questionnaires were not returned by respondents, and some responses were incomplete and therefore invalid for analysis. The total number of 50 valid responses, from the various groups that took part in this study is shown in Table 6.1. This valid responses forms the data which the researcher used in the analysis and findings as presented.

Table 6-1 Responses from field Respondents from the various groups that took part in this study.

Type of Respondents	No of Questionaires Distributed	Valid Number of Responses	Percent of Valid Responses

1.Youths	22	10	45.5
2.Conflict professionals	17	7	41.2
3. Traditional rulers	19	10	52.6
4. The judiciary/JTF	10	2	20.0
5.Oil company Representative	17	11	64.7
6. Lawyers	15	10	66.7
TOTAL	**100**	**50**	**50**

From the foregoing, as presented in table 6.1, each group was administered with a number of questionnaires, out of which a valid number of responses from the questionnaire administered was recorded for analysis. For instance, in group one (the youths), a total of 22 questionaires were administered (see appendix for details) and out of the 22, only 10 were found to be valid due to the reasons stated above. In total, the researcher administered 100 questionaires to the various groups and 50 valid responses were returned making a 50% valid response rate.

6.4. Scope of Research Subject Coverage

This research being an exploratory form of research was conceived in the backdrop of the Niger Delta region of Nigeria. The groups chosen comprised the three parties involved in the conflict: The Nigerian government, Multinational companies, Host communities and their representatives. The findings were based on the following scope.

- Knowledge of mediation by youths in the rural setting, and urban centre (through the focus groups organised in three Universities in the Core States);

- Knowledge of mediation by traditional rulers; legal practitioners; policy makers; Ministry of justice; by stakeholders and oil companies;

- Acceptability of mediation by stakeholders and oil companies; by stakeholders and nigerian government; by host communities;

- Level of Understanding and model preference.

For the purposes of analysis, the scope is discussed briefly below, with some tables to buttress the findings for better clarity. It is important to note that the valid responses of 50 as discussed above, formed the basis for exploring the scope of the reseeerach such as knowledge, acceptability etc.

FINDINGS: QUANTITATIVE DATA

6.4.1 Knowledge of Alternative Dispute Resolution by Respondents.

The knowledge of ADR as a concept appeared to be a new terminology for the respondents in the Niger Delta region; hence for the purpose of conceptual clarity and understanding, ADR was defined to respondents in this study as a practical informal means of resolving disputes, whereby parties convene with a skilled third party who helps them resolve their dispute in a way that is less formal and often more consensual than is done in the courts for all parties (for the rich and the poor). When asked if they have heard about ADR before this study, 10 (20%) out of the 50 respondents we had in our study, agreed to have heard of it but did not know its workability, whilst the other 40 (80%) said they have never heard of it. When they were prompted by a follow up question to give reasons for their answers, those who indicated that they have a little knowledge, associated the definition of ADR to a customary or informal process.

This presented to the researcher the need for training and education on the core principles, process, and philosophies of ADR. This is because a greater percentage of the respondents' responses presented in these findings are assumed to be informed choices based on the definition given on ADR. Because training and education on ADR lies beyond the scope of

this research, the researcher reviewed the questionnaires to navigate towards finding other alternatives, amenable to the respondents.

Table 6-2 Responses from field Respondents on Knowlwdge of ADR

Type of Respondents	No of Respondents with knowledge of ADR	No of Respondents without knowledge of ADR	Percent of Respondents with knowledge	Percent of Respondents without knowledge
Youths	2	8	20.0	80.0
Conflict professionals	4	6	40.0	60.0
Traditional rulers	1	9	10.0	90.0
Judiciary/ Lawyers/JTF	1	9	10.0	90.0
Oil Company Representative	2	8	20.0	80.0
TOTAL	**10**	**40**		

6.4.2 Acceptability of Alternative Dispute Resolution by Respondents

Notwithstanding the lack of knowledge of ADR, as presented above, an exploration to ascertain the level of acceptability (based on their own understanding) having revised the question shows that 40 of all participants in the various groups above indicated strong interest and professionals indicated they would recommend ADR. As stated above, the knowledge of ADR was quite poor and in order to navigate around this problem, the researcher thought it wise to sample the reason for the preference for the customary method of resolving dispute and to see how a hybrid can be explored. In the course of our finding, we explored the acceptability of mediation both in rural and urban settings. To do this, we organized one of our focus groups in the rural setting in Abraka in Delta State of Nigeria. Out of 20 sociology students who classified themselves as semi- urban or rural dwellers, 18 preferred using the indigenous process of settling dispute. A similar result was recorded in

an urban setting in the Rivers State University of Science and Technology Port Harcourt, where more than 30 level three law students were assessed. 22 students indicated interest ADR but in the indigenous form. The rest of the 10 were undecided and as such could not form as valid responses. Thus, the fears or feelings that urban community has lost their sense of communitarianism, which might make the practice of the indigenous mediation impossible, appears to be disputed by this finding.

Table 6-3 Responses from field Respondents on Acceptability of ADR

Type of Respondents	No of Respondents Not Willing to Accept ADR	No of Respondents Willing to Accept ADR	Percent of Respondents Not Willing to Accept ADR	Percent of Respondents Willing to Accept ADR
Youths	2	8	20.0	80.0
Conflict professionals	4	6	40.0	60.0
Traditional rulers	1	9	10.0	90.0
Judiciary/ Lawyers/JTF	1	9	10.0	90.0
Oil Company Representative	2	8	20.0	80.0
TOTAL	10	40		

6.4.3 Level of Understanding and Model Preference

However, it is interesting to note that although the respondents in this study indicate high preference for the "community based model" compared to the "Western model," the reasons for the preference are largely due to lack of knowledge of the mediation in its western form and also due to some perceptions surrounding anything western. However, historical accounts are replete with mediation activity in many regions of Nigeria (Belmont and Reynolds 1999) empirical research has shown that Nigerians prefer to resolve conflicts by informal modes, particularly mediation (Khaminwa 2002) Nigeria has recently benefited from the global campaign of the United States in advocating structured mediation/ADR

(Ilegbune 2004:33) and judging by the gross inadequacies of the country's judicial system in view of the fact that court dockets are notoriously overloaded, mediation will be preferred. The Magistrates play statutorily recognized role in triggering ADR by suggesting ADR to disputants (Ilegbune 2004:34).

Table 6-4 Responses from field Respondents Level of Understanding and Model Preference for ADR

Type of Respondents	No of Respondents Not Willing to Accept Mediation out of 10	No of Respondents Willing to Accept Mediation out of 10	Percent of Respondents Not Willing to Accept Mediation	Percent of Respondents Willing to Accept Mediation
Youths	2	8	20.0	80.0
Conflict professionals	4	6	40.0	60.0
Traditional rulers	1	9	10.0	90.0
Judiciary/ Lawyers/JTF	1	9	10.0	90.0
Oil Company Representative	2	8	20.0	80.0
TOTAL	**10**	**40**		

6.4.4 Reason for Preference for Mediation

Reasons why respondents might want, or not want to participate in mediation, be it the western or the indigenous processes.

6.4.4.1 Cost and Time Benefit Analysis/Quick dispensation of justice.

Reasons adduced by respondents' preference for the communal/indigenous mediation model, amongst other factors, are the need to save time and cost, and for quick dispensation of justice. As discussed earlier, the majority of the persons interviewed stated the reasons for their refusal to concede to litigation or anything western. However, when futher probed, their response shows amongst other reasons the cost and time it takes to prosecute a case in the Nigerian courts. A case which aptly demonstrates the drag of litigation is the leading

Nigerian case of <u>Shell Petroleum Development Company v. Farah</u>, dealing with compensation for oil pollution damage which took more that 22 years.

One of the respondents had this to say: If a matter can be resolve amicably, why waste time and money going to court, anything that gets to the court becomes law. Then the money you don't have will be spent without immediate result.

Another reason for the preference is as aresult of the battlefield psychology associated with settling conflict through litigation. The average Nigerian, especially in the rural areas, feels that litigation is one process brought by the imperialist to disorganise them and incite them against their brother(s).

6.4.4.2 Harmony, Restoration, Peace and Reconciliation after Conflict

In addition to the need to save time and cost, and for quick dispensation of justice, another theme that emerged as a reason for preferring mediation in Nigeria is for the sake of harmony, restoration, peace and reconciliation after conflict. The average person, having experienced violence, for the most part prefers harmonious settlement of their confict or misunderstanding. The former Attorney General and Minister for Justice of Nigeria, (Chief Bayo Ojo), argues that the advantages of the traditional justice system for the Nigerian citizenry include its flexibility, access to justice for the poor, and use of simple procedures in line with the norms, values and culture of the people. It is also equitable, cheaper and operates diverse dispute resolution mechanisms (Ojo 2005). The viewpoint and/or the concept of community based process, according to Brian Williams (2005: 63) should be seen as built of individuals and families who have the power to promote positive change. If they have appropriate attitudes, Williams argues they can remoralise society, however divided and deprived it might be because a communitarian society would be based upon trust, respect, participation, responsibility, solidarity and mutual support, not upon threat, coercion or fear (Williams 2005: 63). The prospect of maintaining ongoing relationships is another paramount reason.

6.4.4 3 Compensation, Reparation, or Restitution

The need for compensation and restitution is one of the strong expectations from people who have been wronged. The desire to be compensated I believe resonated from the indigenous process, where the elders who mediated amongst the parties (see chapter seven for details) apportion compensation for offences committed either against parties or the commute as a reparation for words committed. Victims appear to believe that with mediation, they are more likely to get reparation than in the conventional justice system where they have to initiate fresh legal battle for compensation and for costs to be paid to them by the offender where necessary.

In some cases in Nigeria, when such compensation suits are filed, victims are sometimes disappointed on the excuse that an offender cannot serving a term for an offence and still pay compensation for the same crime. For instance, in an appeal case of <u>*Nwosu versus Environmental Sanitation Authority*</u> the judge advised victims of the right violations suit to seek redress elsewhere (see Yusuf 2007: 276). It is however important to recognise that on the notion of apologies and forgiveness as a healing process, not all victims indeed hope for an apology whch is a sign of public acknowledgement of their pain and suffering. In addition, forced apologies can be a form of mockery and secondary victimization to victim, and may not be accepted by victims.

Hence, there are certain criteria or ingredients that are required to be demonstrated by the offender for true reconciliation, healing and forgiveness to be complete and effective. It is seen as a means of reformation and rehabilitation of the offender. Accountability and apology before compensation is paramout in the indigenous process. Compensation would be meaningless to some victims without remorse and attitude change of offender. There is also a moral dimension to this. Thus, effective conflict management model in Nigeria and parties satisfaction in the justice process is strongly dependent on collaborative participation, and transformation of the affected communities and stakeholders. The starting

point should be to consult all the interested communities and stakeholders and design methodologies of carrying along all to be able to have a full buy in.

6.5 Qualitative Field Findings

Following several weeks of conducting interviews and questionnaire administration with respondents in the Niger Delta region on the viability of alternative to the extant approaches employed in managing the conflict, below are some of the themes which emanated from the qualitative findings. The need for a qualitative presentation is relevant as the researcher recognises need to hear directly from persons whowitnessed the conflict and whose life have been impacted by the ravaging conflict so as to understand and be able to place their perceptions, expectations, fears and experiences in perspective with regard to mediation as an alternative to suppression and other vices discussed in chapter four.

6.5.1 Themes From Respondents

Some of the themes discussed below were not included in the questionaires but were gathered from the unstructured interview/focus group sessions as discussed above under methodology and justication for choice

6.5.1.1 Use of Repressive method

One recurring theme is that the deployment of management methods such as military intervention, which is characterised by repression, intimidation, suppression and gang violence, is not viable. For instance, one of the respondents, FW 2 asserts that the militarised approach employed by the government led to gang formation by the youths who felt they need to defend their communities from attack. We also found that communication between the various stakeholders (that is the Federal Government, multinational oil companies and host communities) has been tactical, withholding, argumentative, fault-finding and blame-trading; generally refer to by respondents as insincerity of parties. A

representative of MEND corroborated the above fact by adding that the government has taken them for granted promising things it cannot keep.

6.5.1.2 Neglect and lack of development

Another popular view amongst the class of respondents interviewed and administered with questionnaire is that the Niger Delta conflict was caused by long exploitation and neglect of the area by the Nigerian State, controlled by the elites of the major ethnic groups and the Oil Multinational Companies operating in the area. This neglect which precipitated hunger and lack was hijacked by politicians who in order to win used the unemployed youths to perpetuate evil, causing a trajectory of political conflicts, especially conflicts linked to party politics. The contest for political power, which is expected to be free, fair and open in a democracy, has become a major source of violent conflicts in the Niger Delta. A good illustration is the spate of violent conflicts that engulfed the Niger Delta following the 2003 elections, which are believed to be linked to young gangs recruited and armed by politicians to fight their political opponents during the polls. It is estimated that over 30,000 people have died in gang violence, and property worth hundreds of millions of Naira destroyed since mid 2003 (Ibeanu 2006).

Also, there is the trajectory of inter and intra-communal conflict. Among these are the Ijaw-Ilaje conflict, the Ogoni-Andoni conflict, the Ogoni-Okrika conflict, the internecine conflict between the two Ijaw villages of Bassambiri and Ogbolomabiri in Nembe and the recurrent conflicts between the Ijaw, Urhobo and Itsekiri over the ownership of Warri, a major centre of *petrobusiness* in Nigeria. The central *causus belli* in these conflicts are conflicting claims made by communities to land and creeks on which there are petroleum deposits or oil installations (Ibeanu 2006).

6.5.1.3 Unstructured Plural system

Furthermore, another finding, especially amongst traditional rulers as well as the rural dwellers, is the contention between plural legal and institutional frameworks as they relate to conflict (Bentzon et al. 1998). Customary practice is almost always overshadowed by the

reality of the supremacy of imposed State law. In the case of conflict between local people and the State, it is this imposed legal regime that is ultimately authoritative at higher scales of governance. This finding therefore calls for the need to incorporate customary practices into the design of institutional frameworks, thus providing legitimacy and congruence in the eyes of local communities.

Several examples in the literature show that there is potential for incorporating indigenous knowledge into innovative structures and mechanisms for the resolution and management of resource-related conflicts. This coming together according to Onuoha would be based on an atmosphere of mutual respect and recognition of the issues raised by each of the parties (Onuoha 2005). The study also found a high rate of support for the indigenous mediation, that is the indigenous mediation involving elders and community leaders presiding and settling quarrels or disagreements. This support was overwhelming in all the different and various groups, as listed above. This overwhelming support for the indigenous process is on the fact that they have faith in the indigenous process and have seen its successes and weaknesses. Also because Nigeria is a communalistic culture and from research communalistic settings prefer mutual and reconciliatory process to deal with their issues.

6.6 Significance of the Findings

This study on mediation as an alternative is aimed at contributing the African perspective to the international discourse on mediation as a viable conflict resolution debate. Though the study used a relatively small number of respondents in Nigeria, out of a population of about 160 million people, and a multi ethnic nationality of about 300 ethnic groups, the findings of this study however give us insights into the expectations and perceptions of the various parties. The call for increased evaluation and research on the origins, processes, and outcomes of community conflict resolution processes by scholars and practitioners have been on the increase (see Azar 1990; Bercovitch et al. 1991; Fisher 1997; Kleiboer 1996; Susskind and Babbitt 1992). This call is a result of the contribution of community based

dispute resolution processes, and because the process has been deemed to help to foster community agreement on public policy, especially on environmental and land use planning issues (McKinney 1997). Hence the need for this research, which is geared towards a better understanding of the successes and failures of the community, based system, as well as providing groundwork for improved consensus building, and to demonstrate effectiveness to funders, researchers and practitioners who need to develop valid and cost-effective evaluation tools. Such tools, we believe, will be able to assess not only tangible outcomes generated by consensual processes but also measure such seemingly intangible outcomes such as a stronger sense of community (McKinney 1997).

Furthermore, this finding is significant in the light of the fact that very little empirical research has examined the actual costs and benefits of using these consensus building processes to reach agreement (Lach and Hixson 1996). Meanwhile the findings of the study presented here might have differed significantly from other studies such as the South African Truth and Reconciliation Commission, which was seen as a model of restorative justice, because, participants in this study have not really experienced the working mechanisms of mediation in its structured western form in practice, and therefore might not be capable of deciphering the strengths, weaknesses, opportunities and threats (SWOT analysis) of mediationin communal conflict in practice.

6.6.1 Theoretical Discourse

A theoretical discourse as to why the acceptability of the indigenous mediation was high among the respondents in this study could be linked to the cultural relativity of the concept of mediation and their understanding of it. As the researcher has argued in other chapters, the principles, values and philosophy of indigenous mediation appear to be traditionally congruous and culturally relative to some traditions and belief system of the respondents. For instance, Jenkins (2006) argues that African cosmology (worldview) sees crime as a person violating another rather than the State, and thus there are social and moral

requirements among the people to reconcile the individuals; coupled with the African axiology (the values for restoration and harmony among disaffected people); the African ontology (how they describe human nature and concept of personhood), and the African epistemology (their source of knowledge of what justice means). Perhaps, this is why their responses to the understanding of the concept of western mediation were described as native or traditional and customary.

Hence their acceptance of mediation is predicated on their association with the concept with their understanding of the values, principles and philosophies of African traditions discussed in chapter seven. The cultural relativity by the respondents confirms the theoretical assumption of Braithwaite (2003:15) who argued on the need to restructure the rule of law by allowing the justice of the people to bubble up to reshape the justice of the law so that the justice of the law could be more legitimately constrained to the justice of the people.

6.7 Limitations of the Field Findings:

All scientific research, qualitative or quantitative, has its limitations. Strydom (1998:33) affirmed this fact when he quoted Earl Babbie thus: "Science generally progresses through honesty and is retarded by ego-based deception." Quantitative research, the methodology of scientific inquiry, has prized objectivity as a key characteristic; however, qualitative research has been accused of too much subjectivity, because the researcher completes the process of data collection and data interpretation (Patton 1990:54). As the chief instrument of data collection, the researcher becomes the key to a successful qualitative study. Gay (1996:222) commented that 'observer bias' cannot be eliminated; it must rather be minimized.

Notwithstanding that the findings of this study are generally positive, generalising the findings of this study should be taken with caution due to issues such as the sample size of the respondents and the sampling techniques used for this study compared to the general population of the study area-Niger Delta (three states out of nine states). Although this

limiting factor has been dealt with, it is important to state that the essence of qualitative research is to develop an understanding of individuals in their natural setting (Borg, et al, 1993:194), most likely to be achieved through a small sample. Gay (1996:219) warned however, that the qualitative research design should not be unsystematic or haphazard. Patton (1990:186) supported that statement by saying that sampling procedures should be fully described, explained and justified.

One major limitation experienced by the research team was lack of funds. The Niger Delta as stated in chapter two is made up of nine states, 250 dialects and a population of about 36 million. In view of these socio-cultural diversities of the region, the size; and the cost of travelling, the researcher could not visit the nine states of the Niger Delta in order to interview or survey opinions of the various communities. The fact that the empirical study covered three States out of the nine States in the region: Bayelsa, Delta and Rivers States, was as a result of limited funds. Hence the plan to cover the rest of the six States was not possible, due to lack of funds and security/access at the time of the field trip. For instance during the field trip, the research team could not get down to Bayelsa State's rural areas, due to politically related unrest. Although these presented as a limitation, the researcher navigated round this seeming limitation by concentrating on the three core Niger Delta States, which produce 86% of Nigerian crude oil, and are also reputed to have almost 20 billion barrels of crude oil reserves.

Secondly the qualitative findings presented at 6.5 above were based on an interpretative analysis of the opinions of a small number of respondents who have not actually experienced mediation. Therefore their responses could have been speculative rather than factual and so more research should aim to establish whether the concerns presented here apply more generally and in practice, so as to test implementation and the effectiveness of mediation in contemporary Nigeria. It is also entirely possible that the findings presented in this study reflect the interests of the researcher as much as the interests of the respondents, due both to the set of questions in the questionnaires and the interpretations put on the

resulting discussion. The questions in the questionnaires that initiated responses from the respondents were clearly informed by the researcher's knowledge of the existing debates in mediation literatures cited in this study. These concerns were allayed by the researcher's inclusion of secondary data and references which points to similar findings within Nigeria such as Omale on Restorative Justice, Ibeanu on causes of the Niger Delta conflict.

Thirdly, for centuries research, has shown that informal/indigenous dispute resolution in Nigeria in urban centres for instance, has long been ignored, owing in part to entrenched positions of undesirability of informal justice system in preference for the received English legal system. Hence it cannot be assumed that the conventional justice system will diminish its power base to accommodate mediation. Nigeria operates in a different geographical and socio-cultural climate. Hence the responses recorded, may not be the same with respondents outside of Nigeria when a similar question is put forward to them.

One might be tempted to argue that a community based mediation projects (where community or religious leaders are mediators) might be effective, given the preference indicated by most of the respondents in this study. There are potential problems in this also; this is because some traditional leaders, or religious leaders who want to seek political attention, and to become relevant in the eyes of national government (known as *Aso Rock* relevance: Nigeria's equivalence of the White House) have often initiated ethnic or religious conflict in their communities, and have afterwards pretended to be the only most influential person who have the clout to stop the violence (the response of one of the youths above). And, because of the level of poverty among the youths in the country, it is usually not difficult for some unscrupulous. ethnic, communities, religious, groups/ organizations, and political leaders to mobilise, manipulate and channel their members who are often induced with petty rewards and false promises to commit violence act based on the personal interests of the leaders (see Boer 2000 for instance). There are concerns also that traditional system in Nigeria have broken down, and weakened over the years due to acculturations, new

generation evangelistic Christianity, colonialism, and involvement of traditional chiefs in politics.

Many have lost the respect of younger generations of youths. Hence, Erin Baines (2007) has reasonably asked if present African elders and chiefs are up to the task of leading an independent and neutral traditional justice system. This is important considering the facts that traditional and cultural leaders are not immune from the endemic corruption in Africa. And more specifically, some assume the position of cultural chief based on political connections to the government, not on heritage or community recognition (often referred to as Abuja chiefs).

Other challenges for repositioning the African indigenous model include: how such mechanisms would be enforced when either the party is non-conformist of the culture and traditions. It is also important to question how effective any mediation project in Nigeria can be successful if representations of women in a position of authority are yet to be fully and properly recognised in the country with its patriarchal traditions.

6.8 Conclusion:

The field findings have consistently demonstrated disenchantment with the court room dramas, the violence and coercion as a means of conflict resolution and the failure of the Nigerian social system that in itself contribute to conflict. Prominent amongst the responses is the lack of recognition given to indigenous voices and methods in order to explore and apply their approaches as part of the methodology in the conflict management paradigm. This viewpoint was supported by Randall Smith (2007: 229) who suggested that effective justice policy needs to listen to the stakeholders concerned (for instance, victims, communities, and the professionals), and to work with these groups to identify solutions that reduce conflict and fear of conflict among the people.

The implication of this for Nigeria is that for any justice and social policies and practices to be effective, and to deal with conflict and violence in the country, Nigerian society needs to locate the historical, cultural and socio-political conditions and contexts in which they operates. This means that in the Nigerian context, there is need to look back at history, and reconstruct the past to heal the future. National healing for Nigeria therefore requires judicial accountability, political responsibility and transparency, social and corporate responsibilities if Nigeria must demand personal responsibility from the citizenry, and to earn the legitimacy and trustworthiness it deserve from the ordinary people. As discussed in this chapter, in addition to proper cultural mapping, we discovered the dangers inherent in introducing a method that worked in one community on the other community without fully understanding the local social, economic and political circumstances.

However, it must be noted that models for dispute resolution based on consensus and collaboration may appear universally relevant, but they do not guarantee equitable outcomes, especially where there are imbalances of status and influence (Nader 1995). Evidence from the literature review, and the findings of this study as presented in the previous chapters of this thesis has shown that mediation and, or Alternative Dispute Resolution have become attractive and an acceptable global concepts in contemporary times (including Nigeria). Hence, there is the need for increasing international comparative research aimed at sharing effective practice and best evidence across cultures and international borders.

Chapter 7: The Practicality of the Indigenous Process.

7.0 Introductions

Following the field findings reported above, which indicate an overwhelming support for the indigenous model, it became important to explore the viability of the indigenous process which aims to utilise local knowledge, culture, proverbs, and cultural ideals. It is necessary to discuss the necessity or relevance of the indigenous process in developing a sustainable and viable model to manage conflict.

The Niger Delta people, like all indigenous people the world over, live in two overlapping worlds, the western (ruled by western epistemologies based on individualistic views and conceptions) and traditional (ruled by traditional epistemologies) based on communalistic views and conceptions. Neither of these two systems is able to fully deal with all the conflict in the region. Solely western models of dispute resolution are often incongruent with the culture of the people and have failed to meet their needs. In the same vein, the hope of turning to traditional models is difficult due to the of imposition of a new and alien set of laws and systems, which has led to the dislocation of people, the consequent breakdown of social structures, and the introduction of a set of previously unknown issues such as substance abuse. Key people who are able to resolve a dispute may be absent or incapacitated and ill equipped to deal with western problems, such as alcohol abuse.

Also, where conflict occurs between indigenous and non-indigenous people, the application of western models may work against indigenous needs and perpetuate disadvantage. This need calls for a renaissance of traditional practices of indigenous people which may need to be supported, new approaches fostered and mainstream dispute resolution practices modified. The need for an indigenous model arose due to a search for an alternative to the perpetual suppression and silencing of indigenous ways of conceptualizing and managing conflict (Joireman 2001). This suppression is prominent in most practice, research, and

training, including conflict resolution where Western problem-solving models of conflict resolution are promoted as appropriate for all cultures, while indigenous conceptions are marginalized through westernization (Galtung 1990).

7.1 Towards an Alternative Theory: Ubuntu as an Indigenous Conflict Theory.

Given the inherent limitations of the various theories of conflict discussed in chapter three, there is the need to propose a theory that could potentially provide an alternative framework to responses to conflict, rooted in the African culture, value system and beliefs, to provide the practical way for the efficient and effective management of conflict in Africa, with its global competitiveness. The search for an indigenous theory for the Niger Delta conflict is premised on the fact that western conflict theories on their own have not been able to achieve the expected goals as they have discountenanced African cultural inertia and social milieu (Jeng 2012).

Furthermore, the reason for proposing an indigenous conflict theory through the principles of Ubuntu is that there is a common belief that the answer to the problem of successful third World development and conflict are not found in the bureaucracy and centrally mandated development projects and programs, but rather in the community itself: its needs, its capacities, and ultimately its own control over both its resources and its destiny (Korten 1986, cited in McKenzie 2002:1). An understanding of customary law and the modalities of local resource management is essential for the creation of legitimate and viable resource management regimes. This alternative is Ubuntu, an African philosophy and way of viewing the world, which a significant number of ethnic groups including the Niger Delta people practice and adhere to. It stresses community consensus and the interconnectedness of people.

7.1.1 Origin of Ubuntu

Ubuntu is an African ethic or humanist philosophy, focusing on people's allegiances and relations with each other. Some believe that Ubuntu is a classical African philosophy or worldview whereas others point out that as far as written sources are concerned, the idea that Ubuntu is a philosophy or worldview has only been developed in recent years. The fact that it has just been written does not make Ubuntu a new conception. The word ubuntu has its origins in the Bantu languages of southern Africa. Ubuntu is a concept which has always been there. it is found in almost all African languages, it is called Ubuntu in Southern Africa, it is called botho in Botswana, uMunthu in Malawi, in Rwanda and Burundi, it is referred to as gira ubuntu, in Tanzannia and Uganda it is called Obuntu Bulamu, In Kiswahili, a language spoken throughout the coast of East Africa and most of Kenya, the word may refer to "utu", in the Shona language, the majority spoken language in Zimbabwe after English, ubuntu is unhu and the Nigeria among the Yoruba, it is called the Kparakpor, and in Kalabari in the Niger Delta, it is called Ilaye ilam, all referring to the same meaning of I am because of you and hence whatever happens to me you will be affected. It is similar to the soiled finger idiomatic expression which says that when one finger is soiled with oil the other four fingers are not spared.

