

# **NIGERIA'S FALTERING FEDERAL EXPERIMENT**

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## NIGERIA'S FALTERING FEDERAL EXPERIMENT

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

Nigeria's federal system and politics are deeply flawed, contributing to rising violence that threatens to destabilise one of Africa's leading countries. Failing to encourage genuine power sharing, they have sparked dangerous rivalries between the centre and the 36 states over revenue from the country's oil and other natural resources; promoted no-holds-barred struggles between interests groups to capture the state and its attendant wealth; and facilitated the emergence of violent ethnic militias, while politicians play on and exacerbate inter-communal tensions to cover up their corruption. The government has been quick to brand many of the symptoms, especially the rise of militancy, as simple criminality to be dealt with by more police and more troops. But unless it engages with the underlying issues of resource control, equal rights, power sharing and accountability, Nigeria will face an internal crisis of increasing proportions.

The resource problem is at its most acute in the oil rich but desperately poor Niger Delta, where since January 2006, the Movement for the Emancipation of the Niger Delta (MEND) and other armed groups have waged an increasingly violent campaign against the federal government and foreign oil companies. It demands local resource control of the Delta's oil wealth and rejects the "Marshall Plan" President Olusegun Obasanjo has proposed for the region. It recently shifted from high-profile kidnappings of foreign oil workers to more deadly activities, including car bombings. MEND says it wants to cripple the oil industry, whose output it has already reduced this year by 25 per cent.

The constitution enshrines a "federal character" principle, a type of quota which seeks to balance the apportionment of political positions, jobs and other government benefits evenly among Nigeria's many peoples but is distorted by a second principle, that of indigeneity, which makes the right to such benefits dependent upon where an individual's parents and grandparents were born. The result is widespread discrimination against non-indigenes in the 36 states and sharp inter-communal conflict. In Plateau State, for example, recurrent clashes since 2001 between "indigene" and "settler" communities competing over political appointments and government services have left thousands dead and many more thousands displaced.

The deep sense of alienation felt by diverse groups throughout the country has fuelled the rise in ethnic identity politics, ethnic militias and, in twelve northern states, disputes over the application of Islamic law (Sharia). The militias demand ethnic rather than national loyalty. Some, such as the Movement for Actualisation of the Sovereign State of Biafra (MASSOB), seek secession from Nigeria. Others, like the O'odua Peoples' Congress (OPC) and the Bakassi Boys, operate as security outfits, including for state governments, and are responsible for human rights abuses that have left hundreds dead.

The federal government has characterised many of these developments as no more than a law and order problem and has responded accordingly with force. It has dismissed the demands of Niger Delta militants, for example, as simple thuggery and assumed that federal security forces can always quell the violence there and in Plateau State, while decreeing sweeping bans on the ethnic militias and putting a number of their leaders on trial for treason.

The federal government has an obligation, of course, to deal with violence by the full rigour of the law but it also needs to look deeper into the circumstances that give rise to so much trouble. It should grant a significant level of resource control to local communities and replace the anachronistic concept of indigeneity with a residence test when applying the federal character principle. Perhaps most fundamentally, it should create a democratic constitutional reform process that would allow Nigerians, so often since independence under military governments, to engage for the first time in a free and wide-ranging debate over restructuring the country's power-sharing arrangements.

### RECOMMENDATIONS

#### To the Nigerian Government:

#### *To encourage equitable distribution of national wealth*

1. Work toward a new division of the country's natural resource wealth by:

- (a) increasing as an interim measure the oil revenue allocated to producing states (the derivation principle) to 25 per cent;
  - (b) passing uniform resource control legislation that:
    - i vests 50 per cent ownership of natural resources in the states and 50 per cent in the federal government, and then divides a percentage of the federal share among the states and local government areas (LGAs) through the Federation Account; and
    - ii requires that states devolve two thirds of the revenue accrued from state ownership directly to local incorporated development trusts, splitting the remainder between the state government and LGAs; and
  - (c) abolishing the derivation principle entirely once this new framework is in place.
2. Encourage non-oil producing states to develop new revenue generating capacity in agriculture, tourism, and solid minerals.
  3. Conduct a review of laws that have deprived communities of their lands and birthrights, leading to reform of the 1978 Land Use Act and repeal of the 1946 Minerals Act and the 1969 Petroleum Decree.

***To ensure fair implementation of the federal character principle***

4. Remove all references to indigeneity from the constitution.
5. Establish constitutionally or by federal law that an individual is a resident of a state if born there or living there for at least five years.
6. Replace indigeneity with residency as the criterion for appointment of at least one minister from each state by revising Section 147 (3) of the constitution, and revise Section 318 to define "from a...State" in the federal character provision of Section 14 (3) as referring to a person who is a resident in the state.
7. Introduce a gender component to the federal character principle, alongside ethnic, state and sectional tests, by amending Section 14 (3) of the constitution.
8. Give the Federal Character Commission more of the responsibility and authority of an equal opportunity commission by deleting all references to the concept of indigeneity from its charter and amending that charter so that:

- (a) individuals or organisations and agencies acting on behalf of individuals can file complaints to the Commission regarding misapplication of the federal character principle; and
- (b) the Commission can investigate charges of misapplication of the principle and either mediate disputes or bring discrimination suits in federal court.

***To ensure broad-based participation in restructuring of constitutional power-sharing arrangements***

9. Inaugurate a democratic constitutional reform process in which an elected assembly debates and drafts a constitution that is put to a popular referendum.
10. Place issues relevant to the protection of marginalised groups such as women, children, and the disabled on the constitution's concurrent legislative list so that the federal government can set uniform minimum standards while still allowing states to legislate in these areas provided they do not deviate from basic federal law.

**Dakar/Brussels, 25 October 2006**

## NIGERIA'S FALTERING FEDERAL EXPERIMENT

### I. INTRODUCTION

On 19 April 2006, a car bomb in a military barracks rocked the southern oil city of Port Harcourt, Rivers State, killing two people and seriously wounding six. The Movement for the Emancipation of the Niger Delta (MEND), an armed group demanding local control of the region's petroleum resources, claimed responsibility. Although they expressed regret for "death among the civilian population", the militants vowed to continue attacks against "those attempting to sell the birthright of the Niger Delta peoples for a bowl of porridge".<sup>1</sup> During the same month in Plateau State, inter-communal clashes between "indigenes" and "settlers" killed over 100 and displaced 8,000. Only a month earlier, in an attempt to stop the 2006 census, militants from the separatist Movement for Actualisation of the Sovereign State of Biafra (MASSOB) attacked a police station in Nnewi, Anambra State, proclaiming that Igbos, one of Nigeria's three major ethnic groups living mostly in the South East, should not be included in the count because they are Biafrans, not Nigerians. Six MASSOB members died.<sup>2</sup>

Escalating violence, especially in the oil rich Niger Delta, threatens the integrity of the Nigerian state and raises the spectre of attempted coups by those who feel their privileges are being endangered.<sup>3</sup> In the 46 years since Nigeria gained independence from Britain, successive governments have attempted, with varying degrees of sincerity and commitment, to fashion federal institutions that can accommodate the country's ethnic, cultural,

religious and linguistic diversity and nurture a sense of national unity.<sup>4</sup> However, the leaders of these governments, at all levels, have failed to live up to their obligations to offer good governance based on equitable political arrangements, transparent administrative practices and accountable public conduct. Communities throughout the country increasingly feel marginalised by and alienated from the Nigerian state.