Mbigi describes Ubuntu as an expression of collective personhood, and involves images of group support, acceptance, co-operation, care, sharing and solidarity (Mbigi 1995). Desmond Tutu in attempting a definition of ubuntu observes that: 'Ubuntu is very difficult to render into a western language. It speaks to the very essence of being human' (Tutu 1999:34). A person with Ubuntu is open and available to others, affirming of others, does not feel threatened that others are able and good; for he or she has a proper self-assurance that comes with knowing that he or she belongs in a greater whole and is diminished when others are humiliated or diminished, when others are tortured or oppressed, or treated as if they were less than who they are (Tutu 1999: 34-35).

Tim Jackson refers to Ubuntu as a philosophy that supports the changes he says are necessary to create a future that is economically and environmentally sustainable (Jackson 2010: 7). In the Tswana language the same concept exists. It is called botho, and the phrase that a person is a person through other people translates to motho ke motho ka batho. Botho is one of Botswana's five national principles (the others being Democracy, Development, Self-Reliance and Unity). Villa-Vicencio in his work 'Identity, culture, and belonging', Villan-Vicencio (1996), Braithwaite (2002) and (Llewellyn and Howse 2002), they attempted to explain the traditional African understanding of the concept of ubuntu as enshrined in the popular Xhosa proverb and popularised in the musical track of late Brenda Fassie's: umuntu ngumuntu ngabantu (a person is a person through persons), and Sutuhuzaki Arosi's musical label 'UBUNTU' This concept has been defined as 'I am because you are' or 'my humanity is tied up with your humanity'.

The implication of such a notion in one's understanding of justice in the community is that if one's humanity is tied up with the humanity of all others, what makes others worse off also brings harm to oneself. In other words, restoration requires attention to each part that suffers, for restoration is impossible if a part of a whole is harmed. This notion explains the group solidarity that exists amongst the Niger Delta host communities who from pre-colonial time have always put up a unified front. Hence, the ''broom adage'' in Nigeria (which represent strength in unity) believes that ''there is strength in our togetherness'' or that ''our strength is in our togetherness'' (Omale 2006). Similarly, the ''soiled finger'' idiomatic expression is popular amongst the Nigerians because as the saying goes 'what happens to the eye happens to the nose' too, which is why, there is a general notion among Nigerians that 'one cannot keep quiet when a kinsman is dancing wrongly (Okogeri 2006 in Oraegbunam 2010). All of these cultural philosophies are a demonstration of communitarian principle and a sense of oneness, or the connectedness of the human persons. This connectedness is translated in the manner in which conflict is managed in the Niger Delta region.

Finally another peculiar fact about the process is that indigenous cultures are unique; ideals are flexible, quick in dispensation of justice and very adaptable as the need arises (Williams and Muchena 2000). It then follows that a community bound by the principles of Ubuntu, where untold harm and suffering is inflicted, the perpetrator was unavoidably being dehumanized as well (Tutu 1999:34). Du Toit (2004:33) writes the following about Ubuntu. "The *Ubuntu* principle which emphasize humanness, communalism and African patriotism, will provide the veritable starting point for the development of indigenous African conflict resolution philosophy". Susan Marks (2000) added that "the question that faces us today in the context of our globalised world, is whether we can draw from the lessons of 'Ubuntu forms of peace making', and with this recognition of our essential unity, work towards 'Ubuntu forms of governance' with public participation and 'Ubuntu economies' that emphasize fair resource distribution and thus the sharing of the earth's resources for the benefit of all.

This theory, we argue, is more culturally adaptive to the Niger Delta setting. Further, it contradicts other theories discussed above, especially the macro, micro and the enemy theories (Marks 2000). The conflict regime in the Niger Delta region, which has existed for several decades, created a culture of violence and brutality built upon attitudes of hatred and fear, thereby embracing negative values of social and political exclusion and economic marginalisation, creating room for a viable theory. The only theory that is all embracing and culturally adaptable to the people will be the Ubuntu, which leads to the process of pacification through the principles of reciprocity, inclusivity and a sense of shared destiny between peoples.

Ubuntu (in its pure form without external incursion) provides a value system for giving and receiving forgiveness. It provides a rationale for sacrificing or letting go of the desire to take revenge for past wrongs. It provides an inspiration and suggests guidelines for societies and their governments, on how to legislate and establish laws, which will promote

reconciliation. In short, it can 'culturally re-inform' a groups' practical efforts to build peace and heal their traumatized communities. Furthermore, the practice of Ubuntu can help eradicate and transform the mind-set and attitudes as well as help initiate social reconstruction of war-affected communities, a key step would be to find a way for members of these communities to re-inform' themselves with a cultural logic that emphasizes sharing and equitable resource.

Having looked at the origin and working of Ubuntu as an African epistemology, the reader is faced with the question: how could the principles of Ubuntu be articulated and translated into practical peace-making processes? The application of the principles of Ubuntu is seen in day to day activities as societies maintained conflict resolution and reconciliation mechanisms, which also served as institutions for maintaining law and order within society. These mechanisms pre-dated colonialism and continue to exist and function today (Masina 2000).

A dispute between fellow members of a community is perceived not merely as a matter of curiosity with regards to the affairs of one's neighbour; in a very real sense an emerging conflict belongs to the whole community. Societies developed mechanisms for resolving disputes and promoting reconciliation with a view to healing past wrongs and maintaining social cohesion and harmony. Consensus building was embraced as a cultural pillar with respect to the regulation and management of relationships between members of the community (Erasmus 1998). Depending on the nature of the disagreement or dispute, the conflict resolution process could take place at the level of the family, at the village level, between members of an ethnic group, or even between different ethnic nations situated in the same region.

The process is not free from problems, and there are naturally instances of resistance in the various stages of the peace making process. This was particularly so with respect to the perpetrators, who tended to prefer that past events were not relived and brought out into the open, same as victims would not always find it easy to forgive. In some instances

forgiveness could be withheld, in which case the process could be held up in an impasse, with consequences for the relations between members of the community. However, forgiveness, when granted, would generate such a degree of goodwill that the people involved, and the society as a whole, could then move forward even from the most difficult situations.

The rationale that lies behind the process is the recognition that it is not possible to build a healthy community at peace with itself unless past wrongs are acknowledged and brought into the open, so that the truth of what happened can be determined and social trust can be renewed through a process of forgiveness and reconciliation. A community in which there is no trust is ultimately not viable and gradually begins to tear itself apart (Stephen and Kemedi 2005). In more difficult cases involving murder, *Ubuntu* societies sought to avoid the death penalty because, based on the society's view of itself - as *people through other people* - the death penalty would only serve to cause injury to the society as a whole. Though it would be more difficult to move beyond such cases, the emphasis would still be on restoring the broken relationships caused by the death of a member of the community.

The guiding principle of *Ubuntu* was based on the notion that parties need to be reconciled in order to re-build and maintain social trust and social cohesion, with a view to preventing a culture of vendetta or retribution from developing and escalating between individuals, families and the society as a whole. Instances of practicability of this theory are epitomized by Mandela and Tutu, who drew upon some aspects of their cultural values and attitudes to enable the country to move beyond its violent past.

This research is not advocating that Africa and its worldview are better. The State and international law will still remain important elements of international society. What is needed, however, is a certain conceptualisation that incorporates the intricate nature of the social dynamics of indigenous structures into the conflict resolution discourse. To do that, there is need to explore and strengthen the core indigenous values.

7.2 Identifying and Strengthening Core Indigenous Values.

Identifying and strengthening indigenous values will help with the success of the indigenous model. This is because indigenous values and knowledge provide the platform for cultural diversity and enrichment in a global environment. Moreover, indigenous values assist in addressing the fundamental social and ecological issues of our times and they directly inform our guiding principles. The need to identify and strengthen the indigenous values as will be discussed below is vital because most of these norms, values and traditions are threatened and are fast eroding with spreading Western influences. Indigenous values are convictions that are deeply rooted in the ancestral heritage of a people. Such dispositions direct the personal values of an individual in profound ways. These values are so many and interwoven in each other. We have listed and discussed a few just for the purpose of identifying some of these values in the order they are listed. They are inter-relatedness, peculiarity, generational, non-violence, needs focused, and humility/respect.

7.2.1 The Value of Interrelatedness

African culture is a maze of relationships; it has a holistic view that all things are interconnected in a network, land, people, and associations. Conflict brings about a distortion of this relationship. When people neglect, abuse or harm this interconnectedness, injustice abounds. Injustice is therefore seen as harmed relationships, rather than crimes against the State. Interconnectedness assumes that all events, things and people are interdependent as opposed to autonomous or independent. The indigenous system demonstrates the value of interconnectedness by gathering people with various connections to the victim, offender and others affected by the harm, to first address the obligation to the victim and second address the interconnected relationships that caused the offender to harm a relationship in the first place, as exemplified in the way the Kalabari and the Ibibios of the Niger Delta in Nigeria resolve their disputes.

Interconnectedness is based in cooperative models of justice (symbolized by the circle), rather than adversarial ones (symbolized by the court room) (Mbigi and Maree 1995). This interpersonal character of Ubuntu is the source of many of its distinctive virtues that have been highlighted in the literature, such as patience, hospitality, loyalty, respect, conviviality, sociability, vitality, endurance, sympathy, obedience, sharing, to list but a few (Shutte 1994).

Katrin de Guia (2005), when discussing "indigenous Filipino values for a culture of non-violence", identified what she called the *PAKIKIPAG-KAPWA* (shared identity), she expressed the idea of a "shared self", which opens up the heart-doors of the "I" to include the "Other". It bridges the deepest individual recess of a person with anyone outside him or herself, even total strangers. Here, it is not important if you are rich or poor, or of a great status in society. "People are just people in spite of their age, clothes, diplomas, colour or affiliations" (Katrin de Guia 2005:5)

Enriquez (1975:88), who declared the concept of kapwa as a Filipino core value, upheld that *kapwa* implied moral and normative aspects that obliged a person to treat one another as fellow human being and therefore as equal. Such a position was "definitely inconsistent with exploitative human interaction. Though Kapwa is a core Filipino value, it had been threatened by spreading Western influences, : "...once AKO starts thinking of himself as separate from KAPWA, the Filipino 's self' gets to be individuated as in the Western sense and, in effect, denies the status of KAPWA to the other. Enriquez continued: "A person starts having a *kapwa* not so much because of a recognition of status given him by others but more so because of his awareness of shared identity (Enriquez 1975: 88). The *ako* (ego) and the *iba-sa-akin* (others) are one and the same in *kapwa* psychology" (Virgilio Enriquez, 1975: 88). The assertion is very true of the fast diminishing values of the Niger Delta people who in a bid to embrace modernity have lost their vital values build on oneness.

7.2.2 The Peculiarity Value

Peculiarity says that we are not all the same. The central focus here is about respecting diversity and difference. Processes that are rigid, as opposed to flexible, do not give a role for the peculiarity of identity or culture. Peculiarity as a value recognizes that conflicts are the property of particular communities, not states or professionals (Christie 1977). It emphasises the need to give respect for individual differences and the desire to reach consensus, unity, and solidarity.

Indigenous values and custom respect real people. An indigenous system deal with real people and examines how these people can be reintegrated into the society. This view is better substantiated in the African adage that when a child does wrong you slap him with the right hand and draw him back to yourself with the left. Another proverb goes like this "do not throw away the child with the bath water". People, rather than precedent are important in indigenous settings. It is embrace-oriented rather than exclusion-oriented (Volf 1996). Indigenous Dispute Resolution processes are characterized by flexibility, utilization of recurring time, qualitative measurement of success and people-orientation (Victor 2007).

7.2.3 The Generational Value

This value enables the community to look beyond the immediate. Within the indigenous concept; time is circular, not linear. A good example of this value is the Seventh Generation Principle. This principle states that, one should make decisions about how one lives today based on how one's decisions will impact the future seven generations. This value is very significant in conflict resolution. This is because conflicts or disputes left unresolved will run from generation to generation with devastating effect on lives and property some of which may be innocent. The generational value calls for the need to be good caretakers of the earth, not simply for ourselves, but for those who will inherit the earth, and the results of our decisions. It deals with identity, grassroots, root causes, broken pasts and shared futures.

The value of generations is one of the core values or ideals of the indigenous people. A person's position in the community is largely dependent on the performance or failure of his/her ancestors. The generational lens creates taboos to keep the community from harmful activities. It may use shame to reinforce those taboos but will always work to reintegrate an offender into community life. Only by breaking harmful patterns and rebuilding the interconnectedness of life, will future generations experience justice. This generational lens has to do with the life of a people. It seeks not just to address harms as they arise but seeks to also educate and empower people to live in harmonious ways.

7.2.4 The Transformation

Yet another very important indigenous virtue is transformation. The goal of the indigenous system is not to fine tune a basically working system, but to seek to radically change people, systems and dreams for the future (Kraybill 1996). Indigenous cultures are centred on the transformation of victims and offenders. Transformation is the long-term human conflict outlook. Although immediate change is celebrated, transformation as an indigenised lens sees deep transformative change as taking time. The western system focuses on solving issues once and for all. The transformative lens focuses on the lives of people and how they deal with day-to-day conflict over the long term. It is not interested in quick fixes but rather it seeks long-term changes on how people relate.

7.2.5 The Humility and Respect Value

This value is one of the hallmarks of the indigenous people, as highlighted above. As children we were trained to respect our elders. A younger person greets an older one using words and gestures that portrays deep respect. It is not allowed to address an older person by their name but by the respectful title. The only persons who are allowed to address each other by name are age mates. Discipline is core to respect for older people. In the African culture, if an older person finds a younger person or a child behaving badly, it is the duty of

the older person to correct the errant child first before reporting her or him to the parents. Africans are firm believers in the 'spare not the rod' doctrine and the correction would invariably be in the form of a thorough spanking on the backside (a biblical injunction in the book of Proverbs). Today, one risks arrest and prosecution if one dares to discipline a neighbour's child in this manner**.** To make the indigenous system effective the humility and respect value will need to be resuscitated and inculcated**.**

7.2.6 The Non-violence Value

As highlighted above, the indigenous system is encapsulated by traditional values and ideals. One of such value is non-violence, which favours cooperative methods (communality) over adversarial ones (the courts). African culture is based on the virtue of communal living or sharing.

7.3 The Concept of ADR in African Context

In African history, the idea that mediation is African in concept and origin is widespread in the continent (Kiplagat 1998). Several historical accounts support mediation activity in many regions of Nigeria (Belmont and Reynolds 1999). Justice Gunmi, (the chief Judge of the federal capital territory Nigeria) speaking on the advent of mediation in Nigeria, observed that all forms of conflict resolution are designed to restore, strengthen and build relationships, and existed in African society prior to colonialism. He noted that dispute resolution has its roots in traditional African culture and practice and that the ancestors never built prisons or courts, since punishments were designed to achieve restitution and restoration of relationship, reconciliation and harmony. The advent of colonialism and the receipt of foreign laws, norms and standards, brought about the jettisoning of traditional values and systems for the civilised way of doing things. Africans it was argued have regressed to obnoxious processes, civilization has failed them and has turned their children into hardened criminals traumatizing and dehumanizing unfortunate victims.

This view was epitomised by John Brand, (Director and trainer Conflict Dynamics in South Africa), who observed that the dispute resolution methods which was supposed to emanate from Africa has been adopted by Europeans while the Africans cling to the system of the Europeans. He said "While we suffer, trying to apply their system, they have adopted African methodology" (Kekere-Ekun 2008).

From the foregoing, it becomes clear that mediation is not a new idea after all; hence its application in the Niger Delta conflict may not pose problems, at least in terms of procedure. This is in view of that fact that ethnic groups such as the Niger Delta people have practiced these forms of mediation long before newer settlers arrived. Although Western forms of ADR were generated in response to the difficulties and deficiencies associated with court proceedings, Customary Dispute Resolution processes were not an "alternative" to anything. It was all that the communities had. There were no courts or highly formalized procedures and institutions to speak of when they were first developed and practiced. Although they seem very ADR-like, they were truly indigenous and unique to the people (Osi 2008).

7.3.1 The Indigenous Process

The term 'indigenous' often implies marginalized groups who are dominated politically by another cultural group. However, the term is used here to describe the descendants of the people who first settled in the Niger Delta area. It is also used to differentiate between the multiple cultural groups that exist in Nigeria. Hence the term indigenous is not used in its politicized sense.Indigenous people like the Niger Delta communities view the world they live in as an integrated whole. Their beliefs, knowledge, arts and other forms of cultural expression have been handed down through the generations. The many stories, songs, dances, paintings and other forms of expression are therefore important aspects of Indigenous cultural knowledge, power and identity. To "indigenize" means to transform things to fit the local culture.

The term "indigenous" has its roots in biology, referring to native plants or species (MacDonald 1983). In conflict resolution, indigenization describes the process of resolving or managing conflict using methods that fit naturally into their environment. The word indigenization was derived from Latin with 'in' meaning within, 'de' meaning from, and 'gena' meaning to beget. It literally refers to that which is native or born from within, as compared to which is foreign or alien. An indigenous conflict resolution avoids applying methods that are out of place and are simply replicas of foreign methods.

This is because an indigenous method needs to have certain cultural characteristics to be effective. Finkler defines indigenization as involvement of indigenous peoples and organisations in the delivery of existing socio-legal services and programs. For indigenous people to achieve a range of social, cultural and economic goals and improved access to justice there is need to develop a framework that is effective and participatory by the indigenous people (Tauri 1995). Indigenocracy is the application of culturally adaptable and viable method of the indigenous people, by the people and for the people. The application of a gamut of ideas and actions to problems as they present themselves based on the level of knowledge, preferences as well as motivation.

7.3.2 The Practice of Indigenous Mediation

Customary mediation in Nigeria includes the native law and custom of various communities in Nigeria with its peculiar characteristic from one community to the other in Southern Nigeria, and Islamic customary mediation applicable in the predominantly Muslim community in Northern Nigeria. Customary mediation has been defined as a native or customary/indigenous arrangement by selected elders of the community who are knowledgeable in the customary law of the people and who take decisions designed or aimed at bringing settlement, stability and social equilibrium to the people and their immediate society or environment (Ufoma v Ahucahoagu (2003) 4 SC (pt ii) 65 at 90). Customary mediation is not regulated by the Arbitration and Conciliation Act (Cap. A18,

Laws of the Federation of Nigeria (LFN) 2004) neither is it based on contractual agreement. Rather it is a traditional agreement based on respect for norms of a particular society (i.e. south) or based on religious obligation as an ordinance from God that must be adhered to. The process involves a voluntary submission of the parties who are in dispute to the decision of the arbitrators, who may either be chiefs or elders of their community, and the agreement to be bound, by such decision or freedom to resile where unfavourable. These chiefs or elders in turn are guided by customary laws though not written down, but handed down by tradition from one generation to another which are well established and have the force of law within the community.

The process of mediation used synonymously with arbitration and comciliation is legally recognised, and has been practiced by various indigenous communities in Nigeria and many other communities in African countries (Awala 2005) before the advent and the introduction of the British legal system of court litigation into the country (Gadzama 2004). This fact was judicially confirmed by the Supreme Court of Nigeria in the case of <u>Ohiaeri v Akabueze</u> (1992) 2 NWLR (pt 221) 1 at 7). Referral of a dispute to one or more laymen for decision has deep roots in the customary law of many Nigerian communities. Indeed, in many of the isolated communities, such a method of dispute resolution is seen to be the only means available to the people and which still persists, despite the centralized legal system and the attendant efforts at modernization and reform of the legal system (Ezediaro 1971). The ultimate aim of this process is not the rigid decision of the dispute and the imposition of penalties, so much as reconciliation of the two parties and removal of the disturbance of the public peace.

To clarify further the views expressed by the author on the practicality of the indigenous process, I shall discuss case studies on the indigenous process by looking at how two tribes the Ibibios and the Kalabaris process dispute.

7.4 Exploring Indigenous Process: case study on Ibibio and Kalabari Tribes.

The researcher Yin defines the case study research method as an empirical inquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used (Yin 1984: 23). The principal research method used in this section is predominantly library based. Its main approach has been identifying and utilising relevant literature ranging from books, journal articles, law reports, web materials, as well as monographs and papers of eminent scholars. In addition, it was supplemented by interviews and some information gathered during the field trip. Following the exploration of the historical facts about the Niger Delta conflicts in the previous chapter, it became apparent that there will be need to explore contemporary phenomenon within the real-life context on the conflict dispute resolution processes of the Niger Delta people to enable us pick out some vital points which aided us in drafting or developing a framework for the management/resolution of the Niger Delta conflict.

The case study was aimed at conducting a re-appraisal of traditional dispute resolution approaches of indigenous people and how these methods can be supported; new approaches fostered and mainstream dispute resolution practices are modified to suit the ever changing and evolving world. To achieve these aims, we looked at two different tribes in the Niger Delta who had an established conflict resolution process. These tribes are the Kalabari tribe in Rivers State, and the Ibibio tribe of Cross Rivers State both in the Niger Delta region of Nigeria.

7.4.1 Dispute Resolution among the Ibibios

The Ibibio people are found predominately in Akwa Ibom State and are made up of the related Annang community, the Ibibio community and the Eket and Oron Communities. They are located in South-eastern Nigeria also known as Coastal South-eastern Nigeria.

Prior to the existence of Nigeria as a Nation, the Ibibio people were self-governed. The Ibibio people became a part of the Eastern Nigeria under British colonial rule. The State (South-eastern State) was later partitioned into two States (Akwa Ibom State and Cross River State) (Noah 1928-1937)

7.4.1.1 Facts Reported To Elders

Once a matter relating to any issue is reported to the village head, who is the ex- officio chairman of the council of elders (esop isii), he consults with other elders in the village and then sets a day (not a date, this is because under customary or indigenous setting, events are marked by either the occurrence of an event for instance a market day or a festival day) for the hearing of the case. The reason for setting a day not a date is that, in traditional settings, days is designated to happenings. Depending on the nature of the matter, the chairman may invite elders within and outside the lineage of the parties involved to participate. The litigants are entitled to invite elders sympathetic to them. Particularly, they must invite elders from edemeka (Maternal extended family lineage or clan).

7.4.1.2 The Assembling/Case Hearing

On the appointed day, all participants are expected to assemble at esopi isii, the ex- officio chairman of the council of elders, all present are participants, can ask the litigants questions, and can also provide information at their disposal in relation to the case. They cannot, however, take part in the decision; but they can show their disapproval or dissatisfaction by booing at a bad decision.

7.4.1.3 The Process

The village messenger or town's crier goes round the community and announces the time and venue of the proceeding for a given day, say a market day which most likely may fall on a week day. The proceeding may not commence until much later because all key elders must

be seated. The chairman will wait until guests (supporters) of each of the litigants are seated before he calls the court to order. The proceeding begins by the appointment of the presiding elder of the day who must be a well respected person in the community by the chairman, with the assistance of his council members. This process is followed by the appointment of other elders to the panel who will hear the matter. The chairman remains a member of the council; he is the father of the village ete idun, who must remain impartial or neutral. The "jurors" for the day having been selected, the next item will be oath taking or prayer as the case may be.

7.4.1.4 The Oath Taking/Prayer Session

One village elder is usually well versed in the art of libation. He gets a calabash, fills it with palm wine provided by the litigants, and then calls on ancestors to be present to guide in the deliberations to follow, to give the jurors an understanding mind to discern truth from falsehood and to punish anybody who might try to pervert the course of justice. The libation is followed by Christian prayer asking for Abasi Ibom's (God) for guidance and the restoration of peace between the litigants.

His exercise of libation and prayer is significant. It places the "jurors' on oath to remain impartial and gets all focused on the desire to seek peace between the litigants (Offiong 1984):100-113). It unites all present in common action before the hearing begins; it also enables all to focus attention on the need for maintaining the harmony and well-being of the extended family, village, or lineage. It reminds all of the presence of ancestors and their power over the living. Both the plaintiff and the defendant are asked to deposit a certain amount of money; the winner gets the money back, while the loser forfeits his/hers, which is then shared by the jurors.

The presiding elder, who serves as the foreman of the jury, then takes over. He outlines the expected decorum and fines for violators and then warns that the case is serious and should

not be treated in a hurry; there should be thorough probing, and this should take as long as is necessary to get to the truth. He concludes by admonishing: "Okop ikdedem kiet odo owot owo." Meaning, taking sides after hearing from one party is grossly unjust; it is a capital offense. Therefore a decision must come only after weighing evidences from both sides. Then he asks the plaintiff to present his/her case. After the presentation, the plaintiff is aggressively and thoroughly questioned, first by the defendant and subsequently by the jurors and members of the audience.

The proceeding is always very lively and heated, but orderly. Witnesses are called and their testimonies strictly scrutinized through questioning. Cases not concluded in one day are adjourned till another day. When all questions and answers have been exhausted, the jurors retire to a convenient corner outside the view of the audience to deliberate on the evidence. Their deliberation does not just seek to determine guilt or innocence; they must also determine how to punish the guilty while still maintaining harmony within the group. They do not want to isolate the guilty party because this could turn him or her into a danger to the community. After a unanimous verdict, an elder invited by the loser is selected as the spokesman for the jury. This selection emphasizes the unanimity of the verdict and leaves no doubt in the mind of the loser that he/she is really guilty.

7.4.1.5 The Ruling

In delivering the verdict, the spokesman relies on proverbs because they convey wisdom. An elder well versed in proverbs is highly respected. Proverbs soothe and are like seasoning which makes an otherwise unpalatable food edible. In emphasizing the importance of respect to constituted authority, the spokesman will commence by saying that a community without elders is doomed. Since elders are the custodians of knowledge, wisdom, and morality, they deserve the respect and cooperation of all. Warning in advance that the punishment to be announced is not commensurate to the offense, the spokesman may use proverbs in his concluding speech before the verdict is delivered. Depending on the

circumstance surrounding the conflict, a relevant proverb is employed. For instance he may use a proverb such as "the length of a snake does not call for a fireplace of equal length". If the loser is younger than the winner, the spokesman may tell the audience that a child may claim to know how to bathe, but the fact is that he/ she only bathes the belly, this suggests that childishness, youthfulness, or youthful exuberance may have led the person to commit the offense. As an admonition that the punishment is a deterrent, the spokesman faces the loser and tells him/her that when a cane hits a disobedient child on the ear, it is a warning to turn a new leaf. He then proceeds to deliver the judgment.

All members of the jury will confirm the verdict in unison. Should the loser apologize and ask for leniency, the fine is reduced. In fact, in most cases not only will he/she apologize, edemeka (his relatives from his maternal side) will join him/her to plead for leniency. Always, the jurors agree during their deliberation that, should the person show remorse, the fine should be reduced. Once the person apologizes, the presiding elder reduces the fine to what the jury had agreed to. If there is no apology or remorse, the original fine stands. The final thing is making peace between the litigants.

7.4.2. The Kalabaris: An Historical Overview

The Kalabari are identified linguistically as Ijo, the fourth largest linguistic group among an estimated 250 in Nigeria (Anderson and Peak 2002). They migrated about one thousand years ago (Alagoa 1972; Erekosima et al 1991) from a largely freshwater community in the central Niger Delta where farming was supplemented by seasonal fishing, to the island of New Calabar in the eastern saltwater side of the Niger Delta, where they took up fishing and trading as their principal occupations (Alagoa 1972). The Kalabari people are an Eastern Ijo group in Rivers State of Nigeria (Dike 1956). They are spread over several islands in the Delta of the Niger River and number about one million (Wariboko 1997). They were one of the most important merchant groups in the transatlantic trade on the western African coast,

participating in the exchange of slaves and palm oil and other produce of the African forest, for European manufactured goods (Wariboko 1997).

Critical to their involvement in the internal and overseas trades was the canoe house system, the most characteristic political and social institution of the Eastern Niger Delta States in the eighteenth and nineteenth centuries. It was not a lineage or descent group; rather it was, as Gwilym puts it "a compact and well organized trading and fighting corporation, capable of manning and maintaining a war canoe" (Jones 1963: 109). In 1913 the canoe house was defined by the British Protectorate administration as a number of persons grouped together for the purposes of trade and subject by native law and custom to the control, authority, and rule of a chief known as the head of the house (Alagoa 1964).