As a civil society leader noted, "the commitment to federalism and democracy holds Nigeria together, and the lack of federalism and democracy threatens to tear Nigeria apart".<sup>5</sup>

In March 2005, an independent panel of experts on Sub-Saharan Africa convened by the U.S. government's National Intelligence Council highlighted the "outright collapse of Nigeria" as a potential destabilising development in the West Africa sub-region within the next fifteen years.<sup>6</sup> President Olusegun Obasanjo, who has repeatedly rejected suggestions that Nigeria is teetering on the edge of disaster, dismissed the report's authors as "prophets of doom".<sup>7</sup> Nigeria may avoid the tragedy of state collapse, but its size and resources ensure that further escalation of its internal conflicts could indeed destabilise the already fragile security situation in the West African sub-region and beyond. "This isn't a doomsday scenario", an experienced international observer has warned. "This is a real scenario".<sup>8</sup>

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<sup>1</sup> Crisis Group email correspondence, MEND, 20 April 2006. Although the 19 April bombing was in a military barracks, civilians were present. On 29 April MEND claimed responsibility for a second bombing that damaged fuel tankers and houses on the outskirts of Warri, Delta State. On 16 May six policemen were killed in Port Harcourt. No militant group has yet claimed responsibility.

<sup>2</sup> The former Eastern Region, in which the Igbos were the dominant ethnic group, declared itself the Republic of Biafra in 1967 but was defeated by Federal forces in 1970. Acid and machete attacks against census officials in the South East were blamed on separatists in Igboland. M. Faul, "Job not easy for Nigerian census takers", Associated Press, 24 March 2006.

<sup>3</sup> For analysis of conflict in the Niger Delta, see Crisis Group Africa Report N°115, *The Swamps of Insurgency: Nigeria's Delta Unrest*, 3 August 2006.

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<sup>4</sup> For a broader review of history, see Crisis Group Africa Report N°113, *Nigeria: Want in the Midst of Plenty*, 19 July 2006.

<sup>5</sup> Crisis Group interview, Abuja, 19 April 2006.

<sup>6</sup> "Mapping Sub-Saharan Africa's Future", National Intelligence Council, March 2005.

<sup>7</sup> E. Aziken, "Obasanjo denounces US intelligence reports", *The Vanguard*, 25 May 2005.

<sup>8</sup> Crisis Group interview, Abuja, 18 April 2006.

## II. ORIGINS OF A FLAWED FEDERALISM

Nigeria's chronic instability is largely a consequence of its failing experiment in federalism. Federalism is often championed in ethnically diverse countries in the hope that it will foster greater political participation and reduce inequality among diverse populations. Nigeria, home to more than 250 ethnic groups, inherited a federal system from the British that its rulers have repeatedly amended, sometimes merely manipulating it to promote sectional rather than national interests.

The colonial legacy includes the 1951 MacPherson and 1954 Lyttleton Constitutions, which were significant departures from the decades of British unitary rule that followed the formal amalgamation of the Northern and Southern Protectorates of Nigeria into a single state in 1914. The MacPherson Constitution was drafted after consultations with the population at the village, district, divisional, provincial, regional and national levels revealed that most Nigerians wanted a structure that would give the regions greater autonomy and political space. The Lyttleton Constitution established three regions – Northern, Western and Eastern – with autonomy in internal policy and administration – while leaving the central administration responsible for external affairs and inter-regional policy.

The Lyttleton Constitution also provided a map for the Independence Constitution of 1960. Under that document and the Republican Constitution of 1963, the regions had considerable powers, including concurrent authority with the central government over higher education, industrial and water development, the judiciary and police. In addition, the regions were responsible for all residual matters, including various socio-economic programs.<sup>9</sup>

Although this arrangement guaranteed the regions significant power, this nascent federation was untenable for several reasons. The fact that it was almost double the size of the combined Western and Eastern regions encouraged belief that the North dominated the federal government. As the three regions were closely associated with the three main ethnic groups – Hausa in the North, Yoruba in the West, Igbo in the East – the central government became a theatre of inter-ethnic struggle, while the numerous minority ethnic groups were marginalised.