7.4.2.1. An Overview of the Resolution Process

The Kalabaris generally avoid public confrontation. They put greater value to 'saving of face' or preserving their reputation. This is made clear in the way they treat the payment of dowry. Rather than take the dowry or bride price paid by his son in law, the father of the bride will secretly give it back to his daughter to keep in case of emergency, in order to rescue the family in times of lack or famine. This is largely because he will not want outsiders to know that his daughter is not well cared for. This notion is also portrayed in the amount of traditional wrappers requested at the marriage ceremony, none of which goes to the father of the bride, it is meant for the daughter to look good to avoid any scandal from outsiders that the daughter is not well taken care of. In a way this is also a conflict resolution /management technique geared towards curbing quarrels and disagreement in the new marriage (Mr.Braide, Kalabari traditional marriage oral interview Bakana).

Generally, it is considered rude to openly confront a person, especially an elder. Thus, the settlement of disputes through intermediaries or mediators is the hallmark of the Kalabaris dispute resolution. Mediation is used here to mean the involvement of a third party in a conflict to facilitate a positive outcome. Mediation is undertaken by respected members of

the community. They include elders of families, respected members of the community with good reputation such as integrity, trustworthiness and patriotism.

The king or the head of the tribe/clan such persons may or may not have been formally appointed into the Ama Kobiri (village committee). Depending on the nature of the conflict, there are different levels of conflict resolution mechanisms involved. They range from negotiation, mediation, neutral party mediation, consensus building and finally arbitration where the King or Amayanabo, the king or the head of the tribe/clan not just a given community) makes the final and binding decision (Interview with Kalabari elders in Buguma during Pilot study in 2010).

The process however goes beyond that to include public hearings, sanctions and fines. These elements are not mutually exclusive. Yet others may involve a protracted process of going between the parties with the aim of a positive outcome of both parties understanding their position and moving towards reconciliation. This is often employed in disputes between families or persons who are closely related, and in the extreme case, between a husband and wife. This process is also used to force the matter into the open, enabling the parties to choose to have the mediator follow through or to settle their grievances on their own. The process is used to settle grievances through offensive, destructive behaviour, nuisance to neighbours or breach of agricultural/fishing practices. The perpetrator is made to take an undertaking to stop the gossip or destructive behaviour. It is also used for debt collection. However, a token of appreciation may be given to the chief or headman by the parties (Alabo or sibidabo) when a settlement is reached (as told by Mr Sunday Fredrick Ibama of Ibama's compound, Buguma).

7.4.2.2 The Process

When an offence involving family members is committed, the details of the offence will be made known to the head of the family who may not necessarily be the oldest in the family. Also if the eldest is a woman except in cases which are matrimonial in nature, she may not

assume the leading role. This is because dispute resolution is mainly patriarchal except where it involves feminine issues. Disputes may occur between two or more clans, or between prominent persons in the community. There is the interplay of power and status when a particular case is brought to the attention of fellow eminent personalities. The relative power of the parties will vary; rarely will it be balanced.

7.4.2. 3 Warikobiri

Warikobiri refers to the first subset of all such groupings involving just the nuclear and extended family of the parties involved in the conflict. As soon as an offence is made known to the other party, and the facts are acknowledged through the waridabo or sibidabo (the headman or chief), the appointed mediator or head of the community or clan will encourage the parties to come to a meeting in which he or she will initiate a settlement process by inviting them to meet face to face to state and clarify their grievances in the presence of the mediator with or without another witness.

At the (face to face) meeting, the background of the case is explained, and the mediator reiterates each party's position. The mediator's role is to get an amicable settlement from the parties in an effort to reconcile the parties. During this period, several idiomatic expressions by way of proverbs will be employed to warn the parties of the dangers of keeping or sleeping over an offence as well devastating effect it will have on the relationship of the parties before the occurrence of the offence in issue. Where there are multiple parties, compromises that would suit all parties would be worked out. In the event that one or both parties refuse to be guided towards reconciliation, the matter will be referred to a higher authority in the form of a senior chief in the polo kobiri (as told by Mr Sunday Fredrick Ibama of Ibama's compound Buguma 14/7/10).

7.4.2.4 Polo Kobiri (Compound Meeting /Discussion)

In the polo kobiri, other respected members or elders of the community who might be in the traditional wari-kobiri are called to hear and to advise the parties. Where they are from different extended families, representatives from each extended family will be called as witnesses. Once again, the facts of the case would be stated, and the history of the proceedings up to that stage would be discussed and reviewed. The elders present would offer solution to the parties. But if one or both persons or parties refuse to comply with the advice given by the elders, then it may become an Amakobiri or public hearing (as told by Mr Sunday Fredrick Ibama of Ibama's compound Buguma).

7.4.2.5 Amakobiri (Community Meeting/Discussion)

The Ama kobiri is a gathering of the different chiefs or traditional rulers that make up the community or all the elders of the village community. This is done in matters that have repercussions for the whole community, as a means of garnering public opinion and for maintenance of order by consensus.In an Ama kobiri, all the parties are required to attend to present their views. The gathering is open to interested persons and to the general public. If it involves land or boundary disputes, prior to the Ama Kobiri, members of the Alabo kobiri (meeting of Chiefs), who are the assistants of the headman would have gone to the site of conflict to ascertain the facts and become assessors and potential witnesses.

Independent elders from another (village or ward) may be invited to participate in the sitting. There is no set procedure for such gatherings. However, it always begins with a welcome by the Amadabo or headman (King) of the village or the elder who initiated the hearing. He states the facts of the case and invites both parties to State their cases. Each leader present is given an opportunity to speak. The leaders will encourage, exhort, entreat and admonish. Words at these meetings are chosen carefully, with metaphors and alliterations being used to drive a point. Sarcasm may even be employed where one party is adamant or insensitive. The most senior leader will only speak after all other leaders have

spoken. Generally, he would ask the parties to go out briefly for a consensus to be reached with his council of chiefs before summarising the proceedings (as told by Mr Sunday Fredrick Ibama of Ibama's compound Buguma).

This process is called Piriso (consensus between the elders before verdict). He states clearly the consensus and decision of the gathering. The parties would be asked to comply with the decision immediately. If the offence involves damage to property, the offender would be asked to restore immediately what had been damaged or wrongfully taken. Should a party be unhappy with the decision of the Ama Kobiri, or if an offender refuses to comply, it then becomes a matter for Se Kobiri (meeting of several communities that make up that tribe) (As told by Mr Sunday Fredrick Ibama of Ibama's compound Buguma).

7.4.2.6 The Se –Kobiri (The Public Hearing)

The Headman (Amayanabo) takes on the role of the judge and hears the case as in the Amakobiri, the difference between the Amakobiri and se kobiri is the composition/membership of the gathering. Here the decision of the King [Headman] is final and failure to abide by it will lead to several consequences, some of which are ostracism, banishment, restitution, fine, compensation, forfeiture, seizure of valuable property, caricature of the party and his family. This process has frequently led to compliance by parties involved in the conflict, due to the pressure that will be put on him or her to settle or face a banishment by his/her own clan or family. The ultimate aim of the resolution is premised on the important value of reconciliation and peace-making.

7.4.3. Similarities in the Two Tribes of the case study

People are organized in extended families (nnu'), village (idu' or obio), lineage ('duk), and warikpo (lineage groups). A belief in the continuing ability of ancestors to affect people's lives maintains social control, and makes the need to have formal laws or regulations minimal. The goal of restoring social networks is paramount, and individual differences are

expected to be subsumed in the interest of the group. To ensure that progress or an agreement in a negotiation is preserved, parties must promise not to invoke the power of ancestors to bewitch or curse the other in the future.

Elders have substantial power, and when they intervene in a conflict or a negotiation, their words are respected. Face-saving is one reason that politeness is so important and confrontation is avoided. Emphasis is placed on the relationships established before the disagreement began. Oath-taking is a common method of dispute resolution. Payment of compensation as a means of restitution or verbal apology to the person or family they have wronged. In the traditional customary system every member of the society is required to act as the police and it was therefore incumbent on any one who sees the commission of a crime properly so-called to report to the Chiefs, Kings (in chiefly societies) or Elders of the Community (Chukwu obaji and 2 ors vs. Nwali Nweke Okpo and ors (1978) 1 IMSLR 258)

7.4.4 Differences in the Two Tribes of the case study

One peculiar difference between the two tribes discussed above is the nature of the community, whether it is chiefly or an acephalous society. According to Hon Justice A.G. Karibi Whyte, what constituted an offence in a chiefly society may not constitute an offence in an acephalous society (Whyte 1988: 27). It may in fact be that even where both societies recognise the conduct as an offence the sanctions may differ in kind, or severity (Fortes and Evans Pritchards 1940: xviii).

From the foregoing, it may be argued that although the similarities between the two tribes in our case studies are greater than their differences, modus operandi may differ. Reeves and Reeves (1997) emphasised that greater challenges may arise when the core pedagogical values in one culture are culturally inappropriate in another. One recurring practice in the two tribes presented in this chapter is that men play predominant role in the process. This is, in fact, one of the arguments advanced against the role of traditional rulers in Africa as being a predominantly male institution (Brock-Utne l985).

Another point worthy of note is the need for an in-depth and proper understanding and analysis of any given tribe or communities process of dispute resolution before adopting a model or developing one. This is because the customary processes are complex and require a refined analysis, including a thorough understanding of local historical, economic, social and political contexts, since conflict, by its nature, holds some risk for those involved, so that one does not reach mistaken conclusions which could actually have a harmful effect on the community (DeWalt 1994).

7.5 The Need for an Indigenous Model

The need for an indigenous model arose due to a search for an alternative to the perpetual suppression and silencing of indigenous ways of conceptualizing and managing conflict (Joireman 2001). This suppression is prominent in most practice, research, and training, including conflict resolution where Western problem-solving models of conflict resolution are promoted as appropriate for all cultures, while indigenous conceptions are marginalized through Westernization (Galtung 1990). Since colonisation has weakened many traditional ways of resolving disputes in a bid to impose its own upon all its colonies for administrative convenience (Joireman 2001), criticisms have been levelled against western models as culturally inappropriate for indigenous peoples due to differences in the worldview underlying the techniques (Beattie 1997). It has also been argued in relation to its inability to contain or effectively manage conflicts due to the employment of the power of the dominant culture, which neither acknowledges nor accommodates differences in culture, since it is claimed that such techniques "cut across culture" (Walker 2004).

The strengths of the process are praised for capitalising on traditional practices, which the masses comfortably identify with, contributing to the recreation of age-old procedures (Daly 2002:355-359). This process is similar to the Xeer in Somali which has been tried, experimentally, in Somaliland and Puntland and has proven to be very successful. These

two regions succeeded in creating institutions led by a council of elders that have both mandates for, and experience in conflict resolution and continuing responsibilities in establishing peace (USIP 2006).

Furthermore, this research argues that the indigenous model will provide parties in conflict with an avenue and a platform to express their views, unhindered by the restrictions created by legal processes totally alien to them. In addition, the model will lead the way in bridging the asymmetrical gap between the Niger Delta communities and the opposing side (Nigerian State and oil companies) they are in conflict with. It will also give room for transparency and mutual recognition of each side's position and arguments (Huyse and Salter 2008).

A further reason for its viability is the fact that the Nigerian legal system has an historic bias against indigenous people through the imposition of a foreign legal system which, by definition, does not take into account cultural systems and customs and as such developing or proposing an indigenous model will be welcomed by the populace who are very much averse to western epistemologies. The establishment of both the indigenous and western mediation models proposed by this research if adopted by the government and drafted into policy will be capable of taking care of conflict in every area of the country and most especially the Niger Delta region. More than this, the fact that the majority of the oil producing communities if not all, lack the capacity, temerity and boldness to sue in court, but would rather continue to resolve disputes the way their forefathers have done in the past gives this chapter its justification.

Sir James Marshall's (director of the 19th century Royal Niger Company) eyewitness statement described the indigenous process thus: "*The efficiency with which the natives administer their own laws is very striking. These people have their own laws and customs, which are better adapted to their condition than the complicated system of English jurisprudence. The adoption of them would, it is maintained, be more conducive to the best*

interests of all than the present system" (cf Balonwu 1975: 31). It is sad to say that these traditional and informal justice forums became outlawed as they were regarded as obstacles to development during the colonial period. Sandra Joireman (2001) added that in order for colonisation to be effective, the colonial powers ensured that a legal system capable of both maintaining a control of the colony as well as resolving its disputes was put in place, notwithstanding the processes already in place. It was further argued that this disregard for the pre-colonial processes has by and large caused the persistence of conflict in Africa (Joireman 2001:577).

Paul Lederach, one of the chief exponents of the indigenous approach, argued that virtually all of the recent transitions toward peace - such as those in El Salvador and Ethiopia, as well as the earlier one in the Philippines were driven largely by the pressure for change that was bubbling up from the grassroots (Lederach 1997). Lederach is not alone in this crusade on the need to explore indigenous processes in managing conflict other authors include Avruch, Black, Galtung and Kraybill (Avruch and Black 1990, 1991; Galtung 1990, 1996; Kraybill 1996, 22–23). The resurgence of indigenous process in Africa is claimed to be as a result of the successful implementation of the Rwandan Gacaca Court which was mostly admired for its indigenous grassroots approach to problem solving, particularly in as critical an area as genocide.

This argument is pivotal in the choice of the two different tribes in our case studies, to find out commonalities and differences which exist among the two tribes and to enable us develop a sustainable and culturally adaptable framework. Avruch and Black (1991:24) commenting on the danger of lumping all or introducing one size fit all process in all the communities said thus. "Trying to lump all of these together as one common group is obviously not very feasible. Each group has unique considerations which must be taken into account for any service planning." To overcome this, Avruch and Black propose taking a cross cultural perspective on conflict and conflict resolution. A major component of this

perspective involves culture-specific mapping to get at how local groups have traditionally made sense of conflict, and dealt with it, which Avruch and Black label *ethnopraxis*. To do this, the importance of context and local dynamics in designing a dispute resolution system cannot be overemphasized as it portrays itself among the three hundred communities speaking 250 languages in the region that do not display homogeneity.

Furthermore, this resurgence is largely due to a significant shift in the 1990s of emphasis away from the idea of 'top-down' peace-building in which powerful outsiders act as experts, importing their own conceptions and ignoring local cultures and capacities, and in favour of a cluster of practices and principles referred to collectively as 'peace-building from below.

The significance of the indigenous model as argued in this chapter is premised on the fact that economic realities of everyday life are closely linked and rooted in the culture and history of the people which invariably is tied to the indigenous method of managing conflict. The significance of the indigenous process in the management or resolution of dispute though not widely researched and reported is shown on some developmental issues which we believe is intertwined with conflict (Castro and Ettenger 1996). Below are testimonies on the efficacy of these methods.

In Mozambique for instance, after fifteen years of civil war, community leaders reportedly managed about 500,000 informal "land transactions" and helped in the settlement of about 5 million refugees and displaced persons in two years. Most significantly, they achieved this without direct external help from donors or central government. It was achieved through traditional, local authorities' reliance on indigenous, customary laws to resolve potential conflicts arising from competing claims to land by returning refugees and those who had settled on the lands during the civil war. As a result, small holders were able to quickly resettle and resume farming and contribute to the growth of agricultural production (Gorjestani 2000).

In Senegal, moreover, external partners had for years engaged the country's authorities to abolish female genital mutilation (FGM), though with little success. Indigenous knowledge and empowerment of community groups eventually made a national impact. After attending an adult literacy course conducted by Tostan, a local NGO, a group of women from a village called Malicounda decided to address the issue in their communities (Easton 1998 and 2001). They convinced the traditional spiritual leaders to join their campaign against the practice. Within two years, these empowered women had convinced sixteen neighbouring communities to abolish the practice. As a result of the growing impact of the Malicounda initiative, by the end of 1999 the practice was declared illegal in Senegal. The Malicounda initiative has spread to other groups in the neighbouring countries where already more than 200 communities have abolished FGM. All these testimonies have attested to the efficaciousness of the traditional conflict resolution process which are inexpensive, locally available, and culturally appropriate; and in many cases are based on preserving and building on the patterns and processes of nature (Gorjestani 2000).

The customary process has been acclaimed to be not only efficacious but also creative in the resolution of conflict. It also acts as a powerful channel of communication among the people, strengthening social solidarity and contributing significantly to the maintenance of social order. It has been seen as a time-honoured institution, capable of resolving many local, tribal, and national conflicts efficiently and in cost effective ways (Gorjestani 2000). The customary process has been likened to a moral, emotional and transformative power that cannot be legislated (Zartman 2000). The viability of the indigenous model is premised on the dilemma faced by many civil societies on how to manage the perpetration/perpetrators of violence as well as maintenance of peace due to relegation of non-western cultural perspective and the ordination of one dominant perspective not only in conflict but every other aspect (Joireman 2001).

7.6 The Role of Traditional Rulers in the Indigenous Model.

In order to have a full view of the dispute resolution systems in the Niger Delta region, and elsewhere in Nigeria and Africa as a whole, it will be pertinent to look at the mechanism through which these systems were and will be administered and how they can be harnessed to suit present day purposes. The reason for highlighting the roles of traditional rulers so elaborately is to inform the reader of the importance of their role as conduit in the indigenous model.

7.6.1 The Role of Traditional Rulers

In most African societies, traditional authority and leadership finds expression in forms such as religious leadership, lineage headship, leadership in extended families, and chieftaincy. The role of traditional rulers in pre-colonial Nigeria includes different roles and functions which include monarchical, associational or consular. Traditional rulers were effective and revered as the authority of the kings in Europe and other places that had an organised governmental system (Agbese 2004). They were in theory and in practice de facto and de jure governors of their domain, self-dependent and self-sustaining, but at the same time not absolute, as a result of the limits on their authority and political behaviour by the institutional restraints, convention and customs (Davies 1990:138).

Traditional rulers are regarded as embodiment of local custom in administratively-defined autonomous communities. They act as patrons and mediators within the community and serve as transmission belt for government policies into the local sphere (Crowder and Ikime 1970). Among them are numerous educated and wealthy businessmen with excellent official connections, but also a few traditional rulers who describe themselves just as 'successful farmers'. They were given affirmation by some top government officials as the custodians of the ideals and values which form the basis of the cultural heritage and as agents to mobilize people in the rural areas.

7.6.2 Denigration of the Role of Traditional Rulers

Traditional ruler's role, however, took a dramatic turn with the advent of colonialism. In places where indigenous rulers were not deposed by the colonial rulers, their central role was transformed from serving their people to ensuring colonial exploitation. What was meant to be a system of government that protected traditional institutions turned out to be one which had, in practice, little or no respect for indigenous cultural norms and ideals. This change in role led to a rejection of their role in the society, in the early years of Africa's post-colonial period (Ferguson 1999).

At a time when the wind of modernity was impacting all facets of society, modernisation theorists argued that chiefs and chieftaincy were old-fashioned, and should be replaced by "modern" representatives and more transparent institutions inherited from the colonial state (Mamdani 1996). Furthermore some scholars even argued for a common political and legal regime that guaranteed equal citizenship for all, and for the abolition of the 'decentralised despotism' that informs bifurcations like 'citizen' and 'subject's. Notwithstanding the move for the redefinition of their roles, the political importance of chieftaincy in a significant way has not been impacted negatively (Mbembe 2001). This is because there is a growing recognition of the role of traditional rulers in contemporary politics in Africa, especially with increasing claims for recognition, restitution and representation by cultural and ethnic communities (Moore and Sanders 2001). These leaders operate outside the purview of the State and still retain the ability either to accommodate or occasionally confront government policies, or to innovate outside the narrow confines of modern structures (Fisiy and Goheen 1998).

7.7 The Limitations of the Indigenous Model.

As effective and efficacious as the indigenous system may seem, with its models for dispute resolution based on consensus and collaboration, it also has its challenges which tend to

inhibit the process. The various arguments enunciated above on what the entire indigenous model is capable of accomplishing have been attempted in the search for a solution to the Niger Delta conflict and have provided useful lessons in efforts to pursue peace and reconciliation and to help break an apparent impasse in the conflict management process in the Niger Delta conflict for many years. However, there are some weaknesses and threats associated with the process which if not managed adequacy may cause more conflict that it is. These threats and inadequacies are enunciated below.

First, the indigenous process on its own, though flexible and adaptable, may not be able to manage all the many technicalities and technology involved in the oil and gas sector. This is in view of the fact that the process relies heavily on the contribution and deliberation based on the *elders' knowledge and experience* in varying circumstances, who may not be so knowledgeable on issues such as information on the environmental contamination caused by oil products, industrial discharges and emissions, traffic emissions and domestic waste and also on level of toxic substances, hydrocarbons, heavy metals, radio-nuclides and other chemicals in these waste and emissions. Also its inadequacy will be seen in its ability and capability in analysing and developing effective methods of land clean up and its further utilisation, as well as measures to reduce the negative environmental impact in the Niger Delta. Secondly, the indigenous process is *culture-specific and not so flexible in all cases*. It is often difficult for people who do not belong or subscribe to the particular culture to respond positively to the processes. There is very little leeway and very little possibility of changing or bending the rules hitherto prescribed to suit particular circumstances. The practice may not be readily acceptable to neighbouring communities, and this may limit its application.

Thirdly, the absence of a clear, written structure or framework for coordinating all the processes can complicate them, or even render them completely futile. The skill and agility of the mediators influence the outcome. If a weak or inept mediator is chosen then the

desired outcome may not be speedily realized, or the real import and gravity of the entire process may be diluted. Again poor coordination of the processes may endanger the desired final outcome. The indigenous process as discussed in our field findings has to be performed at a convenient time following an agreed formula, and this may delay the process.

Fourthly, the agreements reached are verbal and compliance depends on the commitment, goodwill and character of those involved. Party(ies) and the community will be willing to forgive. But forgiveness is an extremely delicate and personal thing which can be influenced but not enforced. If forgiveness is to provide a channel for social cohesion and healing, people have to be willing and able to forgive one another, which in itself is a process of overcoming attitudes of resentment and anger that may persist when one has been injured by wrongdoing. The processes of both acknowledgement and forgiveness are very demanding and best served when unfolding at personal levels. Forgiveness, healing and reconciliation are deeply personal processes, and each person's needs and reactions to peacemaking and truth telling may be different. Indeed, we can never really tell whether genuine forgiveness has taken place. The simple utterance of the words 'I forgive you' does not have to be followed up in subsequent action, as a 'promise' does.

Fifthly, over the years, this social space and social fabric have been desecrated by the prolonged conflict and the internment of entire communities in the camps, and thus the application of the traditional systems cannot readily be appreciated, especially by the younger generation. The revival of these core tenets among the various communities on a massive scale is an enormous and strategically important priority as the population prepare to return to their original homesteads.

Sixthly, the indigenous process does not guarantee equitable outcomes, especially where there are imbalances of status and influence, the dominering role of men for example in the chieftaincy role (Brock-Utne l985). As stated above the indigenous process is not static, the

fact that chieftaincy has been dominated by men in the past does not imply that it cannot be reformed to accommodate women. Instances abound of recent changes, especially in other African countries such as Ghana and Botswana where women play equal role in the dispute resolution setting. They attain the role of kings or title chiefs in their community (The Botswana Gazette, 9 January 2002:4). The role of women as peace brokers is further encapsulated in the role of the Luo women of Kenya in their involvement in the various stages of peace processes, like preventative diplomacy, peace making, peacekeeping and post conflict peace building (Mathey et al 2003).

The Final issue is power imbalance amongst the elders due to stratification brought about by colonialism (Eze 1995). The colonial masters, in an attempt to use some of the rulers as their agents to perpetuate the divide and rule tactics, invented a class system in the traditional rulership, making some more powerful than others, and some became power drunk and ruthless thereby creating a power deferential in the communal system which was not part of the African culture of "Ubuntu." These so called divide and rule and ethnic variance tactics are not suitable for the African philosophy of Ubuntu, which involves communal sharing and living in common (Nomonde 2000).

7.8 Conclusion

The main points of view discussed in this chapter of the research are stated below; one of such is the necessity for change in dispute resolution processes in Nigeria as a whole and Niger Delta in particular. There is need for the inclusion or the resuscitation of community based dispute resolution methods in the country in order to curb the excesses (conflicts both small and large scale) in the country by way of conflict management. Indigenous knowledge or community based ideals are very important in bringing about a peaceful resolution of conflict.

Customary or indigenised methods of dispute resolution are flexible, and are based on a tradition and custom that is flexible or sensitive to its environment. Untill recently,

traditional/customary approaches to conflict resolution have not been adequately addressed by scholarly research and political practice. In fact in most cases they are widely ignored, notwithstanding practical relevance from relatively successful empirical evidence/cases of conflict transformation. Boege (2006) added that the reason for this relegation is because western philosophy has become so overwhelmingly predominant in the modern world that it appears as the universal model, while other ways of thinking are merely perceived as 'the other' of, or 'different from', the western approach. This commonly held western view fails to take into account the actual situation on the ground in many regions.

Beyond western epistemology, there are a host of actors and institutions, customary ways and means of maintaining order, controlling violence and resolving conflicts. An instance to buttress the relevance of traditional practices is in the South Pacific island of Bougainville. For almost a decade (1989 to 1998) Bougainville was the scene of the bloodiest violent conflict since the end of the Second World War. The course of the violent conflict(s) followed the logic of "pay back": revenge had to be taken for losses to one's own side by violent attacks on the clan or the family whose members had caused the losses. There was a host of parties entangled in various overlapping conflicts.

Today, Bougainville presents one of the rare success stories of peace-building in today's world, and it looks like it has a good chance of becoming one of the equally rare success stories of State- and nation-building (Boege 2006). Peace-building on Bougainville worked so far mainly because indigenous customary institutions, methods and instruments of dispute settlement, conflict resolution and reconciliation were extensively applied in the process (BCC 2004:182).

The discussion on the two tribes above is predicated on bringing to bear the unique processes involved in the indigenous process in the two tribes discussed above. Customary laws are continually revised over time to adapt to changing social relationships, political

structures and new problems especially as it works hand in hand with State institutions (Keulder 1998).

The survival of indigenous culture, including values and knowledge, will require positive steps based on explicit models, processes and systems to counter the tide of a ubiquitous global culture fuelled by Western values and exploitation. Indigenous values will also be at the heart of any re-awakening of ideologies not based on Westernisation. All these values and ideals are all underpinned by Ubuntu, the African principle of life or communalism. The entire process is designed to balance individual rights and group needs, which are seen as interconnected (Yazzie 1995:16). This view was supported by LeBaron (1995) who asserted that traditionally, native people approached the world from a Cosmo-centric perspective which emphasized the interrelatedness of everything in the world. The interconnectedness of things is further depicted in the physical circle the elders in council as well as parties to the conflict within the circle all sit in positions of equality, thus no hierarchy is established and the connections are circular rather than linear (Michael 1998).

There is however, a danger in applying an essentially "traditional" versus "modern" dichotomy, since it is likely to underestimate the adaptability and resilience of local practices, while overstating the capacity of official institutions and vice versa. This is in the light of the fact that Africa is not a monolithic continent; but a multiplicity of ethnic, cultural and linguistic groups; it will be wise to generalize the extent to which cultural traditions do or do not have progressive norms and principles which can inform approaches to building peace and social solidarity. Also one must be cautious in romanticising indigenous approaches to resolving disputes in particular. This is because, as with the rest of humanity, African indigenous structures were for the most part exclusionary on the basis of gender. The majority of indigenous women were not included in the primary structures of decision making. This is why this research has advocated for a combination of present notions of gender equality with progressive indigenous norms and principles to create

something that is uniquely African. To do this, this research has proposed a hybrid between indigenous African traditions and modern principles to ensure the human dignity and inclusion of all members of society – women, men, girls and boys.

Chapter 8: Developing an Indigenised ADR Framework.

"in a situation where one size never fits all, an integration and syncronization of both the indigenous and western processes and knowledge are crucial for an early exit and the best possible outcome " {Oliver Ramsbotham, Tom Woodhouse and Hugh Miall 2011).

8.0 Introduction

The indigenised/hybrid framework in this chapter of the research is not a prescription of strategies or actions to be taken by governments and other sector players in the conflict situation; rather it is an articulation of possible best practice agreeable to all the parties, based on available evidence, which will provide government agencies and service providers with a framework from which to identify the most appropriate responses to specific issues at the local, state and national levels.