These tensions sparked the first coup, led in January 1966 by mostly Igbo army officers. Major General Johnson Aguiyi-Ironsi, who became head of state, abolished federalism in favour of a unitary structure, an action

perceived especially in the North as facilitating Igbo domination. In July 1966, a counter-coup led by Northern officers, installed Lieutenant Colonel Yakubu Gowon as the new strongman, who promptly reinstated federalism. The crisis generated by the coups, the killings of thousands of Igbos in the Northern Region and disagreements between the leaders of the Eastern Region and the federal government prompted the attempted secession of the Eastern Region as the Republic of Biafra in May 1967 and a three-year civil war that cost between 500,000 and two million lives.<sup>10</sup>

The military regimes that ruled after the war maintained a federal façade but implemented policies that fostered Nigeria's transformation into a unitary state. They continuously gave more power to the central government while systematically weakening the constituent states. Armed with constitutional decrees such as those of 1966 and 1975, they took for themselves the unrestricted and unchecked power to pursue far-reaching structural reforms.<sup>11</sup>

As power gravitated towards the centre, the military rulers broke down the former regions into an ever increasing number of states: from the initial twelve in 1967, to nineteen in 1976, 21 in 1987, 30 in 1991 and 36 in 1996.<sup>12</sup> This was rationalised as a process to give more autonomy to ethnic and sub-ethnic nationalities and to bring government nearer to the people. In reality, however, it was a design to dilute regional power and so quash any remaining secessionist rumblings.<sup>13</sup> The proliferation of states was accompanied by cuts in the revenue allocated by the central government to each. The result was smaller and weaker federal units, some of which were economically unviable.<sup>14</sup> Nevertheless, the military's objective of weakening the unity of the larger ethnic groups and thus their ability to challenge the central government and destabilise the federation, has not been achieved.<sup>15</sup> For example, the Ijaws in the Niger Delta, who are arguably the fourth largest ethnic group and are divided among five coastal states, have

<sup>9</sup> Rotimi T. Suberu, *Federalism and Ethnic Conflict in Nigeria* (Washington D.C., 2001).

<sup>10</sup> For more on the Biafran conflict and preceding events, see Crisis Group Report, *Nigeria: Want in the Midst of Plenty*, op. cit.

<sup>11</sup> Suberu, *Federalism and Ethnic Conflict*, op. cit.

<sup>12</sup> The 36 states contain 774 local government areas. The South East and South-South are currently agitating for creation of an additional state in each zone.

<sup>13</sup> Chidi Anselm Odinkalu, "The Management of Transition to Civil Rule by the Military in Nigeria (1966-1996)", reference paper prepared for the international workshop on "The Nigerian Democratisation Process and the European Union", organised by the Centre d'Etudes d'Afrique Noire, Bordeaux, 12-14 September 1996.

<sup>14</sup> Crisis Group interview, human rights lawyer, Abuja, 18 April 2006.

<sup>15</sup> Crisis Group interview, lawyer, Abuja, 18 April 2006.

maintained a loose ethno-nationalist agenda that enables them to join forces across state lines.<sup>16</sup>

In October 1975, after a decade of military rule, General Murtala Mohamed, who had ousted Gowon, appointed a 49-member Constitution Drafting Committee (CDC) in response to the widespread feeling that the 1963 constitution had allowed intense rivalry between the former regions, and its parliamentary system did not offer the kind of strong central leadership needed. After Mohamed's assassination in February 1976, the CDC continued under General Olusegun Obasanjo and produced a draft later that year for debate by a popularly elected Constituent Assembly (CA). However, the military government, which retained the right to nullify and revise sections before promulgating it into law, imposed seventeen amendments, thus undermining the democratic nature of the process.<sup>17</sup> Among other things, this 1979 Constitution expanded the legislative powers of the federal government at the expense of the states.

A civilian government elected on the basis of the 1979 Constitution and headed by President Shehu Shagari was ousted by the military in December 1983, on charges of administrative incompetence and widespread corruption. This ushered in another long spell of military rule, until 1999, during which federalism was further subjugated to the unitary system that better suited the generals. There were also pressures for constitutional review, on the argument that the failures of the previous civilian regime were partly due to constitutional lapses. In 1987, General Ibrahim Babangida's government, as part of its program of transition to civil rule, revised the 1979 constitution, but the ink had barely dried when the crisis precipitated by Babangida's annulment of the 1993 presidential elections led to a complete relapse to military rule. In 1994, General Sani Abacha's government convened another CRC, again as part of a program of return to civil rule, but due to Abacha's sudden death in June 1998, the new constitution was only promulgated in 1999, by General Abdulsalami Abubakar's government, on the eve of its departure from power.

The 1999 constitution, which is still in force, has been widely criticised for maintaining its predecessor's legacy of military meddling and lack of public consultation, its highly centralised nature and the accompanying diminution of state and local power. In October 2000, Sylvester

Akhaine, executive director of the Centre for Constitutionalism and Demilitarisation (CENCOD) summed up the views of many, calling it grossly deficient in addressing political realities: "The Constitution subverts the federal principle in its overt empowerment of the centre, leaving the states prostrate and atrophied in terms of power relations and control of resources".

On 21 February 2005, the Obasanjo government, bowing to public pressure, convened a National Political Reform Conference (NPRC), with 400 government-approved representatives of ethnic and interest groups, to make recommendations for a constitutional review. Obasanjo expressed hope it would provide "opportunity to reassess, refocus, redefine and redesign our political landscape in a direction that would strengthen the bonds of unity [and] enhance the process of democratic consolidation..." The conference, which sat until 11 July 2005, received 705 memorandums from ethnic and other interest groups across the country and produced 185 recommendations. Even so, it ended in controversy over two key issues: allocation of revenue from the Federation Account and the tenures of the president and state governors.

On the first issue, delegates from the South-South zone (which includes the Niger Delta) argued for a minimum of 25 per cent and walked out when other groups refused to concede any more than 17 per cent. The second was even more harmful to the constitution review process. A few weeks into the conference, Obasanjo loyalists, including Professor Jerry Gana, then his political adviser, and Ojo Maduekwe, national secretary of the ruling Peoples Democratic Party (PDP), attempted to introduce a controversial amendment which would have increased the presidential and gubernatorial terms from four years with possible re-election to six years. This was widely seen as a ploy to extend Obasanjo's time in office by two years after his current term expires in May 2007. From that point onward, the entire review process became highly suspect.

Suspensions were further heightened when, despite the NPRC's rejection of longer terms, the Joint Constitution Review Committee (JCRC) of the bicameral federal legislature, chaired by the deputy senate president, Ibrahim Mantu, a strong Obasanjo loyalist, again included the proposal in its own recommended amendments. That led to resounding defeat of the entire bill in the Senate on 16 May 2006, leaving the country with the constitutional defects that had been so clearly identified by many parties since 1999.

The return to democracy in 1999 was expected to provide a framework for addressing such issues but as enormous sums of money, the vast majority derived from Niger Delta oil, flow to the capital, the competition for access to the centre's revenue has perverted politics and cultivated

<sup>16</sup> This occurs even while some Ijaw militants demand more states for their ethnic territory.

<sup>17</sup> Crisis Group interview, academic, Abuja, 20 April 2006. Though the constituent assembly expressed a preference for retaining the parliamentary system, a U.S.-style presidential system was introduced. Suberu, *Federalism and Ethnic Conflict*, op. cit., p.37.

a concept of citizenship that is almost entirely about entitlements. Although the failure to devolve powers to state and local governments by successive military and civilian regimes has fashioned a flawed federalist structure, simply passing more authority and money down to the state and local levels would not produce a more stable democracy. Poor governance is pervasive at all levels. Unless there is more responsible and accountable political leadership, devolution will not ensure that all communities have a voice in the country's fate.