Hence, the model presented here is a guide as opposed to a prescription. Practitioners and government in order to apply this model must endeavour to conduct a mapping of underlying issues and disputes such as the range of differentiations and commonalities between and across groups; the complexity of dispute dynamics, including the elements of underlying issues and local and national dimensions as well as the parties/actors in the given conflict, in order to match them with the most appropriate model, whether a purely indigenous or western model or the hybrid. The consequence of failure to understand this might be to bring about social dislocation, disequilibria and institutionalised inequality which may lead to social unrest and the eventual breakdown and disintegration of that society (Wifa 2008).

Also, contextualisation of conflict is vital in employing a viable method in any society and is central to the task of explanation and analysis of conflict phenomena. Such understanding is a prerequisite for the understanding of how conflicts in Africa occur, how they should be resolved, who should resolve them and what tools or process should be used. All processes should be carefully designed, structured, planned, strategic and flexible. The key is to design

processes which reflect the procedural, substantive and emotional needs of parties and to negotiate their acceptability with them. This is because research has shown that the nature of most dispute resolution process is rarely adequately explained to the people upon whom it is about to be imposed. Parties need to make informed decisions about the processes in which they wish to be involved with an understanding of the level of burden that they may place on them.

The proposal to develop a hybrid model in this research is predicated on the determination that the Niger Delta conflict is multidimensional and complex in issues with multi party and cultural diversity. Hence attention is required to all elements such as cultural orientation, local preferences and local expertise in developing strategies aimed at prevention of the conflicts. Furthermore, there is an essential need for greater coherence, coordination and interaction between the various parties.

Another reason why we have not adopted the prescriptive style is that the conflict in question involves multicultural parties and research has shown that multicultural parties maintain indefinite boundaries of the self. The parameters of identity are neither fixed nor predictable, being responsive, instead, to both temporary form and openness to change (Adler 1977:21-47). The multicultural person, in the words of Peter Berger (1973) is a "homeless mind," a condition which, though allowing great flexibility, also allows for nothing permanent and unchanging to develop. Hence the hybrid model stands as a quide for policy makers, governments or organisation to try to fit their issues around when it involves diversity or cross culturalism.

In addition, traditional/indigenous mediation styles in general represent polar opposite approaches to western mediation styles. These differences are more likely to lead to impasses during negotiation and subsequent mediations with indigenous parties. Similar factors come to play in the western mediation setting as parties are not from just from one region. An example is provided by Zwikael et al (2005), who examined differences in

project management style, between the two different cultures: Japanese and Israeli. Significant cultural differences were found between the two. Israeli project managers were found to be more focused on performing "scope" and "time" management processes, while formal "communications" and "cost" management were more frequently used by Japanese project managers. Japanese organizations used clear and measurable success measures for each project, while project objectives in Israel were often quite foggy. They also demonstrated differences in efforts made by project managers and management of the organization on specific project processes. These differences were manifested by smaller costs and schedule overruns in Japanese organizations, while Israeli customers of local projects seemed to obtain better technical performance at the end of the project.

All these differences lead to imbalance often caused by individuals not being fully conversant or appreciative of others' cultural norms. Often this culminates in acrimonious claims against each other. In order to deal with these issues in mediation, it is important to understand that cross-culture has come to the forefront of management thinking (Evans 2006; Kauser and Shaw 2004) and that cultural difference arises due to a variety of factors, such as individual differences in goals, expectations, values, proposed courses of action, and suggestions about how to best handle a situation.

Further, the modern western-style Weberian/Westphalian state hardly exists in reality beyond the OECD world. The 'actual existing states' in most parts of the world are hybrid political orders combining elements of the western model and elements stemming from the local pre-colonial indigenous traditions of governance and politics (Boege 2004:26–35; Schlichte 2005: 277–296). In other words, many contemporary large-scale violent conflicts are hybrid socio-political exchanges in which modern state-centric as well as pre-modern traditional and post-modern factors mix and overlap. It is necessary to change the perspective: not to think in terms of fragile states, but hybrid political orders in which pre-modern, modern and post-modern elements mix and overlap. The hybrid nature of many

contemporary violent conflicts can be taken into account in developing conflict prevention models, ensuring more attention to non-state traditional actors and methods, combining them with modern forms of conflict resolution/management.

8.1 The Framework of the Hybrid Mediation Model.

The hybrid model, as discussed above, is an integration of the indigenous as well as the westernised mediation processes. The aim is such that the best of both is brought to bear in the resolution of conflict involving both. Each process performs the jobs that it can do best, whilst covering the weaknesses of one with the strengths of the other. In essence what is proposed here is not a way back to the 'good old times' of traditional conflict resolution (as we were told), but a way forward to mutual positive accommodation of customary approaches on the one hand and western state-based and civil society approaches on the other. Such approach challenges today's fashionable mainstream discourse on fragile/failing states and their practical political fallout.

8.1.1 Conceptual Description of the Hybrid Process

Applying the concept of "warp and weft" in the resolution or management of conflict in the Niger Delta illustrates the hybrid process very well. The terms warp and weft are used in reference to textiles, specifically those which are woven. In the literal sense, warp and weft are the technical terms for the two types of thread used to create a finished woven product. The warp is the tightly stretched lengthwise core of a fabric, while the weft is woven between the warp threads to create various patterns. The weft threads make up the body of the fabric, which the warp of a fabric, on the other hand, acts like a net to capture the weft, holding these threads firmly so that they will not escape, causing the textile to unravel.

This concept denotes the fact that even if the most complex of designs are woven into a piece of cloth, the basic structure is formed by two interwoven sets of thread, traditionally called the warp and weft. In applying this concept to the Niger Delta conflict: the warp is the

indigenous dispute resolution process as discussed in chapter seven, facilitated by elders underpinned by the spirit of togetherness and in the spirit of human hood (kparakpor in Yoruba dialect) whilst the weft is the westernised mediation process, as discussed in chapter five, modelled after westernised world views. The interaction between these two systems ensures that the threads of different directionality bind together to create some form of stable fabric, transforming the one-dimensionality of threads into a two-dimensional form in the case of cloth, and into a three-dimensional form in the base of basket-weaving. The complexities refer to the differences in values and norms in the parties involved in the conflict.

These different threads in Mahatma Gandhi's spinning philosophy are prominent, as they form the central theme of the Indian independence movement, referred to as spinning a Nation. The spinning wheel became the central image in the Indian flag. Heredia argues that making a largely abandoned village technology central to the uniting of a highly rural country may well represent the kind of improbable creative initiative for which parallels could usefully be sought in relation to conflict management (Heredia 1999, p. 1497). In similar vein, the hybrid model supports the proper blending of both indigenous and western approaches and strategies towards a more comprehensive modelrepresented in the medicine wheel.

8.1.2 Analogous Hybrid Processes

The hybrid model, as discussed above, is a combination or an integration of both the indigenous and western models. The model is an adaptation of western form of ADR, to include indigenous processes and norms. In other words, western ADR has been adapted to include indigenous processes of healing, interconnectedness, intercultural understanding, and discussing important matters (Bell 2004:241). Examples of such models include community mediation circles, elders' advisory groups, and family group conferencing circles. Other community-based, indigenized western ADR systems include India's lok

adalat village-level people's courts, where trained mediators help resolve common problems, Bangladesh's village-based shalish mediation, Sri Lanka's nationally established mediation boards, and Latin America's juece de paz (World Bank 2000). For the purposes of brevity and for comparative example, I shall discuss the Nisga'a Treaty process of Canada.

8.1.3 Nisga'a Treaty[1]

8.1.3.1 Origin.

The Nisga'a lived in a fairly remote area of northwestern British Comumbia (B.C.). Approximately 2500 of the 5500 Nisga'a live in the Nass Valley, which they share with about 100 non-Aboriginal residents. Forestry is the dominant economic activity in the Nass Valley, but fishing, eco-tourism, pine mushroom harvesting and service industries are also important. The Nisga'a social structure is based on kinship, organized into four clans: Killer Whale, Raven, Wolf and Eagle. Each clan contains a number of lineages, headed by hereditary chiefs and matriarchs. These roles remain important elements of Nisga'a culture today. Each Tribe is further sub-divided into House Groups - extended families with same origins. Some houses are grouped together into clans - grouping of houses with same ancestors (Marius 1950).

8.1.3.2 The Quest for the Nisga, a Treaty

The Nisga'a people have lived in the Nass River Valley since time immemorial. The need for a treaty arose in the late 1800s, when much of Nisga'a traditional territory was declared Crown land. The Nisga'a quest for a treaty began over 100 years ago, with the formation of their first Land Committee in 1890. There are two types of Aboriginal claims in Canada that are commonly referred to as "land claims" - comprehensive claims and specific claims. Comprehensive claims always involve land, but specific claims are not necessarily land-

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[1] A treaty represents an understanding between distinct cultures, a covenant that declares respect for different ways of life. It stands as a beacon of hope for indigenous people throughout a divided, fractious world.(Extract from Chief Joe Gosnell's speech on his European Tour on the Nisga.a treaty in 1998 http://www.darrenduncan.net/archived_web_work/voices/voices_v1_n3/making_history.html)

related. The Nisga'a people began petitioning government to recognize their connection to and ownership of Nisga'a territory.

Following three landmark court rulings, the 1972 Superior Court of Quebec decision on the Cree of Northern Québec, the 1973 Supreme Court of Canada ruling in Calder((1969), 8 D.L.R(3d)59(B.C.S.C), and the 1973 Paulette decision in the North West Territories[1977] 2 S.C.R. 628, the department of Indian and Northern Affairs announced a process to settle land claims through negotiation where Aboriginal rights and title would be transferred to the Crown through a settlement agreement which guaranteed defined rights and benefits for the signatories. Canada first established policies on Aboriginal claims in 1973, along with processes and funding for resolving these claims through negotiation which later translated into treaties.

The Nisga'a Treaty provides for an open, democratic and accountable Nisga'a process. It includes representation for all Nisga'a, four village governments, and three urban locals which provide a voice for Nisga'a citizens who do not live in the Nass Valley. The Nisga'a Treaty establishes decision-making authority for the Nisga'a within a model that the Nisga'a have been accustomed to and accepted for many years. The Nisga'a model is designed as a practical and workable arrangement that provides the Nisga'a with a significant measure of self-government that is consistent with the overall public interest and within Canada's constitutional framework.

8.1.3.3 Scope of Coverage

As a modern treaty, the Nisga'a Treaty sets out and describe in detail how the rights of Nisga'a citizens will be exercised. The Nisga'a Treaty sets out the land and resources that form part of the agreement between Canada, B.C. and the Nisga'a Nation. The Treaty sets out the Nisga'a's right to self-government, and the authority to manage lands and resources.

8.1.3.4 The Nisga'a Treaty as a Conflict Resolution Process

The Nisga'a treaty is under the Canadian system; it is an example of the indigenization of ADR forms in the context of a non-indigenous framework, which is said to be "a form of dispute resolution that represents reconciliation between the [Nisga'a] existence as an Aboriginal people and the arrival of the British Crown" (Bell 2004: 242). In general, the approach of the treaty is that of restitution, acknowledgment of wrong, harmony, cooperation, collaboration and reconciliation. The treaty dispute settlement process is used in settling land use disputes. There are three distinct stages of dispute resolution under the treaty. If no early consensus can be reached through informal discussion and deliberations, then conflicts will have to undergo these three stages. The first stage is that of collaborative negotiations. Parties undergoing this will try to reach a consensus that they failed to attain earlier with the help of non-parties (Bell 2004). There is confidentiality in the negotiations, to encourage the free and undisturbed discussion of relevant matters. Like a normal mediation process, it is not open to the public, there are no transcripts involved, and any admission made or openness for settlement cannot be disclosed or used in any other proceeding.

If the parties fail to reach a settlement or a consensus, the second stage of facilitated processes is invoked. These processes include mediation, technical advisory panel, neutral evaluation, and elder's advisory council. All of these processes are geared towards reconciliation and consensual conflict resolution. In case the parties still hit a wall at this point, the third stage of arbitration and adjudication will be resorted to. There is more strictness and formality at this stage. The arbitration process involves attention to procedural fairness, the presence of the opposing party in cases of oral presentations of information or arguments, and the certainty of receipt of a copy of the opposing party's written communications (Bell 2004). Other features include travel costs, designated place of arbitration, translation of documents or presentations, and expert testimony. The final

adjudication shall be made by the arbitrator or arbitration tribunal based on provincial or federal Canadian law or Nisga'a law (Bell 2004).

The Nisga'a conflict setting compares with the Niger Delta region considering its resources and the presence of outsiders in utilizing the resources and the central government preventing it from ultimate control. The Nisga'a treaty served as an alternative to going to court to resolve land and other claims. It is in the best interests of all Canadians, Aboriginal and non-Aboriginal alike, to find mutually-acceptable ways to resolve these claims. Negotiations lead to "win-win" situations that balanced the rights of all Canadians. Also, it demonstrates that governments and First Nations can, in good faith, work together to forge a more secure future for everyone. Quoting part of a speech delivered by chief Joe Gosnell of the Nisga'a tribal council during his European tour, in November 1998, he commented thus: *"the Nisga'a treaty negotiations proved that modern societies can indeed correct the mistakes of the past, and can ensure that the rights of minorities are willingly respected. It is my sincere hope that far beyond Canada's borders, the treaty sends a powerful message of hope and reconciliation around the world''* (European Tour on the Nisga.a treaty in 1998 Extracts from Chief Joe Gosnell's speech 2012: 1*).*

8.2 Developing the Hybrid Model

To develop a framework of a hybrid, this research has adapted the medicine wheel. The medicine wheel of aboriginal origin is referred to the circle process in the Niger Delta. It is an ancient native process where a group of two or more people sit down together to share stories, learn together, resolve conflict, combine their wisdom to explore a situation, exchange information or decide on appropriate restitution to right a wrong. Research showed that the circle process is used in many cities and countries in the world today as a strong place to explore complex and difficult situations (Bell 2004). In this research, the wheel or cycle is referred to as *the Ogaji's hybrid mediation wheel* as shown in Figure 8-1. The wheel explains the practicality of the process, and is guided by western values,

traditional history, ideals, custom, language and values. This wheel will be a guide in the model developed by this research namely the Naija (Naija is a Pidgin English form of Nigeria) settlement process.
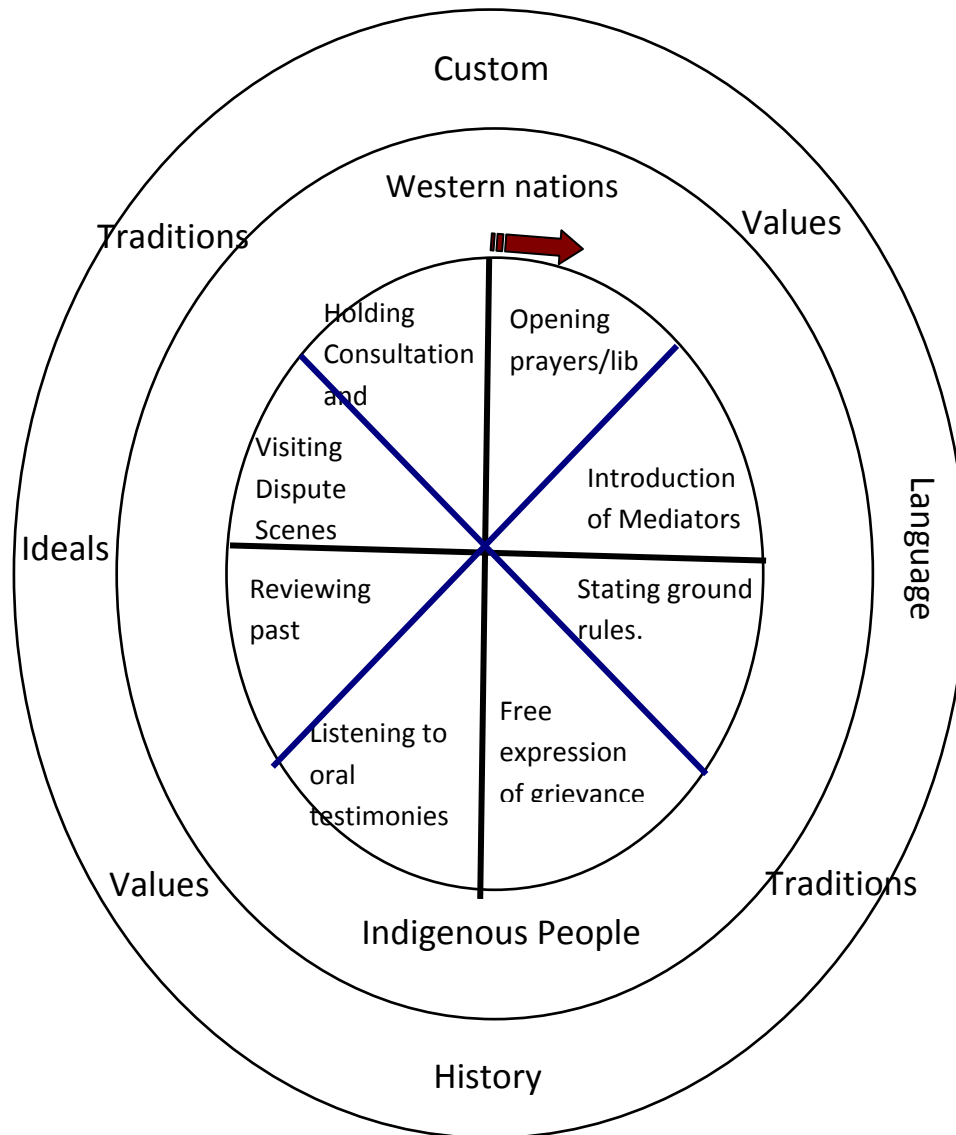
Figure 8-1 The Ogaji's hybrid mediation wheel.

8.2.1: The Naija Hybrid Mediation Process (The Naija Settlement)

The Naija settlement is a model developed by this research as an integration of western and indigenous mediation processes to resolve or manage Nigerian conflicts, capable of replication elsewhere where cross culturalism plays a vital role. It is a multi-cultural

settlement model which incorporates the indigenous laws and custom of the different communities involved as well as western norms and values. The constituted forum in this proposed framework functions in a normal mediation setting, with the ability to listen to oral testimonies and documentary presentations.

8.2.1.1 Selection and Role of the Mediators

Given the diverse nature of the Niger Delta, and because the hybrid involves an integration of both processes, cross cultural perspectives have been taken into cognisance. To this end, we propose that two or more mediators be chosen for the hybrid process. One of the mediators should be conversant with each, or both of the processes. The significance of co-mediation is that it can lead to greater acceptability bringing about cultural proximity between a party and individual mediators without threatening the overall process, as well as bring about the content or outcome impartiality of the mediation.

Culturally balanced co-mediation is also a powerful tool in bridging cultural or religious gaps between the parties in a dispute, as the cultural proximity of the mediators to the parties allows for deeper understanding between the parties and mediators, which in turn helps the mediators facilitate communication and understanding between the parties. Hence because co-mediation is proposed in this model, it is important that the constellation of the co-mediation team adequately represent the key cultural or religious differences separating the parties. By including different competences in the team, co-mediation can be used as a strategy to overcome some of the challenges commonly encountered by mediators, e.g. lack of leverage, arrogance, partiality, ignorance, inflexibility, haste, and false promises (Brahimi and Ahmed 2008). Apart from complementing expertise within the mediation team, it plays vital role in conflicts where cultural factors play a key role. Co-mediation can also be used to increase the acceptability of the mediators, and to bridge different worlds through an understanding of those worlds within the mediation team.Michelle LeBaron noted that "a

single intervenor may not meet parties need where conflicts are complex and cultural factors play prominently or when a conflict involves parties from different cultural backgrouds"(LeBaron 2003:6)

An example of the concept of 'bridging worlds' within the mediation team was the use of mediation by the Cordoba Center for Peace Studies related to the 'Faces of Mohammed' cartoon crisis. This was a dispute between some Danish media representatives, the Danish government, and some Muslim groups, first in Denmark and then, later, further afield. The conflict started when an illustration of the face of Mohammed (the Moslem leader) was shown by some Danish cartoonists. To quell the uprising that followed, a mediation process was initiated which took place in Geneva in February 2006 involving a Muslim advisor for the Danish delegation (Abbas Aroua) and a Scandinavian advisor for the Muslim delegation (Johan Galtung), working together in a culturally balanced co-mediation team.

The co-mediation arrangement was shaped by the wishes of the delegations themselves, and demonstrates a slightly different use of co-mediation than the typical strategy of achieving a direct connection between the party and their respective mediator. In this circumstance, the understanding and ability to connect with the different cultures that is fostered within the mediation team lends itself well to identifying the underlying feelings on both sides of the dispute, and thus nurturing a successful mediation environment. Strategically, the cross representation creates a space in which each party is able to develop a sense of understanding from someone who can express the views of the opposing party, but it is also a trusted figure. This built confidence and a favorable environment for mediation, allowing for an effective subsequent dialog process (Mason et al 2010).

Having discussed the relevance of a co-mediation, we shall further discuss how the mediator or co-mediators can manage cross cultural issues in the hybrid model. There is a significant amount of literature relating to cultural differences in mediation. For instance Raymond Cohen (1997) focused on high-context communication countries of China, Egypt, India,

Japan, and Mexico. In the same vein, Kevin Avruch (1998) gave helpful literature about cultural differences in mediation. Julia Ann Gold, (2005:289), discussed how cultural values shapes our disputing processes. Almost all the articles categorized the differences, but did not explain how a mediator would overcome these differences. In discussing the selection of the mediator for the hybrid model, this research hopes to explore further the need for recognizing and overcoming the problems that result from cultural differences.

Table 8.1 below is an illustration of cultural variations in the two parties discussed. In addition we have explored and adapted Hofstede's useful dimensions of culture and how they will affect the Niger Delta conflict, setting out the scores of each of the dimensions as it affect the various countries operating in the Niger Delta.

Table 8-1 Cultural Variations between Low-Context and High-Context Cultures (according to Edward T. Hall, 1976)

LOW-CONTEXT CULTURE(Western)	HIGH -CONTEXT CULTURE(Niger Delta)
Overtly displays meanings through direct communication forms	Implicitly embeds meanings at different levels of the sociological context
Values individualism	Values group sense
Tends to develop transitory personal Relationships	Tends to take time to cultivate personal relationships and establish permanent
Emphasizes linear logic	Emphasizes spiral logic
Values direct verbal interaction and is less able to read nonverbal expressions	Values indirect verbal interaction and is more able to read nonverbal expressions
Tends to use "logic" to present ideas	Tends to use more "feeling" in expression
Tends to emphasize highly structured messages, give details, and place great stress on words and technical signs	Tends to give simple ambiguous non-contexting messages

Perceive highly verbal persons favourably	Perceives highly verbal persons favourably less

8.2.1.2 Hofstedes Dimestion of Culture

Geert Hofstede (1980), in his empirical studies covering 53 countries, formulated four useful dimensions of culture. He later collaborated with Michael Bond to add a fifth dimension related to Chinese culture. These five dimensions are:

- Power Distance Index (PDI),

- Individualism (IDV),

- Masculinity (MAS),

- Uncertainty Avoidance Index (UAI)

- Long-Term Orientation (LTO).

8.2.1.2.1 Power Distance Index (PDI): It is a measure of hierarchy. Its central value is "respect for the leader or the elder. Status is an important issue in a high Power Distance culture. Absence of hierarchy is a frustrating situation for a person from a high Power Distance culture. In low Power Distance countries, equality and opportunity for everyone is stressed. There is a belief that "all men are created equal" and should be treated that way. These cultures are characterized by mutuality and shared initiatives. The mediators must be careful to give respect and deference to high status individuals and to not challenge them in ways that would seem inappropriate. When asking tough questions of the high status party, the mediator must make clear that he is not trying to challenge the party. The mediator or co-mediators should treat the high status party with respect. If this can be achieved during the pre-mediation meetings, the mediators should be sure that rank is matched on both teams by making sure that parties with equal status will be at the bargaining table. Status issues do

not affect only the disputing parties. Mediators from high-status cultures should try to not be offended if they are not treated with the same respect that they would receive at home. Table 8.2 below shows countries with high or low scores, mediators in the hybrid or the Niger Delta conflict must adhere to these findings. This is because almost all the countries stated below are involved in the oil and gas industry in the Niger Delta region and as such an understanding of the various dynamics and captured by Hofstede will be handy in designing a mediation process for a given conflict.

8.2.1.2.2 Individualism (IDV): focuses on how much a culture reinforces individual achievement and interpersonal relationships. The focus on the individual versus the collective is another "great divide" among world cultures. During mediations, the differences between individual and group values can be a source of conflict and an opportunity to create "joint gains," because the parties may actually be seeking to fulfil different interests. The mediator could start the mediation in a social situation to reacquaint the parties with each other and get them to experience each other out of the normal business relationship.

8.2.1.2.3 Masculinity (MAS) v. Femininity: focuses on the degree to which a culture reinforces traditional male values and gender, such as achievement, control, power, money, recognition, challenges, assertiveness, aggressiveness, dominance, competitiveness, ambition, the accumulation of money and wealth, independence, and physical strength. Women are subordinated to male leadership. A culture high in masculinity, like competitive negotiators, will attempt to dominate each other through power tactics, and may be reluctant to make concessions. Cultures low in masculinity, like cooperatives, may be more willing to discuss interests, offer concessions, and in general be more willing to "separate the people from the problem." Again the mediator should make reference to the table below to watch out for all these.

8.2.1.2.4 Uncertainty Avoidance Index (UAI): A high Uncertainty Avoidance culture creates a rule-oriented society that institutes laws, rules, regulations, and controls in order to reduce the amount of uncertainty in the environment. As a result they will distrust mediating partners who display unfamiliar behaviours, and will have a need for structure and ritual in the mediation process. Uncertainty Avoidance interests are most likely to arise in situations when parties abandon the status quo and try novel solutions. The mediator must try to be able to manage the situation when they arise.

8.2.1.2.5 Long-Term Orientation (LTO) v. Short-Term Orientation (STO): focuses on the extent to which a culture embraces traditional, forward thinking values and exhibits a pragmatic future oriented perspective, rather than a conventional historic or short-term point of view. It is a measure of virtue for a culture. Its central value is "sacrifice for the future." LTO cultures make long-term commitments and have great respect for tradition. There is a strong work ethic. Long-term rewards are expected as a result of today's hard work. In Short-Term Orientation (STO) cultures, change can occur more rapidly because long-term traditions and commitments do not become impediments to change. STO leads to an expectation that effort should produce quick results. Although it might not seem obvious at first, STO cultures have a concern for saving face. LTO cultures may experience people from STO cultures as being irresponsible and throwing money away. STO cultures may experience people from LTO cultures as being stingy and cold.

Table 8-2 The Hofstede Dimension Scores

Country	PDI	IDV	MAS	UAI	LTO/STO
UNITED KINGDOM	35	89	66	35	25
CHINA	80	20	66	30	118
CANADA	39	80	52	48	23

FRANCE	68	71	43	86	-
ITALY	50	76	70	75	-
UNITED STATES	40	91	62	46	29
NETHERLANDS	38	80	14	53	44
WEST AFRICA	77	20	46	54	16

David Day (2005:5) describes cross-cultural mediation as "putting Humpty Dumpty back together," suggesting that a fragile, egg-like relationship has been cracked and needs to be somehow repaired. Of course, it is very difficult to put fragile Humpty Dumpty back together again, unless there is an understanding of how the Humpty Dumpty business deal was assembled in the first place (2005:5). Typical westernised mediators think of business deals as simple, negotiated agreements. The Niger Delta communities and most communalistic mediators or parties, on the other hand, think of business deals in terms of introductions by mutual friends or business associates, the presentation and receiving of gifts, the calling upon of old favours, the forming of trust-based relationships, business relationships formed in entertainment settings, and business arrangements based upon a handshake, not a written contract per se.

8.3 The Role Of The Mediator(s)

In addition to cross cultural differences from the parties, mediators depending on their cultural background may also be influenced by their own values. For instance in the Niger Delta conflict, it will be a challenge for a mediator who is an individualist, egalitarian, informal, low-context communicator who makes extensive use of jokes and humour, and uses a rationally-based, problem-solving approach to radically shift his cultural perspective and behaviour ninety degrees or more to see and do mediation differently. This is because, as a low-context communicator, he will find it difficult to communicate well in a high-

context communicating setting and verse versa. Mediating with a cultural bias may favour either of the parties.