Nevertheless, many of Nigeria's internal conflicts are manifestations of the structural and political flaws of its federalist framework. This report examines three specific crises and how the manipulation of constitutional provisions has helped fuel them. The heated debates over control of resources and allocation of revenues, as well as the environmental abuse and neglect visited upon the Niger Delta over four decades, have spawned the youth militancy and gangland-style violence that grips the region. The application of the federal principle, which has historically emphasised "indigeneity" at the expense of residency, has legitimised a logic that fuels Plateau State's inter-communal violence and less-reported conflicts elsewhere.

The sense of political marginalisation and economic deprivation among ethnic groups, the government's encouragement of ethnic and religious identity politics and the deepening problems of the security sector have all contributed to the rise of ethnic militias, religious vigilantes and separatist groups in various parts of the country. A common feature of these groups is that they owe little or no allegiance to the Nigerian state; some call for the outright break-up of the federation.

The Nigerian government cannot resolve these dilemmas by skirting the issue of resource control, trying ethnic militia leaders for treason and otherwise assuming that the army and federal police can contain the internal tensions. Failure to address the core issues that have fuelled these crises risks proving the "prophets of doom" right.

### III. CRISIS IN THE DELTA

#### A. RESOURCE CONTROL AND REVENUE ALLOCATION

The constitutional and legal frameworks for resource control and revenue allocation give ultimate power to the central government. After independence the 1946 Minerals Act, which vested control and ownership of all minerals in the colonial government, remained in force.<sup>18</sup> Under the 1960 and 1963 Constitutions, mines, minerals, oil fields, oil mining, petroleum surveys and gas were on the list that granted the federal government exclusive legislative authority. However, prior to the civil war, a generous derivation formula that sent 50 per cent of revenue from extracted minerals back to the original regions mitigated the effects of federal ownership. In addition, 30 per cent of derived revenue was shared equally among the federal units, including the mineral producing regions.<sup>19</sup>

The rise of the military regime prior to the civil war triggered the demise of that liberal derivation principle. Oil was discovered in 1956, and Biafra's attempted secession in 1967 threatened to take with it much of the oil-rich southern region. Consequently, the military government passed the Petroleum Act of 1969, which vested the Nigerian state with ownership of all oil and gas anywhere in the country, including its territorial waters and continental shelf. This was initially a war instrument against a secessionist regime but it was never repealed. In the eyes of many activists on the issue, the government thus continues metaphorically to wage war against the same oil-producing communities it sought to "liberate" during the Biafran war.<sup>20</sup>

Federal government ownership of the nation's natural resources is now enshrined in the 1999 Constitution, which states that "the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest

<sup>18</sup> The 1946 Minerals Act was updated by the Minerals and Mining Decree (1999), which states that the "entire property in and control of all minerals, in, under or upon any land in Nigeria, its contiguous continental shelf and of all rivers, streams and watercourses throughout Nigeria, any area covered by territorial waters or constituency, the Exclusively Economic Zone is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria", Chapter 1, Part 1, §1(1).

<sup>19</sup> Otiye Igbuzor, "Constitution Making and the Struggle for Resource Control in Nigeria", Citizens Forum for Constitutional Reform, 2001.

<sup>20</sup> Crisis Group interview, civil society representative, 1 May 2006.



in the Government of the Federation”.<sup>21</sup> The Nigerian National Oil Corporation was formed in 1971 by decree of General Yakubu Gowon, giving the federal government a direct stake in all production through majority shares of joint ventures with the foreign companies that actually operated the sites. In 1978, the Nigerian National Petroleum Corporation (NNPC) was formed, which increased the direct federal stake in most producing fields to 60 per cent and ensured federal control of concessions and exploration rights through the joint ventures. Some 95 per cent of Nigeria's crude oil production is produced through such joint ventures.