Israeli Professor Raymond Cohen describes cross-cultural conflicts in negotiation styles between low-context communicating Americans and high-context communicators from other cultures in the following way:

"American negotiators tend to be surprised by their interlocutors' preoccupation with history and hierarchy, preference for principle over nitty-gritty detail, personalized and repetitive style of argument, lack of enthusiasm for explicit and formal agreement, and willingness to sacrifice substance to form. They are frustrated by their partners' reluctance to put their cards on the table, intransigent bargaining, evasiveness, dilatoriness, and readiness to walk away from the table without agreement. Non- Western negotiators tend to be surprised by their interlocutors' ignorance of history, preoccupation with individual rights, obsession with the immediate problem while neglecting the overall relationship, excessive bluntness, impatience, disinterest in establishing a philosophical basis for agreement, extraordinary willingness to make soft concessions, constant generation of new proposals, and inability to leave a problem pending. They are frustrated by their American partners' occasional obtuseness and insensitivity; tendency to see things and present alternatives in black-or-white, either-or-terms; appetite for crisis; habit of springing unpleasant surprises; intimidating readiness for confrontation; tendency to bypass established channels of authority; inability to take no for an answer; and obsession with tidying up loose ends and putting everything down on paper" (1997:216).

The quote above shows that not only the parties, the culture and values of the mediator may impact the mediation process if not dealt with. Cultural mismatch and misunderstanding are additional confounding factors that complicate communication and create misperceptions that sometimes hinder finding a mutually acceptable compromise. When all parties approach negotiations with a clear appreciation of the impact of cross-cultural understanding and

communication on the conflict resolution process, the parties might find that mediations are smoother and that resolutions come easier. To this end, we shall discuss some of these issues, and see how the mediator can navigate around the issues.

One of the first issues the mediator(s) may be confronted with is the mediator's awareness of his/her own individuality and singularity amidst the Niger Delta cultural diversity. The Niger Delta community is diverse with lifestyle which may be different from the mediators' personal experiences. If the mediators are capable of seeing diversity within the community, they will be more effective in understanding and managing these differences.

The first step in implementing cultural awareness changes is for the mediator to be aware of his/her own uniqueness in terms, among others, of expression of emotion, body language, style of communication, importance given to the guidelines and/or structure of mediation, and comfort with conflict. To do this, the mediator(s) prepares for the cross-cultural negotiation by mastering a cultural conceptual framework, learning about his/ her own cultural upbringing, and investigating the culture of the other negotiators. The mediator must also be able to grasp the meaning of "cultural behavior" and how it is different from universal "human behaviour". A pre-mediation could serve as a good avenue. This meeting could also enable parties get clarity to issues such as to determine or reconfirm the mediator's style and approach, to advance the party's case, to use the mediator to educate a resistant or less-experienced party or advocate, to verify that the necessary parties will be attending the mediation, or to ensure that there will be sufficient time available to resolve the case (Abramson 2004:242–243).

Further, the mediator should be aware of how his/her own behaviour can affect the participants' interaction in mediation. He or she must be conversant with the national history and a unique family's story of parties' background and acculturation: From an anthropological point of view, the Niger Delta communities may be described as having an allocentric culture, that is, one in which the interests of the group and relations among group

members take precedence over individual concerns or internal psychological states. This general interpersonal orientation helps explain the centrality of some cultural values.

The most salient of these values is familismo, which places the multigenerational, informal extended family at the core of the culture. Family thus extends vertically to include grandparents, aunts, uncles, and cousins (to the fourth generation), and laterally to include godparents (compadre, comadres) as well as close family friends (cuatismo). Thus, la familia refers to the kin network, as opposed to la casa, which denotes the immediate or nuclear family (Irving et al 1999:327). Irving, Benjamin and San-Pedro, in *Family Mediation and Cultural Diversity: Mediating with Latino Families*, suggest that practicing mediation in a more culturally acceptable way will help mediators work better with the Latino population. Personal involvement, warmth, patience, a slower and more tolerant pace, a more accepting atmosphere, the offer of home-based programs, and respect for the values of the culture will help mediators work better with this population.

In understanding the Niger Delta clients, it is helpful if the mediator is aware of the internal family dynamics of their culture. The portrait of Niger Delta family systems involves concern with components such as values, conduct, and comparison to majority family norms. This generalized interpersonal orientation helps explain the centrality of at least some cultural values. The mediator searches for ways to bridge any resulting gap by helping the parties identify the nature of the impasse and by facilitating an intervention. The chosen mediator(s) must be aware of the diverse issues amongst the parties involved in the conflict. The main cultural differences between nations lie in values. Hofstede (2005:364) asserts that there are differences with regard to values about power and inequality, the relationship between the individual and the group.

Hence a mediator who will be able to mediate the Niger Delta conflict must be a person who is not only diversity aware, but are also conversant with conflict resolution processes practiced by the parties. For instance effective cross-cultural mediation will usually benefit

from the extensive use of caucuses and premeditation meetings because in the caucus, the mediator has an opportunity to meet privately with each party to define the issues for mediation, which gives the mediator an opportunity to assess the cultural characteristics of the parties, assess the cultural awareness of each party about the other party's culture, explore the parties knowledge of the culture and values of the opposing party, serve as interpreter, coach, and teacher, and create an opportunity for parties to re-establish or create social relationships useful for resolving their conflict.

Another issue which the mediator must be aware of is that the predominant model of mediation is a rational and linear decision-making process. The mediator guides the parties through a fixed series of problem-solving stages. While this model works well for some groups in society, other groups tend to operate best with different patterns of communication: for example, circular thinking or passionate discussions (LeBaron 1997; Lederach 1986). The Niger Delta host communities and Nigerians in general fall within this category and to ask people from such backgrounds to talk about only one issue at a time or to speak without emotions contradicts their traditional patterns of interaction and conflict resolution.

The mediator(s) must also be aware of the fact that in communal setting such as in the Niger Delta, the western model of conflict resolution is problematic because it asks people to separate the people from the problem. In many cross-cultural conflicts, people and problems are deeply intertwined. One cannot separate them. For some groups, harmony is highly valued; they cannot have a conflict with others and still maintain a positive relationship (Duryea 1993). The difference must be resolved in order to reconcile the relationship. Another problem with separating the person from the problem is that many cross-cultural disputes are identity-based conflicts; that is, each party sees the other through the prejudices, myths, and biases of his or her cultural group (Rothman 1997). In order to resolve identity-based conflicts, mediation needs to confront the people problems as well as the substantive

ones. The difficulty of inter-group anxiety also challenges the notion of separating the person from the problem (Leung and Chan 1999).

When people from different backgrounds are brought together, they may experience stress related to a number of factors: lack of knowledge or understanding of the other party, negative stereotypes, or past negative experiences with people from the other's background. Once again, mediators need to address the people issues in order to deal with the substantive issues. If the parties are anxious about meeting one another, they will have difficulty focusing on the substance of their dispute and the means of resolving it. Interventions to help them establish trust at a personal level can serve to reduce anxiety and promote rational problem-solving.

Yet another vital issue in the mediation process is the method of communication. As illustrated in table 8.1, one of the parties is a low context communicator while the other is high context communicator. Misunderstandings can easily arise during mediations from poor communication or from not being clear about what one wants, needs, or expects. The question then is how can a mediator bridge the communication gap between these two parties? For instance for the low-context communicator, the mediator will need to use low-context communication with that party. If the other party is a high-context communicator, the mediator will need to function as a translator. If the parties employ direct, low-context communication the mediator will work best by also being direct and saying exactly what is meant.

The mediator might need to act as a translator between high context and low-context parties. Although there is some risk that high-context communicators might be insulted or otherwise put-off by the low-context communication, without translation and interpretation, low-context communicators may well completely miss the intended, implicit message of the high-context communicators. Mediators can bridge these communication and understanding gaps, usually in caucuses, to clarify the messages and help the parties to save face. A low-

context party will generally be direct and explicit. They will say exactly what they mean and will not "beat around the bush" (meaning they will not be indirect).

A common impact on a high-context party is to feel that the low-context party is aggressive and "pushy" and is always "claiming value." The mediator should approach the low-context communication with the intent to listen, question, actively listen, and otherwise learn the essentials and gist of what the party is seeking and suggesting. The mediator can then translate this information to the high-context party and present it in a less direct and less aggressive form, perhaps by reframing the information to reduce the negatives in the message that the high-context party will notice just because of the manner in which the message is delivered.

One of the key challenges for mediators, regardless of background, is how to combat ethnocentric fairness bias (Leung and Chan 1999). People tend to interpret the world through their own perspective. A mediator from a secular background, for instance, will have an easier time viewing the issues from a secular perspective. The mediator can compensate for ethnocentric bias by using strategies to develop an understanding of both parties' perspectives: inviting parties to explain their perspectives in detail, identifying and questioning assumptions, using cultural interpreters, or conducting a role reversal.

In the Israeli context, conflicts between secular and religious Jews are often identity-based, revolving around the ways in which the individual parties perceive themselves and one another. Victimization is a common trait on both sides. Both secular and religious Israelis often see the other as part of a powerful group in Israeli society, while viewing themselves as oppressed. For religious Israelis, these perceptions may be reinforced by identities that are wrapped up in the history of oppression of Jews throughout the world. The mediator needs to make connections between the specific issue in dispute and the parties' identities, if the mediator is going to have any chance of helping the parties come to a mutually agreeable solution.

Finally, the mediator must also be aware of the predominant model of mediation, which assumes a relatively equal balance of power between the parties. This does not hold true in cross-cultural conflicts such as in the Niger Delta. Significant power imbalances exist, particularly between people from minority and majority groups as discussed in the chapters above. The more powerful party may have greater influence because of greater financial resources, better negotiation skills, and better language skills. Personal insults, name-calling, and similar behaviour tend to sharpen differences and obstruct cooperative solutions. The mediator helps them separate the people from the problem by having them agree to ground rules about name-calling and by having them focus on their mutual problem, not their like or dislike for one another.

In the Israeli context, consider a dispute between religious and secular neighbours. The mediator might be either religious or secular. A religious mediator might be viewed with scepticism by a secular client, whereas a secular mediator might be viewed with scepticism by a religious client. Accepting the perception that a mediator, despite training, might not be impartial, one alternative is to use co-mediators, which is why we have suggested two mediators in this research.

8.4 The Qualities Of The Mediator(s)

Having discussed the cross cultural issues the mediator should be mindful of, this section shall discuss the qualities of the mediator or co-mediators in the hybrid mediation model.The fact that the mediator is a central force of any mediation makes it important that the peculiarities of the Nigerian oil industry be jointly taken into cognisance while selecting and deciding the role of the mediator. In a communalistic setting such as in the Niger Delta, the mediator is normally a person of a prestigious social standing who is known for his thorough knowledge, honesty and impartiality. Seniority and respect for elders are particularly significant. Such a person enjoys the respect of the disputants who *invariably feel satisfied with any award he may deem appropriate*. However, because the hybrid

involves an integration of both processes, cross cultural perspectives have to be taken into cognisance. First, he (or she) would be a neutral, non-adjudicating person who is chosen by the parties and who seeks to guide them to a settlement. He/she can be significantly helpful in achieving the goals set out for the mediation, and stands to make or mar the mediation process (Menkel-Meadow 1996).

Secondly, it is essential to look for mediators with extensive, decade-long cross-cultural and international commercial experience in complex disputes, probably within the relevant industry (natural resources related issues). In-depth and long-term exposure to cross-cultural environments is perhaps the only way, but still not quaranteed to provide the necessary sensitivities.

Thirdly, a cosmopolitan approach is required; senior negotiating responsibility in multinational companies, international organisations or truly multinational professional firms is probably essential. Accordingly, Munir Maniruzzaman added that "a mediator or conciliator, who does not bow to legalism, but is more amenable to realism, can perhaps strike a balance, a fair balance that a reasonable man will expect in the circumstances." This, he emphasizes, is where mediation is likely to bring blessings to a vulnerable party, at least by allowing it to deal with "an understanding mediator whose role is that of a healer not a hired gun" (Maniruzzaman 2003: 197 - 282).

Fourthly, the chosen mediators should have a clearly written and applicable mandate, with necessary flexibility to adapt in a timely fashion to developing situations. Mediators should always be involved early on in the planning and designing of a mediation process, rather than joining a peacemaking effort after it has already been structured.

8.5 Case study - Testing the Proposed Model

By way of testing out the proposed Naija settlement model discussed above, I will take a typical conflict situation between an indigenous and a non-indigenous party as a case study. The parties are the Rumuekpe community in Rivers State in the Niger Delta region (an

indigenous) and Shell Petroleum Development Company of Nigeria (SPDC) (the western or non - indigenous party).

8.5.1 The facts of the incident

The incident occurred on 9th July 2003 when a major oil spill occurred from a section of the Rumuekpe-Adebawa pipeline belonging to Shell. The spillage pumped large quantities of crude oil into land, river and creeks of the community, causing havoc to the people (See Figure 8-2) below. Their only source of water was polluted while farmlands with crops, as well as economic trees and aquatic lives were destroyed by the spill. On the 10th of July, Shell having been alerted of the said incident, only came to the village with seven armed MOPOL to fix the broken pipe. This move led to a disagreement as the company was only interested in fixing the facility in order to resume production. The people of Rumuekpe, according to international practices, insisted on a proper clean up and remediation of the affected area, as well as payment of compensation to affected individuals.

Apparently, Shell left in disagreement, only to return the next day with about fifteen armed mobile policemen who shot sporadically into the air on arrival. Following this act on the part of Shell, on 11th July, the villagers mobilised and occupied Shell's facility, insisting that the spill be cleaned. It is this protest that attracted the truck loads of over fifty trigger-happy security operatives, who dealt ruthlessly with the members of the community (Chigbo 2011).

Figure 8-2 Rumuekpe environment is devastated by oil pollution

8.5.2 Issues for Determination

The first step in any mediation effort would be to assess and analyze the history and causes of the conflict that is a contextualized understanding of the conflict to answer questions of strategy: at what level to engage, how to gain leverage, and on whom to focus efforts. The next cornerstone of a successful mediation is designing an adequate procedure for resolving conflicts which has a close co-operation with those primarily affected by it. Such a process promises both a successful mediation effort and a constructive, respectful peace process. In addition, such a process undertakes an analysis of underlying interests, combined with the application of methods generating value-creation and creativity and serves as a cornerstone of the process.

The mediators will need to identify what is being contested, and to trace the trajectory of core and emerging issues to know if the conflict concerns territory, sovereignty and local autonomy, control of natural resources or wealth, religious or ethnic identity. Also relevant is the commonalities among the different issues. Identification of these issues is very

paramount in the light of the fact that the Niger Delta conflict involves complex issues which may be obscure to an uninformed person, who may believe the Niger Delta conflict is just about resource control. Secondly, the mediator may have to navigate, relying not on hard information but on experience, intuition, and common sense, being able to ask the right questions to get the best answers. Ideally questions like (1) what the conflict is about, (2) understanding who the actors are, (3) understanding the larger context, and (4) understanding sources of power and leverage.

Following the statements and facts of the matter, as stated above, issues for determination and escalation include establishing:

8.5.2.1 Consent From Host Communities Prior To Commencement Of Operation: Oil companies in the Niger Delta are used to giving secret monetary payments to individuals and group without the knowledge of the larger community. This practice in turn incites sections of the community against others. The mediation process will emphasize a *consensus ad idem* (a meeting of the mind) of all parties. The mediator must identify the positions of the parties to the conflict and the issues that divide them, such as the factors, personal and cultural ones, which underlie positions? For example, does a leader fear that he or she may be killed if peace becomes a reality, or does the society regard compromise as a sign of weakness? The mediator should differentiate between the stated positions and the underlying interests of the key actors. How will different conflict resolution scenarios affect underlying interests? Even if issues being contested are settled, actors' interests might continue to drive the conflict. Who has an interest in keeping the conflict going (conflict entrepreneurs)? For some people, the conflict may be a source of power or wealth or a means of avoiding justice. Some of these interests may be legitimate, and could be satisfied by means other than conflict. In view of the historical grievance in the Niger Delta, it will be necessary for the mediators to devise different forms of engagement for different actors.

Some actors will have a place at the table, others will have observer status. Private and public consultations will occur in many different forms.

8.5.2.2 Safety Concerns: contrary to international practices, due to lack of regulatory and enforcement regimes in the Niger Delta, oil companies operate in the region with flagrant disregard for the safety of affected communities and lifestyle. For instance, they have failed to decommission corroded, rusted-out equipment, or maintain operating infrastructure, in line with existing law or API rules. Many pipelines are more than 40 years old and in severe disrepair (Foster 2011). The mediation process proposed here will ensure that the design, construction and operation of pipelines meet standards, taking into cognisance the route of the pipeline and its proximity to local houses, the gas terminal, its location and environmental concerns.

8.5.2.3 Compensation Regime: The current system for compensating oil spill victims is complex, arbitrary, non-transparent, based on a complex local land use rights and too often politicised. Awards do not meet needs, satisfy expectations or bring justice. The 1969 Petroleum Act does not refer specifically to spills, but does require the companies to pay 'fair and adequate compensation for the disturbance of surface or other rights.' Also, the Oil Pipelines Act and Environmental Protection Act create similar, overlapping duties to pay for spills not caused by sabotage. Laws are silent on compensation levels; instead, uniform rates are set with heavy influence from Oil Producers Trade Section (OPTS). Many of these appear to be outdated and well short of international best practice**.** One community member illustrated the problems thus: "Getting fishermen compensation can take 3 to 5 years. What are all the lost earnings? Costly international litigation against oil companies will only accelerate without better responses to such questions. Operators alone have the resources to avoid spills from equipment failure.

A way forward will be to set up an Investment Fund for local development, significant and front-loaded, capable of continuing for the duration of the project. Also the process for supporting local development should be appropriate and transparent with a strong involvement of local development agencies and local communities. Also important is enhancing the legal mechanism for protecting and asserting individual and community rights. The mediator should examine the groups directly involved in the conflict, including how they define themselves and whether they possess political as well as military wings. What are the groups' profiles within the larger society? How large a part of the overall population do they represent? What is the quality of their connection to their constituency? The group's internal organizational structure is an important consideration. What is the hierarchy or chain of command? Is the chain of command generally stable and effective? The concentration of power within the group should be taken into account

Failure to take all these into cognisance has largely been responsible for the failure of past efforts in brokering peace in Nigeria. For instance, the failure of the Darfur Peace Agreement in 2006 derived in part from a failure of the mediators to recognize the complexity of the factionalism within the rebel movements. Peace negotiations in Burundi have also been complicated by multiple rebel movements and factions, with varying levels of commitment to the peace process. Hence, the mediator should identify the top leaders and the basis of their authority (e.g. military prowess, political skill, popular following, or potential to lead after the conflict).

Having described the framework of hybrid mediation in the Niger Delta conflict, by way of testing the framework, the following session will explore its viability using a case study.

8.5.3 Composition:

The process operates with the explicit authorization of the disputants/parties, which generally are the families of the sufferers and the company representatives of Shell. The

process is not invoked automatically, parties have to seek the intervention of the process or a concerned citizen may in order to forestall a possible chaos invoke it. This request is done in writing, with an undertaking to abide by the agreement. Mediation commences when both parties agree on the use of mediation and choose a mediator. Having agreed to engage in a mediation process, such an agreement to commence mediation should be formal and accompanied by a serious commitment from both parties and organisations (and at least the main players with an ability to make a decision in their organisation). This agreement is vital, in the light of the fact that lack of a serious will on both sides to engage in mediation and trust for the mediator (s), will lead to process collapse. Also sharing costs of mediation is important to a successful resolution whether the cost sharing is contractually required or agreed to after a dispute arises. Both parties must have a financial and emotional stake in a successful resolution of the dispute through mediation (Waelde 2003).Representatives of both parties (Rumuekpe and Shelland government by virtue of the joint venture gareements in place) together with two mediators who have knowledge of both processes, that is, the indigenous and the western mediation processes, who will constitute themselves as mediators/conciliators leading the discussion.

8.5.4 Initiation of the Process

The process begins with an open deliberation, which may integrate listening to and asking questions for clarification, as well as listening to oral testimonies from witnesses, free expression of grievances, visiting dispute scenes, seeking opinions and views of neighbours, reviewing past cases, holding private consultations, and considering solutions.

8.5.4.1 Opening Session/ Stating of Ground Rules

The presiding mediators trained in both western and indigenous processes serve as the foremen of the process. They outline the expected decorum (ground rules), emphasizing the seriousness of the case in question. Then the mediator, one who is usually well versed in the tradition of the Rumuekpe community, gets a calabash, fills it with wine/local gin and then

calls on the ancestors to be present to guide in the deliberations to follow. The libation is followed by Christian prayer asking God for guidance and restoration of peace between the parties. The significance of the prayer and libation is such that it places the mediators on oath to remain impartial and focus on the desire to seek peace between the parties. Furthermore, it reminds all, of the presence of God the Almighty and for those who believe on ancestors and their power over the living.

8.5.4.2 Timelines: Deadline for mediators' submission of proposed settlement or (for expert adjudicator's) time limits have to be set for important milestones and submission of briefing notes to mediator. This is because if the mediation process is left open ended without definitive time frame, parties may want to drag on the process forever and may in the process defeat the aim of mediation process.

8.5.4.3 Remuneration by both Parties: an advance payment to cover the minimum costs of mediation payment portrays a sign of taking the process seriously. The parties must pull or set aside some funds towards settling the mediators' charges or fees.

8.5.4.4 Confidentiality of the Process: Prohibition on both parties to use statements against the other party obtained during mediation in a subsequent suit, complaint/ litigation. This means that nothing said or done in an attempt to resolve the issue through the mediation process may be made the subject of any suit/ complaint. This confidentiality also applies to the mediators who may not voluntarily disclose or be required to disclose dispute resolution communicationsin subsequent litigation as expert witness or arbitrator, except for certain statutory exceptions such as that which may affect national security.

8.5.5 Listening To Parties/Oral Testimonies

The next stage is when the council of elders/mediators invites the complainant/Rumuekpe community representatives to state the facts. Applying the Naija settlement process, mediators can adequately utilise both traditional and western method which involve getting

expert reports on the extent of damage, age of pipes and valuation of properties destroyed and decide on adequate compensation bringing about reconciliation and mutual co existence

Both parties have an opportunity to tell their story about what happened, from their viewpoint. Often, these stories may be told from each party's view point and may be emotional. The mediator may ask clarifying questions, but typically the parties do not question each other.

8.5.6 Caucusing

At this point, the mediator(s) may ask the parties to caucus (separate for the purpose of discussion). The mediator(s) talks with each party, proposes solutions, tries out scenarios, in order to get commitment to a settlement by both parties. The mediator(s) goes back and forth between the parties during this time, clearing up misunderstandings, and carrying information, proposals, and points of agreement. Aggressive statements made by a disputant will be reframed and any positive or conciliatory statements will be highlighted to develop a framework within which to resolve the conflict. During the session, references to precedents of similar disputes will be reiterated to the disputants. The mediators shall promote the settlement of the issues in dispute between the parties in any manner that the mediator believes to be appropriate, but shall have no authority to impose a settlement on the parties.

8.5.7 Consensus

Parties in the hybrid process may reach a consensus on what needs to be done to restore the balance to the relationships, as well as any restitution to be made. The deliberation does not seek to determine the guilty or the innocent; it is instead geared towards determining how to compensate the victim while yet maintaining harmony. Another crucial procedural issue is obtaining consent from parties on issue such as authorisation to conduct separate discussions with each party without disclosure of the result of such discussions to the other party. The obligation of each party is to make time and staff available to receive and work with the

mediators, and to attend meetings and to work under an agenda chaired by the mediator. the mediator should assess the organization of civil society, including patterns of civic engagement and representation. What civic organizations or associations continue to operate (e.g., political parties, professional organizations, labour unions, village councils, religious institutions, social clubs)? Some of these may be capable of bringing pressure to bear on militant groups. In order to construct a peace agreement that can be successfully implemented, it is essential to understand the basic condition of the populace. The mediator should assess the populace's existing level of security and how the populace fits into existing governance, legal, economic, and social structures. The mediator should also learn about the capacity of the society to maintain communal structures.

8.5.8 The Agreement

Since the goal of the hybrid process is to generate a narrative that both sides can accept and agree with, a win-win settlement may be reached. The agreement (named the Naija Settlement Agreement) reached is then memorialized in writing and signed by both parties in this case a representative of Shell and Rumuekpe Village. Both parties will receive a copy of the written agreement during a public ceremony where symbols such as a hand shake or an embrace as well as feasting together and a verbal pronouncement of forgiveness is exhibited to crown it all. At this point, there are no further negotiations or appeals allowed on its contents. At the end of the process, a celebration and feasting ensues heralding a state of reconciliation and forgiveness. There is a mutual benefit for all, which is the oil, the development of the Oil and Gas project, if done properly and safely, has the potential to bring substantial economic, social and indeed environmental benefits to all parties, also of national strategic importance.

8.5.9 Expected Outcome/Deliverables from the Hybrid

In addition to the factors elaborated above, an approach to a sustainable mediated settlement is one which will deal effectively with the fundamental issues of the conflict as stated in

chapter two. Some of this effort from the government in the journey to transformation will include: Putting appropriate policies in place to grow the economy to reduce the rising unemployment and poverty in the Niger Delta, tackling environmental degradation by reviewing existing regulation on the environment and the activities of oil and gas sector adequately with compliance and enforcement policies.

8.6 Comparison between the Hybrid and the Western Mediation Styles.

A look at the hybrid process above shows more similarities than differences from ordinary western style mediation. This is largely because it is, as the name goes, a hybrid (an integration of the best of the western and the best of the indigenous processes). Undeniably, understanding such similarities and differences may be helpful when exploring ways of helping facilitate cross-cultural dispute resolution applications that effectively bridge western-style applications and customary style. Despite having a similar nomenclature, in its terms and processes, when it comes to utilization and application, there can be significant differences arising from differing approaches, perspectives and goals as applied by each practice.

Furthermore, what initially appears to be a similarity in function between similarly named elements of Western mediation and the proposed model is indeed different. For example terms such as venting, neutrality, and confidentiality, are actually used differently in the two practices. Venting, for example, is used in the hybrid process as an important anticipation enabler for the victim's family, allowed only in private meetings, whereas in Western-style mediation, venting is sometimes practiced by all disputants in multiparty settings, specifically designed to demonstrate to each party the level of grief and anger on the other side, contributing to empowerment, recognition, and the making of outcome-related decisions (Bush and Folger 1994). The relationship between venting in the Naija settlement

and in the Western ADR is that both approaches see venting as an important path-maker for reconciliation because it helps the disputants get beyond the immediate grief, anger, sense of victimization, and frustration, and helps them to agree to give reconciliation a chance (Silbey 1986).

The differences in application between the proposed indigenized style and the Western-style mediation practices arise from cultural and philosophical differences between the two. In addition, some of the procedures of the mediation elements used in the indigenized style and Western-style mediation are also different. In Western mediation, some disputants conduct face-to-face meetings, and some opt for a private caucus with the mediator(s). The hybrid/Naija process, on the other hand, for a variety of reasons, involves exclusively private caucus meetings between the selected (mediators) and each of the disputants' representatives. This is, to a great degree, due to the high anger level between disputants' communities/families, and the danger that face-to-face meetings between disputing community members will degenerate into violence.

Furthermore, the exclusive private caucus style allows the council to reframe, even re-phrase, disputants' narratives when speaking to the other party, remove potentially inflammatory parts, and retain those parts that are conducive to fostering a climate of reconciliation. In contrast, the lack of joint meetings denies the disputants the possibility of witnessing first-hand the frustration, sense of victimization, and injustice that each party tends to perceive as its exclusive state of mind.

Another significant difference between the Naija style (hybrid) and Western-style mediation is the place and use of respect and honour. In the Western context, the term honour is usually used in its suggestive "folkloristic" form. In the indigenous setting, honour and respect is not only central to life in general, it is central to dispute resolution in particular. The perception of loss of honour and respect, fuels the eruption of the conflict in many cases, and the perception of restored honour is a crucial component required to resolve a

dispute. For instance the strongest leverage available to the indigenous mediator i.e. the clout in the community and the threat of losing respect and social standing if the agreement is refused. These consequences may seem trivial to a Western observer, but in a communal culture, honour and respect are central elements, so the threat of shame or lost honour can provide considerable leverage (Wikan 1994).

Another major difference reflects on the perception and application of the confidentiality concept in both the hybrid and Western-style ADR. In Western-style mediation, the mediator is obliged to maintain the confidentiality of information regarding the process from the public and even from the judge if an agreement is reached. In the hybrid process on the other hand, such information may not be shared except where parties have been free from the oath of secrecy taken at the commencement of the process and unless the other party agrees, or the elders (mediators) decides that the disclosure will help the conciliation process. The main reason for this "selective confidentiality" practice is the desire to increase harmony and decrease possible friction points between the disputants. Again here we have a similarity of reasoning, but a divergence of functionality.

8.7 Possible Criticisms of the Proposed Hybrid

Research has shown that a significant number of tensions and problems may affect the proposed model. The fact that the proposed hybrid model is an integration of the Indigenous Dispute Resolution processes with current day ADR subjects it to the criticism that it may do very little to substantially address systemic and societal issues of racism, discrimination, oppression and euro centrism. Simply accommodating the indigenous model with western may be seen as inadequate. Convergence between Indigenous and Western ADR processes is argued to be counterproductive, since it is merely a collision of different cultures and may just be "a polite form of assimilation" (Macfarlane 2004:99).

Serious impediments to this revivalist trend, as the Indigenised or Hybridised Dispute Resolution process is referred to by some authors include internalized colonialism or colonial thinking. Indigenous communities may fear that their own customary dispute resolution mechanisms are inferior to those of the so-called dominant society (Yazzie 2004). If confronted with a conflict between their own system of justice and the non-indigenous system, they may find it less complex to rationalize that the majority's system should be followed, thereby potentially creating disorder within their own community. Some might be willing to abide by indigenous values, processes and systems, but only if they do not conflict with Western modalities (Bell 2004). They may also fear that it would be very difficult to alter current power and legal structures so much that participation by their communities through Indigenous ways of resolving conflicts is almost nonexistent. The World Bank has also noted that the restoration of Indigenous Dispute Resolution procedures, such as in India, subjects women to the application of exceptionally discriminatory social norms (World Bank ADR 2000) instead of the fair and equal justice of a rights-based legal system. It can be argued that these forums of indigenous justice are merely borrowing from Western ADR systems, or vice versa.

8.8 Response to the criticisms

Following the above criticism, it is undeniable that there are points of convergence between the two processes which will benefit Indigenous and non-Indigenous peoples. It is not just a mere collision of the two cultures, but in the words of the Australian law commission "although capable of operating independently from one another, together offers a system where the Aboriginal people of this state can practise their own customary laws ....., while at the same time providing a more meaningful and effective criminal justice system" (Morgan and Motteram 2004: 5).

In addition, the hybrid is not just a forum for display of cultures; rather it is one in which the Indigenous Dispute Resolution processes characterized by flexibility, utilization of cyclical time, qualitative measurement of success and people-orientation are able to influence individualistic views to a more communalistic view, thereby being able to deal with issues such as discrimination, racism and other vice. The influence here does not imply one process backing down over the other; rather it provides a forum for the best of both processes interrelating without usurpation (Wenona 2007).

As we grapple with issues of conflict management or transformation, whether resource related or other forms of conflict, there is a need to conceptualise conflicts appropriately in their historical and political contexts. This is because conflicts in Africa are underpinned by two cultural and ethical paradigms which unfortunately have been overlooked by many authors. According to Marshall James (2000) African colonial experience shook the traditional conceptual paradigms and institutions, calling into question the African cultural foundation. Notwithstanding this shake up of the African ethical standpoint, what has emerged is a synthesis of European or westernised and African cultural dynamics in order words, a hybrid of the two cultures.

Although most Africans suggest awareness and a strong connection to the African cultural values, the reality of what James called the synthesis of the African and the westernised values due to the domineering impact of modernity on the African lifestyle cannot be overlooked or forgotten in a hurry. These are unfortunately historical as well as contemporary realities which has to a large extent affected perceptions of most Africans.

Next, the issue of respect and honour accorded to the mediator is symbolic, with the person in the middle of the process not simply being persuasive, but exemplifying the virtues of a teacher and planner, given his reputation for wisdom and knowledge of traditional lore (Yazzie 2004). Mediators must not be short-term blame-fixers, but, rather long-term enhancers of reconciliation. Only a handful of mediators have the opportunity to mediate

cross-border business disputes or international political conflicts (Nolan-Haley, Abramson and Chew – 2006). In indigenous setting, with its multifarious nature as in the Niger Delta, indigenous mediators are increasingly likely to be involved in disputes between people who represent distinctly different ethnic, racial, origin cultures, even the most skilled and experienced mediator will face new challenges in cross-cultural mediation as in this model. Hence the mediators' need to be familiar with the culture where the conflict occurs is crucial.

In the light of this fact, the mediator is expected to take all necessary steps to ensure the success of the process. He/she is expected to learn the cultural stereotypes about the culturally different parties who will come to the mediation, investigate the actual people involved, as well as the problem, It would be useful to look at the differences from the perspectives of personalities, also he/she should be flexible and understand that the parties may well act differently than the stereotypes or patterns, and that the stereotypes still are useful in planning for the mediation. Such misunderstandings can be diminished through a process of appreciating each other's aims, needs and expectations.

8.9 Benefits of the Hybrid Model to the Parties

Unlike normal ADR, the beauty of the hybrid lies in the fact that the process may be designed on a case-by-case basis to fit the particular facts and the unique circumstances of the parties. The candour of inter-cultural relations is that there will be divergent goals, objectives, standards, attitudes and expectations between the parties. A key aspect of developing a dispute resolution model is to examine and act upon opportunities for preventing a potential conflict situation from becoming a formal dispute. Inter-cultural conflict emerges from a complex environment of social and cultural values and expectations, economics and politics.

Each of the parties in the Niger Delta conflict shares some attributes with each other. However, each also differs from the other in important respects. Awareness of each other's unique qualities creates understanding, less reliance on assumptions that may or may not be accurate and a sounder base for the decisions we make about how to work together. Developing a comprehensive model designed to facilitate mutually beneficial issue resolution is largely untested in the field of dispute resolution in Nigeria. This lack therefore provides an opportunity for parties, especially the Host communities and the IOCs, to break new ground and show leadership and creativity in testing out this model capable of handling a range of issues, both complex and straightforward.

The hybrid model illustrates how ADR mechanisms may be used for various types of disputes. The potential exists for both states and local governments to adopt similar ADR models for land use planning and related inter- cultural matters.

8.9.1 Benefits to OGCS

The multinational oil companies, more than ever, need to embark on mediation, be it indigenous or hybrid, because certain aspects of mediation are particularly congruent with the goal of maintaining relationship (Martin and Anshan 2001). Mediation depends on the principles of reciprocity, ensuring open exchange of information between the parties, and rectification, undoing past wrongs by compensating parties for losses suffered. Such remedies could be an apology, or preferable mitigation steps which they wish to be recognised (Walde 1999). Decision-making and fact-finding are jointly done, turning the outcome into a future-oriented pact of compromises and as a result avoiding the marginalization/discrimination claim (Leipmann 1984-1986: 99).

Another major benefit of the hybrid to oil and gas companies (OGC's) is that mediation secures the "social license to operate" for OGCs. "Social License", in this context, is the formal and informal approval a company requires from stakeholders/communities to carry out its activities. Companies can maintain this social licence by developing on-going,

positive relationships with people who are likely to be affected by its activities. Joyce and Thomson, puts it this way

"company's performance in the areas of safety, social and environmental management is critical to gain and retain this"social license", and in doing so, the company is better positioned to gain access to new resources, receive regulatory approval to operate, attract higher-quality employees and enjoy support from a wider range of stakeholders (Joyce and Thomson 2002: 1).

8.9.2 Benefits to Niger Delta Community

One of the benefits of the model proposed in this chapter is that it affords host communities access to justice which has been denied them. Adequate access to justice is one of the highest ideals of any good legal system. *"A just legal order is a hollow shell if a minority or an individual is denied access to that just legal order, access in the sense of understanding the law and its procedures, access in the sense of being capable of effectively utilizing the law, access in the sense of participating in the rule-making process, and experiencing positively the benefits of his society"* (Singapore 1984:431 cited in Wifa 2008: 5).

The need for access to justice in conflict prone areas like the Niger Delta cannot be overemphasized. The law and the court system are complicated and involve large amounts of technical language, so these people need to know that they can access the law and justice in a clear and reliable way. This reliable and viable process is what this research through its empirical search has found to be the indigenous mediation. Hence in addition to providing a purely indigenous process of conflict resolution, the hybrid provides a broader opportunity for them to seek redress especially when oil companies are involved in such conflict.

Furthermore, the reason for the proposal of an indigenized / hybrid model is as a result of the inability of indigenous/customary conflict resolution method on its own in tackling the Niger Delta conflict given the technical, expert inclined, scientific and specialised nature of

the conflict. Also significant is the status of the parties involved in the conflict. Yet another reason is to avoid the dilution of the indigenous system which is formulated in such a manner that introducing outside elements such as expert witness will be frowned upon and may dilute the cultural content; hence, the introduction of the hybrid to bring the best of both processes so that the conflict is effectively managed and parties are given adequate attention to their various issues with relevant and specialised skills as required.

8.9.3 Benefits to Nigerian Government

As discussed above, the hybrid model brings several benefits to all the parties. To the Nigerian government, it brings about improved economic performance which leads to economic growth, a good "investor climate," "consumer confidence," and other aspects of a nation's collective consciousness.

Yet another benefit to the Nigerian government is that a conflict controlled and managed environment will promote and protect local industries. Government seeks to promote and protect local industries, support micro, small and medium enterprises (MSMEs) in order to improve productivity, meet consumption and increase export; and to encourage foreign direct investment (FDI) which again helps to accelerate macro-economic growth and integration. Achieving these economic objectives requires a favourable legal regulatory regime and efficient dispute resolution system. In an increasingly competitive globalizing economy, these objectives are targeted, in economic terms, at increasing the wealth of a nation measured by its gross domestic product and *per capita* income, and redressing balance of trade and balance of payment deficits.

Another benefit is that of a quick and expeditious disposal of cases. The cost of doing business in Nigeria invariably involves the cost of pursuing lengthy litigation. Nigeria's case is peculiar, the World Bank report, (*2005 Doing Business in Nigeria)* classifies Nigeria as the 8th slowest country to enforce contracts out of 145 countries surveyed. The report

reveals that contract enforcement required 23 procedures and 730 days, at a cost of 37.2 percent of the debt. Low-cost and impartial contract enforcement procedures are commonly held to provide a critical incentive for the formation of complex commercial agreements and, thereby, facilitate trade and economic growth. These procedures enhance predictability in the system by restraining opportunism among contracting parties. One such procedure is the existence of a dispute resolurion process amenable to all parties. This reduces uncertainty and decreases the cost of exchange and promotes transactions. Different societies are likely to have different institutions depending on their history, culture, and political system.

The Hybrid process helps to deal with issues such as culture, values, history and political system. The hybrid model also provides an avenue and access to justice where parties can deal with contrating issues by inserting a disputive resolution clause in the contract opting for the hybrid. The hybrid model brings about harmony and collectivity: if a nation's collective consciousness becomes more harmonious and coherent, then the government will mirror that harmony and coherence in its decisions and actions.

Finally, the relevance of the hybrid model proposed in this thesis when viewed with Somaliland's success portrays some good reason. First, the continued dysfunctional state of southern Somalia despite international engagement and the triumph of Somaliland under indigenous initiatives show strongly that confronting internal conflicts in Africa requires an engagement with traditional social structures and institutions. Second, a viable model for conflict resolution is not entirely dependent on the primacy or existence of the structures of the modern state. The state as an entity for the organisation of social life is merely one possible option. In this sense, the Somaliland experience demonstrates that the postcolonial African state is largely an organised expression of the people's aspiration and way of life. This is partly driven by a community's shared values, commonality of interest and the desire to create conditions that have the potential of fostering a bond of mutual co-existence that embodies peace and social justice. Third, Somaliland's integration of modern institutions

with traditional social structures drift away from the strict Westphalia model to some kind of a hybrid institution focusing on a people-centred interpretation of peace and security.

8.10 Conclusion

The discourse of one size fits all which suggests that there is a best practice and principles which can be quantified is faulty. There is no single model (be it indigenous or western) that can say it owns all the strategies, or can claim that theirs is a more correct model. This determination or realisation therefore call for the hybrid model, which encourages collaboration and compromise, the most productive forms of addressing conflict, without a winner or loser but rather working together toward the best possible solution. Mediation, for example, has historic roots in labour, civil rights, family, community justice, courts, game theory, cooperative problem solving, organizational development, communications, industrial relations, and more recently, complexity science, to name but a few.

The difficulties inherent in the one size fits all position are obvious. First, the backgrounds, contexts and trajectories, as well as the consequences of conflict vary from one community to another as well as from one country to another. Second, while atrocities are committed during conflict and civil wars, their specific nature also tends to differ. Ignoring the conflict does not resolve the misunderstanding but merely buries it until a time when it once again reappears. Addressing conflict sooner rather than later thus creates a more positive environment for everyone.

A further compelling reason for a hybrid model is the fact that most of today's large-scale violent conflicts in the world cannot be perceived as conventional 'wars' any longer. These clashes are not just between States, or conventional civil wars between a State government and an internal armed political opposition designed at the overthrow of that government, regime change or secession. Rather, they are new wars characterised by an entanglement of a host of actors, issues and motives, with features such as trans-nationalisation/regionalisation of conflicts, their privatisation and commercialisation and the

accompanying proliferation of conflict parties (Kaldor 1999; Duffield 2001; Muenkler 2002).

The argument for a hybrid model is also predicated on restructuring the indigenous process, which due to the disintegration of traditional societal structures in many regions of the world, has had limited potential for conflict prevention and peace-building, and is only applicable in specific circumstances and in confined niches (and even then, they alone most probably will not suffice). As highlighted above, the hybrid model is not an entirely different setting or approach from the western and indigenous model; it is an integration of both hence the best of both model will be practiced.

Conflict resolution and management through dualistic integration and interdependence, as proposed in the hybrid model, could enunciate forms of approaches that could enhance a more holistic engagement with internal conflicts. In this sense, the focus of the theoretical framework was twofold. First the framework laid the foundation towards a more analytic understanding of the nature of inadequacies that characterise extant approaches or methods. Second, it proffered an articulation that makes a case for the re-integration of the indigenous norms, ideals and values through the Ubuntu model.

The claim is not that the concept of Ubuntu or the hybrid should be regarded as the absolute elixir which provides answers to all inadequacies besetting approaches and methodologies applied in the Niger Delta conflict. Rather, it is proposed as a potential alternative in becoming self-sustaining with practical mechanisms and methodologies capable of engaging parties and norms largely invisible in the past. The theoretical framework is also symbolic, because western European influences in approaches to conflicts resolution/management have been so dominant that alternatives such as indigenous models conceptualised in a third world perspective are often perceived as merely representing the other.

As discussed in the various chapters of this research, the Niger Delta conflict is a reflection of the difficulties encountered in reconciling fundamentally different philosophical and cultural systems. What is needed however is a certain conceptualisation that incorporates the intricate nature of the social dynamics of indigenous structures into the functions of the westernised practices. As argued by the reseracher conflict transformation/resolution framed within integration and interdependence provides grounds for viability.

Chapter 9: Conclusion

"The old order changeth; giving place to the new and the same

applies to the oil industry as it enters the 21st century" (Dundas

2009 cited in Ilegbune 2004:14)

9.0 Introduction

The aim of this research has been to explore the viability of Alternative Dispute Resolution

processes in the Niger Delta conflict. This aim is predicated on the identification that the

current approach towards the management of the Niger Delta conflicts is not only

inadequate, but also raises a spectrum of problems, such as significant human rights

questions as regards approaches The overall argument of this thesis has therefore been that

approaches to conflicts conceptualized through the lens of viability are neither adequate, nor

capable of confronting the complex nature of the Niger Delta conflicts. These conflicts

require the introduction of concepts and approaches that depart from the inherent limitations

of current approaches that are still overwhelmingly state-centric and western in outlook.

9.1 General Summation of the Research Arguments

As discussed in chapter two, the conflict in the Niger Delta in its most recent phase is oil-

related, but its background lies deeper in the nature of the Nigerian State and the

depredations of the ruling political elite. Also critical is a long-festering sense of grievance

and marginalisation by the ethnic minorities of the Niger Delta region, which has continued

to fuel agitation for self- determination and control of the resources of the region. Oil is

central to the spiralling violence in the Niger Delta, which has gone beyond an ethnic

minority conflict, with far reaching national and global ramifications (International Crisis

Group 2006; Obi 2007). At certain levels, the conflict appears to be one between the ethnic

minorities against the ethnic majorities-controlled federal government, but such a

conclusion as asserted by Obi (2007) would be misleading and false, as the reality is much more complex. It involves violent contestation around a historically constructed sense of grievance, injustice, inequality and wanton exploitation and impoverishment by the state-transnational oil alliance, to which a faction of the Niger Delta elite also belongs.

From the foregoing and as has been discussed in the various chapters above, the evidence coming out of the Niger Delta shows that the conflicts have complex causes: roots and branches that mutate over time in response to various factors, and forces: local, national and global, and have defied simplistic explanations or 'quick fixes.' Also reducing these complex factors to statistical assumptions and representations or abstract matrixes that do not capture the shade and specificities of the Niger Delta conflict may lead to misleading results.

The theoretical and analytical framework explored above is premised on the understanding that the extant approaches, including litigation, are incapable of proposing innovative approaches to the specificities and complexities of postcolonial internal conflicts. This is exemplified by the unavoidable delays caused by incessant adjournments and overloaded court dockets. The complex nature, as well as the technical issues which result from oil and gas operations, have not been previously dealt with by the courts, due to inadequate laws and low capacity.

In this sense, the focus of the theoretical framework was twofold. First, the framework laid the foundation of a more analytic understanding of the nature of inadequacies that characterise extant approaches or methods. Second, it proffered an articulation that makes a case for the re-integration of the indigenous norms, ideals and values through the Ubuntu model. The claim is not that the concept of Ubuntu or the hybrid should be regarded as the absolute elixir which provides answers to all inadequacies besetting approaches and methodologies applied in the Niger Delta conflict. Rather, it is proposed as a potential alternative in becoming self-sustaining with practical mechanisms and methodologies

capable of engaging parties and norms largely invisible in the past. The theoretical framework is also symbolic, because western European influences in approaches to conflicts resolution/management have been so dominant that alternatives such as indigenous models conceptualised in a third world perspective are often perceived as merely representing the other.

9.2 The Urgency in Finding an Amicable Solution

The costs associated with conflict are undoubtedly huge to society, to the parties and to the victims of such conflict. Mediation, though an imperfect art, is a better option for resolving environmental, and related disputes between foreign oil companies and host communities in Nigeria because it seeks amicable agreement, where courts seek verdicts, thereby preserving the relationship between these parties. Even without the emergence of mediation in preference to litigation in the field of environmental dispute resolution, the likely danger exists that these disputes may not be accurately and fairly resolved, owing to the numerous administrative loopholes which attend the judicial settlement of these disputes. Judges lack the time, the know-how, and even the rules (precedents) to enable the proper handling of environmental disputes. Worse still, unavoidable delays caused by incessant adjournments and overloaded court dockets remind of the equitable maxim that justice delayed is justice denied. The situation is aggravated by the technical nature of the issues involved in these disputes, especially where the question relates to the adequacy of, or compensation for environmental damage/pollution resulting from oil and gas activities.

The need for effective mediation at the community level, as well as between the parties to address the variety of intra- and inter-community violence, is pivotal. The best option for parties is to seek avenues of ADR, be it the Indigenous Dispute Resolution processes as in chapter seven, or the Western ADR systems as discussed in chapter five, or the hybrid form of ADR as proposed in chapter eight. Conflict resolution and management through dualistic integration and interdependence, as proposed in the hybrid model, could enunciate forms of

approaches that could enhance a more holistic engagement with internal conflicts. Conflict may have numerous negative impacts but it can be a catalyst for positive social change. The oil producing communities in the Niger delta region of Nigeria are indeed marginalized groups clamouring for redress of injustices andinequities of resource distribution in the country. Conflict is therefore an inherent feature of their struggle for change. Mediation promises to provide the leverage they need to assert their claims and creates opportunity for building bridges between these communities and their erstwhile arch oppressors- the oil and gas developing companies. This would be evident in a reduction in the incidents of staff kidnapping and incessant disruptions of operations. The mediation of disputes with host communities will also provide the much-needed global image laundering, particularly in the cases of Shell and Chevron in Nigeria

9.3 The Significance Of The Hybrid Model

As demonstrated in the findings, the failings of the Nigerian system at the time of research made the respondents generally positive about the mediation/indigenous initiative. Also the overwhelming support for indigenous mediation as demonstrated in the findings of this study might also be due to the fact that mediation has its root originally in the major religions and traditional philosophies of Nigerians (as in other cultures). However as explored in both chapters five and seven, the inability of both the indigenous and the western model as discussed, begs for a hybrid which is an integration of the best of both processes.

There is no single model (be it indigenous or western) that can say it owns all the strategies, or can claim that theirs is a more correct model. The discourse of one size fits all which suggests that there is a best practice and principles which can be quantified is faulty. The difficulties inherent in the one size fits all position are obvious. First, the backgrounds, contexts and trajectories, as well as the consequences of conflict vary from one community

to another as well as from one country to another. Second, while atrocities are committed during conflict and civil wars, their specific nature also tends to differ.

A further compelling reason for a hybrid model is the fact that most of today's large-scale violent conflicts in the world cannot be perceived as conventional 'wars' any longer. These clashes are not just between States, or conventional civil wars between a State government and an internal armed political opposition designed at the overthrow of that government, regime change or secession. Rather, they are new wars characterised by an entanglement of a host of actors, issues and motives, with features such as trans-nationalisation/regionalisation of conflicts, their privatisation and commercialisation and the accompanying proliferation of conflict parties (Kaldor 1999; Duffield 2001; Muenkler 2002).

Moreover, the multidimensionality of the Niger Delta conflict which involves diverse causes as stated in chapter two and three implies that the resolution process will inevitably involve different strokes for the different issues. Mari Fitzduff (2002) speaking on the Northern Ireland conflict argued that there was not one approach that single-handedly transformed the conflict. She writes, "[resolving a conflict] is a complex and interlocking process. In many ways, the task is like working on a jigsaw, where the successful putting together of just a few pieces may well leave the picture as a whole still in fracture, and uncertain" (2002:xv). Gleaning from Fitz duff's assertion, "a one fit for all purpose model" will not be suitable as has been discussed in previous chapters.

A hybrid process is also needed to deal with the disparities among the parties, such as their behaviour, view of life, values, and the way they see and solve problems, and make decisions which makes it essential to look at issues through a cross-cultural lens. For instance, the way knowledge, technology and 'best practice' is transferred from one country to another may be problematic without considering the cross-cultural implications; Also appropriate styles and methods of 'leadership' may differ substantially from one culture to

another; Western-style participatory decision-making processes developed in individualistic cultures may be entirely inappropriate in community-based cultures. In addition, concepts of ethicality differ substantially across cultures including values relating to people, relationships, exclusion, gender and power and cross-cultural sensitivities, as well as principles and mechanisms to manage these differences, need to be developed.

Hence, the process of hybridisation is geared toward managing the complexities of the two approaches through understanding and refining the process, thereby giving room for different stakeholder inputs and making multiculturalism and multiple influences of culture as an advantage, rather than a disadvantage. A holistic approach to the Niger Delta conflict requires the adoption of a proactive and structured approach rather than a reactive, ad hoc approach to disputes. This holistic approach is what has been explored in this thesis as shown in the indigenous model (geared towards dealing with purely indigenous issues involving two indigenous parties) the western process geared towards dealing with issues best handled in the western pattern as well as issues which parties have elected to be dealt with in the western form and finally the hybrid model.

In addition to the contributions outlined in chapter one above, these research findings have also provided possible answers to the question "How viable is the indigenous dispute resolution process [IDRP] in holistically managing and resolving the conflict, that is, whether IDRP could be a better alternative to adversarial process. The research has also demonstrated how the IDRP paradigm could be improved and, or benefits from the African traditions and conception of restoration and reconciliation. This Afro-centric contribution to mediation is important for international academia and practitioners, who are often commissioned to chair dispute resolution mechanisms in Africa.

9.4 Recommendation/Areas for Future Research:

This research has laid the foundations for the exploration of different conflict resolution models (indigenous, western and the hybrid). For sustainability, we shall recommend for the

application of the various models in conflict situation in the Niger Delta and other part of the country. In addition to applicability, there is a great need for monitoring of the models. Process monitoring is the main way in which to aggregate data with which to measure and evaluate the relative success of a program. To do this, there is need to design a spreadsheet which tracks dispute type, jurisdiction, status, background, and ADR process in use. This must be kept up to date, and the likelihood of staff prioritizing this will increase if their involvement with and input into the ADR process as a whole is increased (Ury, Brett, and Goldberg 1988).

Dispute tracking should be put in place to include the following: region, parties, dispute key issues, number of meetings, time spent on dispute per week, process budget (meetings, facilitator, etc.), whether surveys have been sent, and whether the agreement has been implemented (including a description of how and -if applicable- why not). In order for the models to maintain their relevance, a way to periodically revisit model should be put in place so that staff involved in the process can revisit and update them as necessary. This could look like a yearly meeting with active facilitators/mediators and resource people to touch base about their experiences and perceptions of the process, and their visions for its future.

Additionally, a program should be employed to facilitate the conception and analysis of links between program inputs, activities, outputs, and outcomes. Time could be scheduled on a quarterly or bi-yearly basis to review these tools to ensure they are up to date, and, if not, to follow up on dispute statuses with those responsible for guiding the respective processes. At this point it could also be useful to plot disputes on a map so that over time patterns emerging can be identified and diverse methods to address these employed. To increase agreement implementation, process and agreement satisfaction, and post-process survey response rate, following the resolution of an ADR process, facilitators should monitor them by initiating follow-up via phone, e-mail, letter, or in person, at specified intervals.

Alternatively, a monitoring committee comprised of process participants could be set up to monitor both agreement implementation and future dispute development. It is strongly recommended that parties sign an agreement at the conclusion of their ADR process, even though this is not required by legislation nor is it binding. The signing of such an agreement will bring closure, raise the level of commitment to the agreement, and generally add a sense of formality and decorum to the process. In addition, to discover further information about participants" perceptions of model efficiency, survey questions could be created to address these, or additionally qualitative probing could be undertaken.

9.5 Areas for Future Research

This research indicated that while provincially ADR processes are few in number, they do exist, and yet little research has been undertaken on them. Such study would richly contribute to knowledge in the field of ADR. Further comparative work researching ADR in other national jurisdictions, such as the other African countries and Europe and further abroad would also be useful. Constant evolution of current and integration of new ADR practices is recommended in order to increase the dynamism of ADR process in Nigeria.

Further research into additional ways to incorporate diverse methods and cultural approaches to address conflict and disputes could be undertaken. Qualitative exploration of traditional rulers' experiences of the ADR process and types of training in the area of ADR that they would like to receive are some possible avenues.

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APPENDICES

Appendix A. Ethical Consideration:

For field research to be ethical research subjects must consent to their participation in full understanding of the potential risks and benefits Kelman; Belmont Report, Subsequent to the fact that this study requires the participation of human respondents, we have taken some ethical issues into consideration in order to secure the consent of the selected participants. To do this, we relayed all important details of the study, including its aim and purpose.

By explaining these important details, the respondents will be able to understand the importance of their role in completing the research. The respondents will also be advised that they can withdraw from the study even during the process. With this, we can be assured that the participants were not forced to participate in the research. The confidentiality of the participants was also taken into account by ensuring that their names or personal information in the research were not diclosed. Only relevant details that would help in answering the research questions were included. Language with appropriate levels of specificity and sensitivity to labels that acknowledges the subjectivity of participant was employed (Creswell 2003).

The risk level in this study was minimal, and impacts on the participants were small. The topic, methodologies and methods were selected with the participant's rights, needs, values and desires in mind.

A.I Consent Form for Participants

Research Topic: The Viability of Applying ADR in the Resolution of Oil and Gas Conflict in the Niger Delta Region of Nigeria: PhD Research Work.

Dear Participant,

Purpose and Objectives:

This research is about finding Alternative Dispute Resolution (ADR) means to resolve the ongoing conflict in the Niger Delta of Nigeria other than through violence.

Importance of This Research:

Research of this type is important because it provides practical ways for the resolution of an age long conflict, allowing for better accountability and the representation of the views of all parties involved. Additionally, this research addresses the gap in the literature in terms of the appropriate blending of both indigenous and western approaches to ADR.

Your participation will enable us to:

1. Study and review the current development of ADR [conciliation and mediation] and its effectiveness in resolving the oil and Gas conflicts in the Niger Delta area and Nigeria in general.

2. Investigate the suitability of the conciliatory and mediation methods in the dispute resolution in question.

3. Determine the acceptance or readiness of parties to these disputes to accept the use of ADR.

4. Create an oversight mechanism, consider what it might look like and the basis under which it might be put in place.

5. Develop a framework for applying ADR in resolving oil and gas and other resource based conflicts in the Niger Delta.

Some of the questions are personal, e.g. questions about your views and your experience in your immediate environment. It is very important that we hear your views and experiences. Also note that -

The survey is anonymous. You do not need to put your name on it.

The survey will take about 30 minutes to complete.

This is a research work in partial fulfilment of the award of a PhD in law in the University of Warwick. If you would like any further information, please contact the school of law at the University of Warwick.

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The findings from the survey will be used:

to identify priorities for community development,

as a baseline to monitor changes taking place in the local community over the next few years, with regards to peaceful co-existence.

To develop a framework for the resolution of different conflict in the Niger Delta region and the country at large.

We need your help to do this - could you please complete the enclosed survey. It asks questions about the many things we need to understand to build a peaceful State and country for all of us and our unborn children.

Voluntary Participation Your participation in this research must be completely voluntary. If you do decide to participate, you may withdraw at any time without consequences or any explanation. If you do withdraw from the study, your data will not be used.

On-going Consent To make sure that you continue to consent to participate in this research, prior to each meeting or request for research review, I will remind you of the voluntary nature of your participation and ask you if you still consent to participating.

Anonymity In terms of protecting your anonymity, because of the nature of the research, your personal information and data will be known to the researcher (this is to enable the research team contact you for the next phase of the research which is the diagnostic/implementation stage). However, should you choose to remain anonymous, at the research reporting and dispersal stages, all descriptors of you will be omitted, and you will be given or can choose a pseudonym for use in these stages.

Confidentiality Your confidentiality and the confidentiality of the data will be protected by the storage of personal information and data in a secured office and filing cabinet and protected computer files. Access to this information will be restricted to the researcher, research supervisor and committee members.

Dissemination of Results It is anticipated that the results of this study will be shared with others in the following ways: directly to the participant; published article; PhD thesis, and presentations at scholarly meetings.

Request for Future Use: It is possible that this data may be analyzed by the researcher, research supervisor or committee members in the future, for purposes other than this research. This may include academic papers or books.

Disposal of Data: Data from this study will be disposed of within 5 years from the completion of the study; paper files will be shredded, and electronic data will be erased.

Contacts: Individuals that may be contacted regarding this study include Ofinjite Joy Ogaji and Dr. Tony Cole. Their contact information is available at the beginning of the consent form.

A.1.2 Interview Questions For Oil and Gas Company Representatives (Nupeng and Pengassen).

✓ What types of conflict with communities, workers and contractors has your company experienced? (Include demands for "free, prior and informed consent" if appropriate.)

✓ What procedures and mechanisms does your company employ for conflict avoidance and resolution? If possible, please provide web references or contact details for more information.

✓ Does your company policy or a certification initiative require such mechanisms to be in place?

✓ How do you ensure that stakeholders are aware of and understand these mechanisms?

✓ What procedures and mechanisms are most effective at avoiding or resolving conflict?

✓ What mechanisms are less effective? What further guidance and lesson sharing is required?

✓ Do you have any good practice case studies or experiences to share with us? If possible,

✓ Have you heard about ADR? I'd like to hear more of your thoughts and opinions about the ADR.

✓ How did you hear about it?

✓ What are some of the good things you have heard about it?

✓ What are some of the bad things you have heard about it?

✓ Does your company adopt or practice ADR in resolving their conflict?

✓ How effective was it? Did you encounter problems in terms of implementation?

✓ Have you heard of Mediation? I'd like to hear more of your thoughts and opinions about. Mediation

✓ What barriers prevent use of the methods we have? Please explain.

✓ Do you have any questions?

Thank you for taking the time to talk to us!!

A.1.3. Participant Consent Form /Letter of Invitation to Focus Group

The Viability of Applying ADR in the Resolution of Oil and Gas Conflict in the Niger Delta Region of Nigeria: PhD Research Work.

You are invited to participate in a focus group study entitled **The Viability of Applying ADR in the Resolution of Oil and Gas Conflict in the Niger Delta Region of Nigeria** that is being conducted by Ofinjite Joy Ogaji, research student with the university of Warwick UK you may contact me if you have further questions by email at: j.o.s.ogaji@warwick.ac.uk or j_ogaji@yahoo.co.uk. It is being conducted under the supervision of Dr. Tony Cole and Dr. William E O'Brian Jr. You may contact my supervisor through the law school contact above.

Purpose and Objectives:

The purpose of this research is to ascertain amongst other things the viability of ADR in the resolution of the Niger Delta conflict.

Importance of This Research

Research of this type is important because it provides practical ways for the resolution of the age long conflict, allowing better accountability and representation of the views of all parties involved. Additionally, this research will address the gap in the literature on the proper blending of both indigenous and western approaches to ADR.

Voluntary Participation Your participation in this research must be completely voluntary. If you do decide to participate, you may withdraw at any time without any consequences or any explanation. If you do withdraw from the study your data will not be used.

On-going Consent To make sure that you continue to consent to participate in this research, prior to each meeting or request for research review I will remind you of the voluntary nature of your participation and ask you if you still consent to participating.

Anonymity In terms of protecting your anonymity, because of the nature of the research, your personal information and data will be known to the researcher. (This is to enable the research team contact you for the next phase of the research which is the diagnostic/implementation stage). However, should you choose to remain anonymous at the research reporting and dispersal stages, all descriptors of you will be omitted and you will be given or can choose a pseudonym for use in these stages.

Confidentiality Your confidentiality and the confidentiality of the data will be protected by the storage of personal information and data in a secured office and filing cabinet and protected computer files. Access to this information will be restricted to the researcher, research supervisor, and committee members.

Dissemination of Results It is anticipated that the results of this study will be shared with others in the following ways: directly to the participant; published article; PhD thesis, and presentations at scholarly meetings.

Request for Future Use It is possible that this data may be analyzed by the researcher, research supervisor, or committee members in the future for purposes other than this research. This may include academic papers or books.

Disposal of Data: Data from this study will be disposed of within 5 years from the completion of the study; paper files will be shredded and electronic data will be erased.

Contacts: Individuals that may be contacted regarding this study include Ofinjite Joy Ogaji Dr. William E. O'Brian, Dr. Tony Cole. Their contact information is available at the beginning of the consent form.

A.1.4 Focus Group Discussion for Urban Dwellers

Before we start, I would like to remind you that there are no right or wrong answers in this discussion. We are interested in knowing what each of you thinks, so please feel free to be frank and to share your point of view, regardless of whether you agree or disagree with what you hear. It is very important that we hear all your opinions. You will probably prefer your comments not be repeated to people outside of this group.

Please treat others in the group as you want to be treated by not telling anyone about what you hear in this discussion today.

Let's start by going around the circle and having each person introduce herself.

1. What do you think about the topic that has brought us here today (Alternative Dispute Resolution Methods (ADR)?

2. In this State, who makes the decisions about settling disagreements or quarrels?

• Who makes decisions about the settling of disputes?

• How are these decisions made?

3. According to you, what are the reasons for:

Disagreements?

Land disputes?

inter group fight?

Misunderstandings between the oil companies and the communities?

What is one factor that you believe contributes to the escalation of gang violence in this State?

4. In your own opinion, who should take the responsibility for conflicts or disputes *(The youths, the leaders or, oil companies .)*? Please explain.

5. What methods are available for resolving the conflicts?

• What do you know about these methods?

• Where do they obtain the method?

• Describe how these methods are selected for the purposes of amicable living.

• What are some reasons why people might choose a traditional method of dispute resolution over a modern one e.g. using the court?

• What are some of the reasons that might make people choose a modern method over a traditional one?

• What are some of the reasons that will make people refuse to use any of these methods but prefer to fight?

• Why would some people who had already decided to use one of these methods change their mind?

6. Have you heard about ADR? I'd like to hear more of your thoughts and opinions about the ADR.

• *If participants are unfamiliar with the method, I will explain what it is and how it Works.*

: Does this sound like something people might be interested in?

Please explain.

• *If any have heard of the method, I will ask the following:* What have you learned about this subject? How did you hear about it?

What are some of the good things you have heard about it?

 What are some of the bad things you have heard about it?

• Would people in this State think about using ADR in resolving their conflict?

• If they wanted to use the ADR what are some of the things that might make it hard for them to do so?

• What are some of the things that might make it easy for them to use it?

• For people who are interested in using the ADR, where do you think the services should be offered? Please explain.

 Who should provide the service?

7. Have you heard of Mediation? I'd like to hear more of your thoughts and opinions about mediation.

8. What barriers prevent use of the methods we have? Please explain.

9. Let's summarize some of the key points from our discussion. Is there anything else?

10. Do you have any questions?

A.1.5 Focus Group Discussion For Rural Dwellers[2]

Before we start, I would like to remind you that there are no right or wrong answers in this discussion. We are interested in knowing what each of you think, so please feel free to be frank and to share your point of view, regardless of whether you agree or disagree with what you hear. It is very important that we hear all your opinions.

You will probably prefer your comments not be repeated to people outside of this group.

Please treat others in the group as you want to be treated, by not telling anyone about what you hear in this discussion today.

Let's start by going around the circle and having each person introduce himself/ herself.

1. What do you think about the topic that has brought us here today (Alternative Dispute Resolution Methods (ADR)?

2. In this community, who makes the decisions about settling disagreements or quarrels?

• Who makes decisions about the settling of disputes?

• How are these decisions made?

3. According to you, what are the reasons for:

• Disagreements?

• Land disputes?

• Tribal fights?

Misunderstandings between the oil companies and the communities?

4. In your own opinion, who should take the responsibility for conflicts or disputes *(Men? Women? Chiefs, oil companies.)*? Please explain.

5. What methods does this community use in resolving the conflicts?

• What do you know about these methods?

• Where/from whom do they obtain information about these methods?

• Where do they obtain the method?

• Describe how these methods are selected for the purpose of amicable living.

• What are some reasons why people might choose a traditional method of dispute resolution over a modern one e.g. using the court?

• What are some of the reasons that might make people choose a modern method over a traditional one?

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[2] Adapted from: Family Health International [2004 FHI publication].

• What are some reasons that will make people refuse to use any of these methods?

• Why would some people who had already decided to use one of these methods change their minds?

6. Have you heard about ADR? I'd like to hear more of your thoughts and opinions about the ADR.

• *If participants are unfamiliar with the method, I will explain what it is and how it works.*

 Does this sound like something people might be interested in?

Please explain.

• *If any have heard of the method, I will ask the following:* What have you learned about this subject? How did you hear about it?

What are some of the good things you have heard about it?

 What are some of the bad things you have heard about it?

• Would people in this community think about using ADR in resolving their conflict?

• If they wanted to use the ADR what are some of the things that might make it hard for them to do so?

• What are some of the things that might make it easy for them to use it?

• For people who are interested in using the ADR, where do you think the services should be offered? Please explain.

 Who should provide the service?

7. Have you heard of Mediation? I'd like to hear more of your thoughts and opinions about. Mediation

15. What barriers prevent use of the methods we have? Please explain.

16. Let's summarize some of the key points from our discussion. Is there anything else?

17. Do you have any questions?

Thank you for taking the time to talk to us!!

A.*1.6* Interview Questions: Chiefs and Other Community Leaders

Before we start, I would like to remind you that there are no right or wrong answers in this discussion. We are interested in knowing what you think, so please feel free to be frank and to share your point of view, regardless of whether you agree or disagree with what you hear. It is very important that we hear all your opinions. You will probably prefer your comments not be repeated to people outside of this group.

Please treat others in the group as you want to be treated by not telling anyone about what you hear in this discussion today.

What is your role in this community?

2. In this State/community, who makes the decisions about settling conflict?
_____
_____

What methods are available for resolving conflicts?
_____
_____

4a   What are some reasons why people might choose a traditional method of dispute resolution over a modern one e.g. using the court?

_____
_____

4b   Why would some people who have already decided to use one of these   methods change their mind?

_____
_____

5. In your opinion, what are the reasons for:
Disagreements?

_____
_____

Land disputes?

_____
_____

Inter group fights?

_____
_____

Misunderstandings between the oil companies and the communities?
_____
_____

6. What is one factor that you believe contributes to the escalation of gang violence in this State?

_____

_____

7. In your own opinion, who should take the responsibility for conflicts or disputes *(The youths, the leaders or oil companies.)*? Please explain.

_____

_____

8. Have you heard about ADR? I'd like to hear more of your thoughts and opinions about ADR.

_____

_____

• *If participants are unfamiliar with the method, I will explain what it is and how it works.*
Does this sound like something people might be interested in?
Please explain. _____

_____

• *If any have heard of the method, I will ask the following:* What have you learned about this subject? How did you hear about it?

_____

Thank you for taking the time to talk to us!!

A.1.7 Interview **Questions For Professionals Involved In Conflict Resolution In Nigeria To Ascertain The Success Of The Process Used.**

This research is concerned with finding alternative dispute resolution (ADR) means to resolve the ongoing conflict in the Niger Delta of Nigeria, other than through violence.

Background information.

I am comfortable with putting my name down as a participant in this survey

Yes I am ☐   No, I prefer to be anonymous   ☐

Please tell us a little about yourself.

Name:

Organisation/Denomination:

Postal Address:

Telephone number:

Email address:

- What are the different dispute resolution processes deployed in your organisation (including an informal, advisory capacity)? PLEASE List below.

- What kinds of issues/parties are commonly dealt with in the dispute resolution process (pollution, resource allocation, between locals and oil companies.)?

- How does the number of parties involved in a dispute resolution process affect how the process unfolds?

- How do rural or urban identities come into play?

- How do other aspects of identity or culture come into play?

- What is the level of tension like between disputants at the beginning of a dispute resolution process?

- What parts of a dispute resolution process are likely to go well, and what parts poorly?

- How does the physical environment affect the dispute resolution process?

- What kinds of things tend to bring about dispute resolution process "breakthrough" moments?

- What aspects of a process tend to affect whether parties can reach a mutually satisfactory agreement?

- How many months do processes typically last?

- How does the length of time between the commencement and completion of a dispute resolution process affect how the process unfolds?

- What is your level of satisfaction with the process in general and why?

- Is there anything you would change about the process?

- Do you perceive a need for more training, refresher courses or the integration of different methods?

- Are there types of case that you think are not suitable for this type of process (i.e. number of parties; certain issues; case complexity; rural or urban.)?

- If you think there are cases that are unsuitable for this process, how do you think these cases should be addressed?

- What kind of information would be useful for you to have available when working on a case (i.e. case history, timeline, process history, negotiation information)?

- How would you like to access this information (charts, reports, shared drive, and internet)?

- Are there further experiences or ideas you would like to relate to?

- Do you have any additional observations or recommendations?

- Have you heard about alternative dispute resolution (ADR) methods? Yes/No

A.1.8 Ministry Of Justice Dispute Resolution Process Survey

This survey is to determine your satisfaction with the effectiveness of the dispute resolution process in place in the Ministry and to find out your knowledge and understanding of the use of ADR.

What are the different dispute resolution processes deployed in your Ministry (including an informal, advisory capacity)? PLEASE List below.

_____

What kinds of issues/parties are commonly dealt with in the dispute resolution process (pollution, resource allocation, between locals and oil companies.)? Please outline below.

_____

_____

What are the factors that may affect the outcome of a dispute resolution process or processes?

_____

_____

What aspects of a process tend to affect whether parties can reach a mutually satisfactory agreement?

_____

_____

Are you satisfied with the processor processes outlined above in general?

If yes, give your reasons.

_____

_____

If no, is there anything you would change about the process?
_____

_____

6. In your opinion, what aspects of the process were the most successful in resolving differences between parties?

_____

_____

7. Would you use a similar process for other disputes?

If yes, what type of disputes?

_____

If no, why not?

_____

_____

8. What changes, if any, would you make to improve the service?

_____

9. Do you have any additional observations or recommendations?

_____

10. Have you heard about ADR? If yes, please State the methods you are aware of, I'd like to know more of your thoughts and opinions about ADR.

_____

11. In view of our discussions above, is the application of ADR feasible? Please State reasons for or against.

_____

12. Are there further experiences or ideas you would like to relate to? Please State below.

_____

Thank You for Taking the Time to Complete This Survey.

Appendix B.   Relevant Legislation (Legal Rules, Statutory and Treaty Provisions Relating To ADRin Nigeria)

B.i Constitution of the Federal Republic of Nigeria 1999

Section 19(d): Foreign policy objectives

The foreign policy objectives shall be –

(d) Respect for international law and treaty objectives as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication.

B.ii Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria (LFN) 2004

Part I: Arbitration – Sections 1 to 36

Part II: Conciliation – Sections 37 to 42

Part III: International Commercial Arbitration and Conciliation – Sections 43 to 55

Part IV: Miscellaneous – 56 to 58

First Schedule: Arbitration Rules

Second Schedule: Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958

Third Schedule: Conciliation Rules

B.iii Federal High Court Act, Cap. F12, LFN 2004

Section 17: Reconciliation in civil and criminal cases

In any proceedings in the Court, the Court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

B.iv High Court Act, Cap. 510, LFN (Abuja) 1990

Section 18: Settlement of disputes

Where an action is pending, the court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

B.v District Courts Act, Cap. 495, LFN (Abuja) 1990

Section 26: Courts to promote reconciliation

A District Court shall, so far as there is proper opportunity, promote reconciliation among persons over whom the court has jurisdiction, and encourage and facilitate the settlement in an amicable way and without recourse to litigation of matters in difference between them.

Section 27: Pending civil cases

Where a civil suit or proceeding is pending, the District Court judge may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

B.vi Rules of Professional Conduct (RPC) for Legal Practitioners 2007

Rule 15: Representing client within the bounds of the law

(3) In his representation of his client, a lawyer shall not –

(d) Fail or neglect to inform his client of the option of alternative dispute resolution mechanisms before resorting to or continuing litigation on behalf of his client.

Rule 47: Instigating controversy or Litigation

(1) A lawyer shall not foment strife or instigate litigation and, except in the case of close relations or of trust, he shall not, without being consulted, proffer advice or bring a law suit.

B.vii High Court of Lagos State (Civil Procedure) Rules 2004

Order 25: Pre-trial Conferences and Scheduling

1. (1) within 14 days after close of pleadings, the claimant shall apply for the issuance of a pre-trial conference Notice as in Form 17.

(2) Upon application by a claimant under sub-rule 1 above, the Judge shall cause to be issued to the parties and their Legal Practitioners (if any) a pre-trial conference notice as in Form 17 accompanied by a pre-trial information sheet as in Form 18 for the purposes set out hereunder:

(b) giving such directions as to the future course of the action as appear best adapted to secure its just, expeditious and economic disposal;

(c) Promoting amicable settlement of the case or adoption of alternative dispute resolution.

B.viii High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004

Order 17: Alternative Dispute Resolution

1. A Court or judge, with the consent of the parties, may encourage settlement of any matter(s) before it, by either –

(a) Arbitration;

(b) Conciliation;

(c) Mediation; or

(d) Any other lawfully recognized method of dispute resolution.

B.ix Matrimonial Causes Act, Cap. M7, LFN 2004

Section 11: Reconciliation

(1) It shall be the duty of the court in which a matrimonial cause has been instituted to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage (unless the proceedings are of such a nature that it would not be appropriate to do so), and if at any time it appears to the judge constituting the court, either from the nature of the case, the evidence in the proceedings or the attitude of those parties, or of either of them, or of counsel, that there is a reasonable possibility of such a reconciliation, the judge may do all or any of the following, that is to say, he may–

(a) Adjourn the proceedings to afford those parties an opportunity of becoming reconciled or to enable anything to be done in accordance with either of the next two succeeding paragraphs;

(b) With the consent of those parties, interview them in chambers, with or without counsel, as the judge thinks proper, with a view to effecting reconciliation.

(c) Nominate a person with experience or training in marriage conciliation, or in special circumstances, some other suitable person, to endeavour with the consent of the parties, to effect reconciliation.

Section 30: Petition within two years of marriage

(1) Subject to this section, proceedings for a decree of dissolution of marriage shall not be instituted within two years after the date of the marriage except by leave of the court.

(3) The court shall not grant leave under this section to institute proceedings except on the ground that to refuse to grant the leave would impose exceptional hardship on the applicant or that the case is one involving exceptional depravity on the part of the other party to the marriage.

(4) In determining an application for leave to institute proceedings under this section, the court shall have regard to the interest of any children of the marriage, and to the question whether there is any reasonable probability of reconciliation between the parties before the expiration of the period of two years after the date of the marriage.

B.x Consumer Protection Council Act, Cap C25, LFN 2004

Section 2: Functions of the Council

The Council shall –

(a) Provide speedy redress to consumers' complaints through negotiation, mediation and conciliation.

Section 5: Duty of State Committee

The State Committee shall, subject to the control of the Council –

(a) receive complaints and enquiries into the causes and circumstances of injury, loss or damage suffered or caused by a company, firm, trade, association or individual;

(b) Negotiate with the parties concerned and endeavour to bring about a settlement; and

(c) Where appropriate, recommend to the Council the payment of compensation by the offending person to the injured consumer.

B.xi Environmental Impact Assessment Act, Cap. E12, LFN 2004

Section 29: Referral by Council

Where at any time the Council [Federal Environmental Protection Council] is of the opinion that – (a) a project is likely to cause significant adverse environmental effects that may not be mitigable; or

(b) Public concerns respecting the environmental effects of the project warrant it,

The Council may, after consultation with the Agency [Nigerian Environmental Protection Agency], refer the project to mediation or a review panel in accordance with section 35 of this Act.

Section 31: Appointment of Mediator

Where a project is referred to mediation, the Council shall, in consultation with the Agency –

(a) Appoint as mediator any person who, in the opinion of the Council, possesses the required knowledge or experience; and

(b) Fix the terms of reference of the mediation.

Section 33: Mediation

(1) A mediator shall not proceed with mediation unless the mediator is satisfied that all of the information required for mediation is available to all of the participants.

(2) A mediator shall, in accordance with the provisions of this Act and the terms of reference of the mediation –

(a) Help the participants to reach a consensus on –

(i) The environmental effects that are likely to result from the project;

(ii) Any measures that would mitigate any significant adverse environmental effects; and

(iii) An appropriate follow-up programme;

(b) Prepare a report setting out the conclusions and recommendations of the participants; and

(c) Submit the report to the Council and the Agency.

B.xii Industrial Inspectorate Act, Cap. I8, LFN 2004

Section 4: Arbitration

(1) Any person disputing a finding of the Directorate relative to the investment valuation of any matter concerning his undertaking may require the matter to be submitted to arbitration and the dispute shall be resolved in the following manner, that is to say –

(a) There shall be a sole arbitrator who shall be a person agreed to by the Director and the party disputing the valuation (both of whom are hereafter in this section referred to as "the affected parties") and who shall be appointed by the Minister [of Industries];

(c) The sole arbitrator shall decide on the investment valuation and make his award within one month after entering on the reference or any longer period allowed in writing by the Minister;

(2) The investment valuation as determined by the sole arbitrator and any award made thereby shall be binding and final as between the affected parties.

B.xiv Trade Disputes Act, Cap. T8, LFN 2004

Section 4: Procedure before dispute is reported

(1) If there exists, agreed means for settlement of the dispute apart from this Act, whether by virtue of the provisions of any agreement between organizations representing the interests of employers and organization of workers or any other agreement, the parties to the dispute shall first attempt to settle it by that means.

(2) If the attempt to settle the dispute as provided in subsection (1) of this section fails, or if no such agreed means of settlement as are mentioned in that subsection exists, the parties shall within seven days of the failure (or, if no such means exists, within seven days of the date on which the dispute arises or is first apprehended) meet together by themselves or their representatives, under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties, with a view to the amicable settlement of the dispute.

Section 6: Reporting of dispute if not amicably settled

(1) If within seven days of the date on which a mediator is appointed in accordance with section 4(2) of this Act the dispute is not settled, the dispute shall be reported to the Minister [of Labour] by or on behalf of either of the parties within three days of the end of the seven days.

(2) A report under this section shall be in writing and shall record the points on which the parties disagree and describe the steps already taken by the parties to reach a settlement.

Section 8: Appointment of Conciliator.

(1) The Minister may for the purposes of section 7 of this Act appoint a fit person to act as conciliator for the purpose of effecting a settlement of the dispute.

(2) The person appointed as conciliator under this section shall inquire into the causes and circumstances of the dispute and by negotiation with the parties endeavour to bring about a settlement.

(3) If a settlement of this dispute is reached within seven days of his appointment, the person appointed as conciliator shall report the fact to the Minister and shall forward to him a memorandum of the terms of the settlement signed by the representative of the parties, and as from the date on which the memorandum is signed (or such earlier or later date as may be specified therein), the terms recorded therein shall be binding on the employers and workers to whom those terms relate.

(4) If any person does any act in breach of the terms of a settlement contained in the memorandum signed pursuant to subsection (3) of this section, he shall be guilty of an offence and liable on conviction –

(a) In the case of a worker or a trade union, to a fine of N200; and

(b) In the case of an employer or an organization representing employers, to a fine of N2,000.

(5) If a settlement of the dispute is not reached within seven days of his appointment, or if, after attempting negotiation with the parties, he is satisfied that he will not be able to bring about a settlement by means thereof, the person appointed as conciliator shall forthwith report the fact to the Minister.

Section 9: Reference of dispute to arbitration tribunal if conciliation fails

(1) Within fourteen days of the receipt by him of a report under section 6 of this Act, the Minister shall refer the dispute for settlement to the Industrial Arbitration Panel established under this section.

B.XV National Health Insurance Scheme Act, Cap. N42, LFN 2004

Section 26: Establishment and functions of the State and Federal Capital Territory Arbitration Board

(1) There shall be established for each State of the Federation and the Federal Capital Territory, Abuja, as and when necessary, a State Health Insurance Arbitration Board and a Federal Capital Territory Health Insurance Arbitration Board, respectively (in this Act referred to as "Arbitration Board").

(2) The Arbitration Board shall be charged with the responsibility of considering complaints made by any aggrieved party –

(a) Of violation of any of the provisions of this Act; or

(b) Against any of the agents of the Scheme; or

(c) Against an organization or a health care provider.

(3) A complaint made under subsection (2) of this section shall be made in writing within 60 days from the date of the action giving rise to the complaint, notwithstanding that credible reasons have been rendered for the action.

(4) The period specified in subsection (3) of this section may be extended if the Arbitration Board is satisfied that the complainant was justifiably unable to make the complaint within that period.

B.Xvi Nigerian Co-Operative Societies Act, Cap. N98, LFN 2004

Section 49: Settlement of disputes

(1) If a dispute touching the business of a registered society arises –

(a) Among present or past members and persons claiming through present or past members and deceased members; or

(b) Between a present, past or deceased member and the society, its committee or any officer, agent or servant of the society; or

(c) Between the society and any other committee and any officer, agent or servant of the society; or

(d) Between the society and any other registered society, the dispute shall be referred to the Director [Federal or State Director of Co-operatives] for settlement.

(3) The Director shall on receipt of a reference under subsection (1) of this section

(a) Settle the dispute; or

(b) subject to the provisions of any regulations made under this Act refer it to an arbitrator appointed in accordance with the regulations made under this Act for disposal.

(4) A decision made by an arbitrator under paragraph (b) of subsection (3) of this section shall, except as otherwise provided in subsection (6) of this section be final.

B.xvii Petroleum Act, Cap. P10, LFN 2004

Section 11: Settlement of disputes by arbitration

(1) Where by any provision of this Act or any regulations made there under a question or dispute is to be settled by arbitration, the question or dispute shall be settled in accordance with the law relating to arbitration in the appropriate State and the provision shall be treated as a submission to arbitration for the purposes of that law.

(2) In this section "the appropriate State" means the State agreed by all parties to a question or dispute to be appropriate in the circumstances or, if there is no such agreement, the Federal Capital Territory, Abuja.

B.Xviii Public Enterprises (Privatisation and Commercialization) Act, Cap. P38, LFN 2004 c

Section 27: Establishment and membership of the Public Enterprises Arbitration Panel

(1) There is hereby established under this Act an *ad hoc* body to be known as the Public Enterprises Arbitration Panel (in this Act referred to as "the Panel") which shall be

responsible for effecting prompt settlement of any dispute arising between an enterprise and the Council [National Council on Privatization] or the Bureau [Bureau of Public Enterprises].

(2) The Panel shall consist of five persons who shall be persons of proven integrity one of whom shall be the chairman.

Section 28: Powers of the Panel

(1) The Panel shall have power to arbitrate –

(a) In any dispute raising questions as to the interpretation of any of the provisions of a Performance Agreement; or

(b) In any dispute on the performance or non-performance by any enterprise of its undertakings under a Performance Agreement.

(2) A dispute on the performance or non-performance by any of the parties to the Performance Agreement shall, in the case of a commercialized enterprise, lie to the Panel provided that such reference may be made after all reasonable efforts to resolve the dispute have been made and have not been proved.

Section 30: Other arbitration laws not applicable

The provisions of the Arbitration and Conciliation Act or any other enactment or law relating to arbitration shall not be applicable to any matter which is the subject of arbitration under this Act.

B.xix National War College Act, Cap N82, LFN 2004

Section 5: Centre for Peace Research and Conflict Resolution

(1) There is hereby established for the College a Centre for Peace Research and Conflict Resolution (in this Act referred to as "the Centre") which shall be charged with the responsibility for conducting research into all facets of peace and proffer solutions to conflicts at both national and international levels.

(2) Notwithstanding the provisions of subsection (1) of this section, the Centre shall –

(b) organize and facilitate researches on national, regional and global basis in the fields of conflict sources, conflict monitoring, conflict prevention, conflict resolution, peace-making, peace keeping, peace enforcement, peace building, and capacity building;

(c) Initiate actions and take such other steps which will enhance the resolution of conflicts, both domestically and internationally.

B.xx National Boundary Commission. Act, Cap. N10, LFN 2004

Section 3: Functions of the Commission

The functions of the Commission shall be –

(a) To deal with, determine and intervene in any boundary dispute that may arise between Nigeria and any of her neighbours or between any two States of the Federation, with a view to settling such dispute.

Section 6: Functions of the Technical Committee

The [Inter-State Boundary] Technical Committee shall have the following functions, that is –

(a) Dealing with any inter-State boundary disputes, with a view to settling such disputes;

(b) Finding solutions to any inter-State boundary problems; and

(c) Making recommendations to the President, through the Commission, as regards borders and boundary adjustments, where necessary, between States.

B.xxi Energy Commission of Nigeria Act, Cap. E10, LFN 2004

Section 5: Functions of the Commission

Subject to this Act, the Commission is hereby charged with the responsibility for the strategic planning and co-ordination of national policies in the field of energy in all its ramifications and, without prejudice to the generality of the foregoing, the Commission shall

(b) Serve as a centre for solving any inter-related technical problems that may arise in the implementation of any policy relating to the field of energy.

Note: To this end, Section 3(1) and (2) of the Act establishes a Technical Advisory Committee which consists the Director-General of the Commission and professionals representing the following Ministries and Agencies – petroleum resources; power and steel; science and technology; agriculture and rural development; water resources; finance; defence; industries; communication; environment; National Electric Power Authority [now Power Holding Company of Nigeria]; Nigerian National Petroleum Corporation; Nigerian Mining Corporation. The advice of the Committee can be said to be a process of Expert Appraisal.

B.xxii Minerals and Mining Act, Cap. M12, LFN 2004

Section 76: Agreement of other interested parties

(1) An applicant for a water licence shall inform the Minister [for mines and minerals] of persons likely to be adversely affected by the grant of the water licence and furnish the Minister with their names and such other particulars as the Minister may require.

(2) The Minister, upon receiving the information required under subsection (1) of this section, shall enter into consultation with all persons likely to be affected by the grant of the water licence and shall reach such necessary agreement with such provisions [*sic*.] as may be just and proper.

Section 255: Application of Arbitration and Conciliation Act

Unless provided otherwise, the Arbitration and Conciliation Act shall apply to all arbitrations under this Act.

B.xxiii National Office for Technology Acquisition and Promotion Act, Cap. N62, LFN 2004

Section 4: Functions of the National Office

Subject to section 2(1) of this Act, the National Office shall carry out the following functions

(b) the development of the negotiation skills of Nigerians with a view to ensuring the acquirement of the best contractual terms and conditions by Nigerian parties entering into any contract or agreement for the transfer of foreign technology.

B.xxiv Nigerian Communications Commission Act, Cap. N97, LFN 2004

Section 4: Functions of the Commission

The Commission shall have the following functions, that is –

(k) The arbitration of disputes between licensees and other participants in the telecommunications industry;

(l) To receive and investigate complaints from licensees, carriers, consumers and other persons in the telecommunications industry.

B.xxv Nigerian Dock Labour Act, Cap. N103, LFN 2004

Section 2: Functions of the Council

(1) The Council [Joint Dock Labour Industrial Council] shall –

(i) Serve as a medium for resolving disputes and complaints among the interest groups in the port and dock industry.

B.xxvi Nigeria Export Processing Zones Act, Cap. N107, LFN 2004

Section 4: Functions of the Authority

In addition to any other functions conferred on the Authority [Nigeria Export Processing Zones Authority] by this Act, the functions and responsibilities of the Authority shall include – (e) the resolution of trade disputes between employers and employees in the Zone, in consultation with the Federal Ministry of Employment, Labour and Productivity.

B.xxvii Advisory Council on Religious Affairs Act, Cap. A8, LFN 2004

Section 3: Functions of the Council

The Council shall be charged with the following functions, that is –

(b) Serving as an avenue for articulating cordial relationship amongst the various religious groups and between them and the Federal Government;

(c) Serving as a forum for harnessing religion to serve national goals towards economic recovery, consolidation of national unity and the promotion of political cohesion and stability.

B.xxviii Nigerian Investment Promotion Commission Act, Cap. N117, LFN 2004

Section 26: Dispute settlement procedures

(1) Where a dispute arises between an investor and any Government of the Federation in respect of an enterprise, all efforts shall be made through mutual discussion to reach an amicable settlement.

(2) Any dispute between an investor and any Government of the Federation in respect of an enterprise to which this Act applies which is not amicably settled through mutual discussions, may be submitted at the option of the aggrieved party to arbitration as follows

(a) In the case of a Nigerian investor, in accordance with the rules of procedure for arbitration as specified in the Arbitration and Conciliation Act [Cap. A18]; or

(b) In the case of a foreign investor, within the framework of any bilateral or multilateral agreement on investment protection to which the Federal Government and the country of which the investor is a national are parties; or

(c) In accordance with any other national or international machinery for the settlement of investment disputes agreed on by the parties.

(3) Where in respect of any dispute, there is disagreement between the investor and the Federal Government as to the method of dispute settlement to be adopted, the International Centre for Settlement of Investment Disputes Rule shall apply.

B.xxix International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act, Cap. I20, LFN 2004

Section 1: Award of I.C.S.I. dispute to have effect as award in final judgment of Supreme Court.

(1) Where for any reason it is necessary or expedient to enforce in Nigeria an award made by the International Centre for the Settlement of Investment Disputes, a copy of the award duly certified by the Secretary-General of the Centre aforesaid, if filed in the Supreme Court by the party seeking its recognition for enforcement in Nigeria, shall for all purposes have effect as if it were an award contained in a final judgment of the Supreme Court, and the award shall be enforceable accordingly.

B.xxx Regional Centre for International Commercial Arbitration Act, Cap. R5, LFN 2004

Section 4: Functions and powers of the Centre

The functions and powers of the Centre are to –

(a) Promote international arbitration and conciliation in the region;

(b) Provide arbitration under fair, inexpensive and expeditious procedure in the region; (c) act as a co-ordinating agency in the Consultative Committee dispute resolution system;

(d) Co-ordinate the activities of and assist existing institutions concerned with arbitration, particularly among those in the region;

(e) Render assistance in the conduct of *ad-hoc* arbitration proceedings, particularly those held under the Rules;

(f) Assist in the enforcement of arbitral awards;

(g) Maintain registers of –

(i) Expert witnesses; and

(ii) Suitably qualified persons to act as arbitrators as and when required; and

(h) Carry out such other activities and do other such things as are conducive or incidental to its other functions under this Act.

Appendix C Descriptions of Terminologies

Conflict is the pursuit of incompatible goals by different groups or individuals. It includes any political conflict, whether it is pursued by peaceful means or by the use of force. It involves a broader span of time and a wider class of struggle than armed conflict. It involves" divergence of goals, objectives, standards, attitudes or expectations between individuals or social units. Conflict can be latent (below the surface and not identified) or manifest (fully surfaced and particularized over issues with the parties clearly defined)" (Chicanot and Sloan 2003).

Disputes involve negotiable interests that can be settled by compromise (see chapter three for more details) "manifest conflict in which the issues are typically identified, the parties known, and the „particularity" of the conflict is understood by those involved" (Chicanot and Sloan 2003).

Armed conflict is a narrower category denoting conflicts, where parties on both sides resort to the use of force. It is notoriously difficult to define, since it can encompass a continuum of situations ranging from a military over flight or an attack on a civilian by a single soldier to an all-out war with massive casualties.[3]

Violent conflict or *deadly conflict* is similar to armed conflict, but also includes one-sided violence such as genocides against unarmed civilians. That is direct, physical violence.

Contemporary conflict this is defined by Tom et. al as the prevailing pattern of political and violent conflicts in the post-cold war world, involving the use of force.

Conflict settlement means the reaching of an agreement between the parties which enables them to end an armed conflict. It puts to an end the violent stage of conflict behaviour. It

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[3] Oliver Ramsbotham, Tom Woodhouse and Hugh Miall 2011 Contemporary Conflict Resolution: The prevention, management and transformation of deadly conflicts ISBN100745649742 Third edition

also suggests finality, but in practice, conflicts that have reached settlements are often re-opened later, because conflict attitudes and underlying structural contradictions may not have been addressed.

Conflict management, like the associated term 'conflict regulation', is sometimes used as a generic term to cover the whole gamut of positive conflict handling, but is used here to refer to the limitation, mitigation and containment of violent conflict.

Conflict resolution is a more comprehensive term, which implies that the deep-rooted sources of conflict are addressed, and resolved. The implication is that behaviour is no longer violent, attitudes are no longer hostile, and the structure of the conflict has been changed.

Conflict transformation is a term which for some analysts is a significant step beyond conflict resolution. It has particular salience in asymmetric conflicts, where the aim is to transform unjust social relationships.

Negotiation is the process whereby the parties within the conflict seek to settle or resolve their conflicts.

Facilitated Negotiation: "a process of dispute resolution in which a third party is involved in any way in helping the disputants; often this is done by managing disputants" discussions"

Mediation involves the intervention of a third party; it is a voluntary process in which the parties retain control over the outcome (pure mediation), although it may include positive and negative inducements (mediation with muscle).

Conciliation or *facilitation* is close in meaning to pure mediation, and refers to intermediary efforts to encourage the parties to move towards negotiations, as does the more minimalist role of providing *good offices*.

Problem-solving is a more ambitious undertaking, in which conflict parties are invited to reconceptualise the conflict with a view to finding creative, win-win outcomes.

Reconciliation is a longer-term process of overcoming hostility and mistrust between divided peoples.

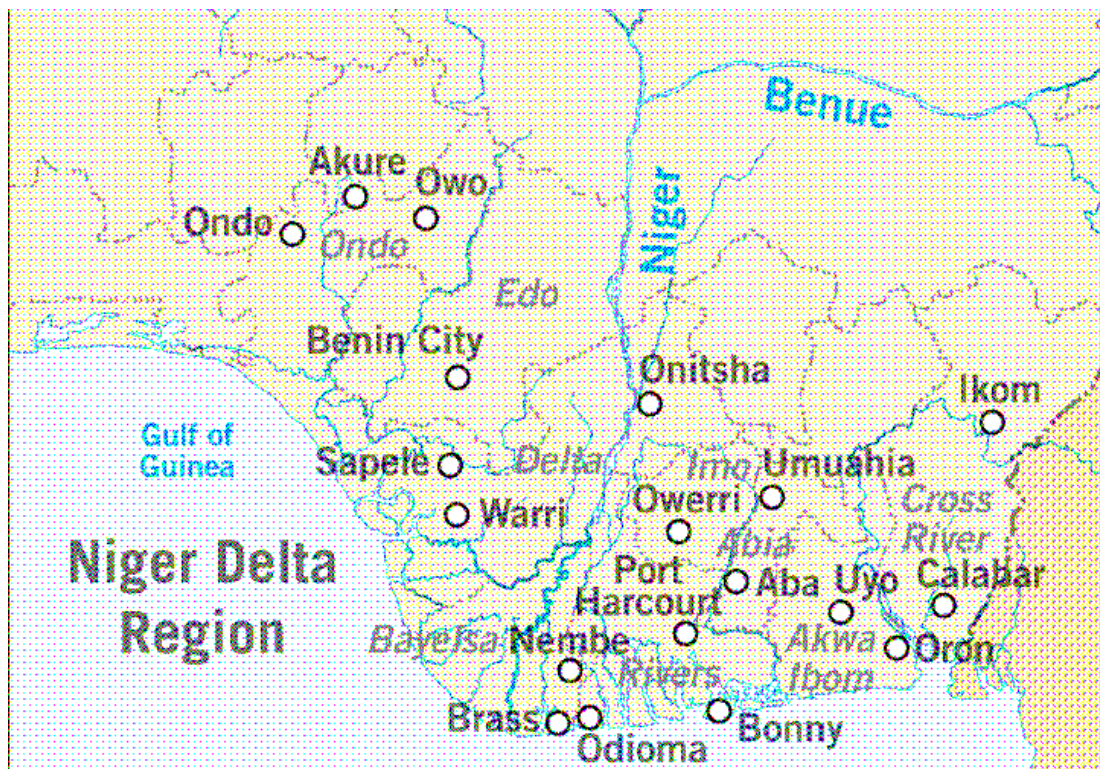**APPENDIX D: Niger Delta Area in Perspective**

Figure D.1: Map of the Niger Delta Area; Source: Fuelling the Niger Delta Crisis (Crisis Group Africa Report No.118) 28 September, 2006; P.28
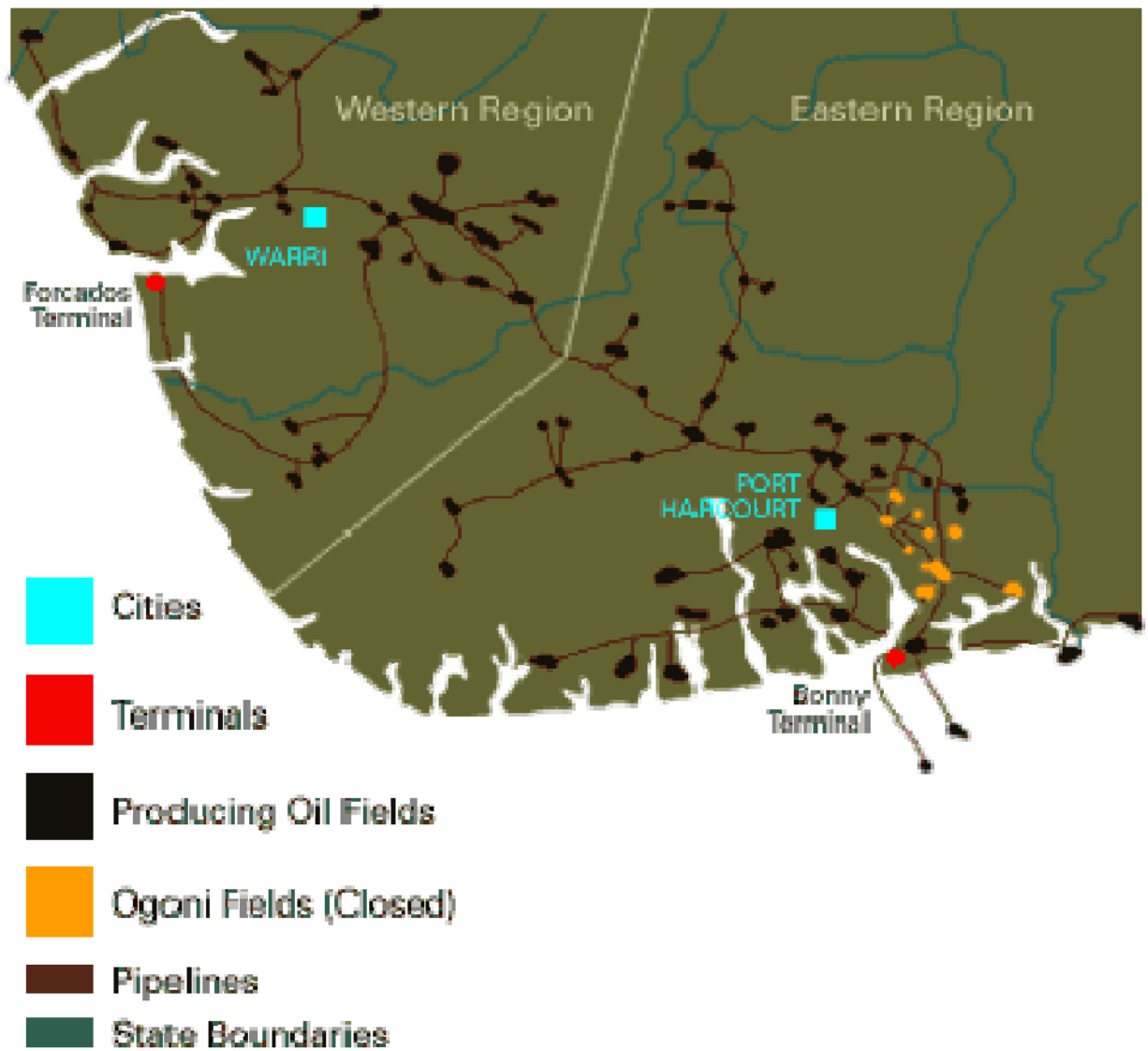
Figure D.2 A map of the Niger Delta showing oil fields and pipelines.

The Place of Oil

Nigeria's OPEC Quota (1999–2007) millions of barrels/day

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1999	2.033	2.033	2.033	1.885	1.885	1.885	1.885	1.885	1.885	1.885	1.885	1.885
2000	1.885	1.885	1.885	2.033	2.033	2.033	2.091	2.091	2.091	2.198	2.198	2.198
2001	2.198	2.075	2.075	1.993	1.993	1.993	1.993	1.993	1.911	1.911	1.911	1.911
2002	1.787	1.787	1.787	1.787	1.787	1.787	1.787	1.787	1.787	1.787	1.787	1.787
2003	1.894	2.018	2.018	2.018	2.018	2.092	2.092	2.092	2.092	2.092	2.018	2.018
2004	2.018	2.018	2.018	1.936	1.936	1.936	2.101	2.142	2.142	2.142	2.224	2.224
2005	2.224	2.224	2.224	2.265	2.265	2.265	2.306	2.306	2.306	2.306	2.306	2.306
2006	2.306	2.306	2.306	2.306	2.306	2.306	2.306	2.306	2.306	2.306	2.206	2.206
2007	2.206	2.164	2.164	2.164	2.164	2.164	2.164	2.164	2.164	2.164	N.A.	N.A.

Appendix D2 :OPEC Annual Statistical Report of oil production in 326

The Place of Oil *(continued)*

Crude Oil Production in Millions of Barrels per Day (1997–2007)

S/No	Year	Production in mb/d
1	1999	1.781
2	2000	2.053
3	2001	2.017
4	2002	1.801
5	2003	2.213
6	2004	2.410
7	2005	2.423
8	2006	2.381
9	2007	2.200

Source: OPEC Annual Stat. Survey, 2007

Total Oil Export Revenue in Billion US Dollars (1999–2007)

S/No	Year	Production in mb/d
1	1999	12.453
2	2000	20.040
3	2001	17.188
4	2002	17.083
5	2003	22.184
6	2004	33.309
7	2005	47.642
8	2006	52.523
9	2007	57.900

Source: OPEC Annual Stat. Survey, 2007

Consequences *(cont'd)*

Quantity Of Oil Loss In Barrels Per Day/amount In Us Dollars For 2007				
States	Estimated Qty Of Barrels Of Oil Loss Per	Total Barrels of Oil Loss For The Month	OPEC Basket Price For Bonny Light Crude Oil For The Month In US$	Total Amount Loss For The Month In US Dollars
January	700,000	21,700,000	56.18	1,219,106,000
February	700,000	19,600,000	59.58	1,167,768,000
March	700,000	21,700,000	64.59	1,401,603,000
April	700,000	21,000,000	70.01	1,470,210,000
May	700,000	21,700,000	70.03	1,519,651,000
June	700,000	21,000,000	74.45	1,563,450,000
July	700,000	21,700,000	79.21	1,718,857,000
August	700,000	21,700,000	73.34	1,591,478,000
September	700,000	21,000,000	79.87	1,677,270,000
October	700,000	21,700,000	79.32	1,721,244,000
November	700,000	21,000,000	88.84	1,865,640,000
December	700,000	21,700,000	87.05	1,888,985,000
Grand Total				$18,805,262,000

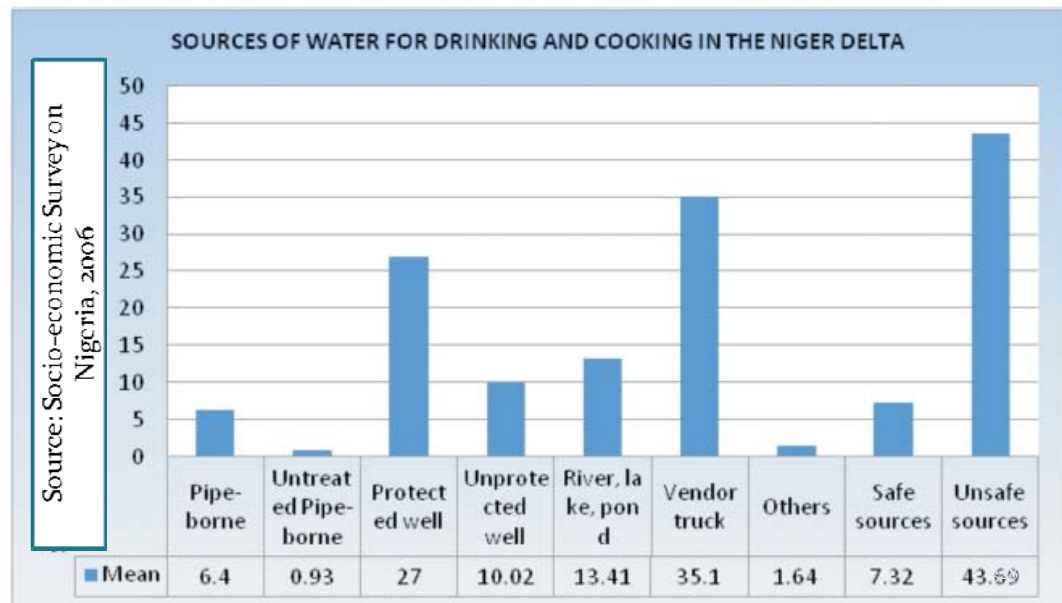Appendix D3 :Source: NNPC Annual Statistical Bulletin, 2007

Consequences *(cont'd)*

Quantity Of Oil Loss In Barrels Per Day/amount In US Dollars For 2008				
States	Estimated Qty Of Barrels Of Oil Loss Per Day	Total Barrels of Oil Loss For The Month	OPEC Basket Price For Bonny Light Crude Oil For The Month In US$	Total Amount Loss For The Month In US Dollars
January	700,000	21,700,000	88.35	1,917,195,000
February	700,000	20,300,000	90.64	1,839,992,000
March	700,000	21,700,000	99.03	2,148,951,000
April	700,000	21,700,000	105.16	2,208,360,000
May	700,000	21,700,000	119.39	2,590,763,000
June	700,000	21,700,000	128.33	2,694,930,000
July	700,000	21,700,000	131.22	2,847,474,000
August	700,000	21,700,000	112.41	1,633,793,000
September	700,000	21,700,000	96.85	2,439,297,000
Grand Total				$20,720,842,000

Appendix D4 Source: NNPC Annual Statistical Bulletin, 2007

People of the Niger Delta *(cont'd)*

SOURCES OF WATER FOR DRINKING AND COOKING IN THE NIGER DELTA

Source: Socio-economic Survey on Nigeria, 2006

	Pipe-borne	Untreated Pipe-borne	Protected well	Unprotected well	River, lake, pond	Vendor truck	Others	Safe sources	Unsafe sources
■ Mean	6.4	0.93	27	10.02	13.41	35.1	1.64	7.32	43.69

Appendix D5: Sources of water for Drinking and Cooking in the Niger Delta

People of the Niger Delta *(cont'd)*

HDI for the Niger Delta States, 2005

States	Life Expectancy	Education Index	GDP Index	HDI
Abia	0.492	0.578	0.560	0.543
Akwa Ibom	0.506	0.683	0.540	0.576
Bayelsa	0.455	0.523	0.520	0.499
C/River	0.556	0.630	0.565	0.584
Delta	0.587	0.636	0.621	0.615
Edo	0.579	0.602	0.600	0.594
Imo	0.503	0.546	0.591	0.547
Ondo	0.501	0.575	0.512	0.529
Rivers	0.563	0.590	0.620	0.591

Source: ERML Field Survey, 2005 Appendix D6

Table D: Ratio of Health Care Facilities in the Region by Population

People of the Niger Delta *(cont'd)*

Ratio of health care facilities in the region by population

States	2006 Pop	Tot. Health Facilities	Ratio of Pop to HF	Primary Healthcare	Ratio of PHC to Pop
Abia	2,833,999	748	3,678	721	3,816
Akwa Ibom	3,920,208	539	6,419	345	10,028
Bayelsa	1,703,358	544	5,231	478	5,953
C/River	2,888,966	544	6,846	507	7,346
Delta	4,098,391	670	4,726	317	9,989
Edo	3,218,332	159	25,577	142	28,639
Imo	3,934,899	905	4,180	588	6,434
Ondo	3,441,024	634	5,278	449	7,452
Rivers	5,185,400	670	7,128	628	7,605
Total (9)	31,224,577	5,413	69,063	4,175	87,262

Source: National Bureau of Statistics, 2005 Appendix D7

People of the Niger Delta *(cont'd)*

States	Population	Diarrhoea, w/o blood	Cholera	Schisto-somiasis	Typhoid Fever	HIV/AIDS Prevalence
Abia	2,833,999	0	0	0	0	3.7
Akwa Ibom	3,920,208	808	0	0	21	7.2
Bayelsa	1,703,358	0	0	0	0	4.0
C/River	2,888,966	4,869	23	0	29	12.0
Delta	4,098,391	0	0	0	0	5.0
Edo	3,218,332	982	0	0	268	4.3
Imo	3,934,899	0	0	0	0	3.1
Ondo	3,441,024	4,525	0	429	899	2.3
Rivers	5,185,400	0	0	0	0	6.6
Total (9)	31,224,332	11,184	23	429	1,217	5.4

Source: Federal Ministry of Health, National HIV/AIDS Sentinel Survey, 2003; Federal Ministry of Water Resources Survey, 2006. Appendix D8

Appedix D9. A criss-cross of oil pipelines within the human habitat, exposing them to danger.

Figure D.4 Gas flaring In the Niger Delta.