Federal land-use legislation has also strengthened government control of valuable resources. In 1978, the military government decreed the controversial Land Use Act, the terms of which were incorporated into the 1979, 1989 and 1999 Constitutions.<sup>22</sup> The 1979 Constitution (Section 40 (3)) declared all mineral and hydrocarbons legal property of the federal government. Land ownership rights were vested with state governors (then appointed by the military regime) to hold “in trust” for the people.<sup>23</sup> Communities were granted rights of occupancy, which the state and federal governments could revoke for “public purposes”. The Act eased the federal government's acquisition of community lands within the oil-producing regions for oil exploration and pipeline construction. However, while the original goal was to harmonise customary systems of land tenure and so make land more accessible for public purposes, it has instead deprived many communities of land ownership benefits.

The Act provides that revocation of a community's occupancy rights to enable the acquisition of land for public purposes must be compensated. However, compensation is based not on the economic value of the land but on the value of crops, buildings, installations, or improvements upon it at the time of acquisition.<sup>24</sup> The majority of communities in the oil-producing areas of the Niger Delta are comprised of subsistence farmers engaged in small-scale food and cash crop production, thus such communities receive minimal compensation for lands from which billions of dollars worth of oil and gas are subsequently produced. There remains much resentment in the Delta toward President Obasanjo for this

law, which was promulgated when he was military head of state.

Revenue allocation, as opposed to resource control, has often been the primary area of contention between state and federal officials. Revenue from national resources, mainly oil, is pooled into a Federation Account monthly and then allocated to the federal government, states, and local government areas (LGAs) according to a formula developed by the Revenue Mobilisation, Allocation and Fiscal Commission (RMAFC), a federal executive body.<sup>25</sup> The portion reserved for allocation to the states is divided according to principles such as population and inter-unit equity. As a result of unimaginative leadership and reliance on federally-allocated revenue as the easiest and most convenient source of regular funding, many states have become almost wholly dependent on these monthly transfers.

The derivation component has remained the most controversial issue in debates over the revenue allocation formula. Derivation requires that a certain percentage of revenue from natural resources be returned directly to the states from which the revenue was produced. Although derivation was as high as 50 per cent under the 1960 and 1963 Constitutions, the discovery and exploitation of oil in the Niger Delta, the Biafran secession attempt and the rise of centralising military regimes swelled the ranks of those who argued that the principle excessively favoured resource-endowed states and thus negated even development, inter-regional harmony and national unity.

By 1992, the federal government was keeping 48.5 per cent of all revenues in the Federation Account, while state and local governments were allocated 24 per cent and 20 per cent, respectively. Of the remaining 7.5 per cent set aside as special funds, only 3 per cent was earmarked for development of oil-producing areas, while another 1 per cent was shared among all mineral-producing states on the basis of derivation. Persistent objections from the oil-producing states, which viewed this as further proof of the federal government's persecution of the Niger Delta's ethnic minorities, elicited a concession which raised the derivation principle in the 1999 Constitution to “not less than 13 per cent of the revenue accruing to the Federation Account directly from any natural resources”.<sup>26</sup> In March 2006, the Joint Constitutional Review Committee proposed a constitutional amendment

<sup>21</sup> Constitution (1999), Chapter IV, §44 (3).

<sup>22</sup> Chapter VIII, Part III, §315 (5)(d) of the 1999 Constitution notes that: “Nothing in this Constitution shall invalidate...the Land Use Act, and the provisions of those enactments shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this Constitution...”

<sup>23</sup> Land Use Act, 1978, Part I §1.

<sup>24</sup> *Ibid.*, Part V, §29 (4).

<sup>25</sup> The RMAFC is empowered to review the revenue allocation formula and must submit proposed changes to the National Assembly for ratification. Constitution (1999), Third Schedule, Part I, 32 (b).

<sup>26</sup> Suberu, *Federalism and Ethnic Conflict*, op. cit, pp.66- 68.

to increase this to 18 per cent, still short of the 20-25 per cent sought by oil-state representatives.<sup>27</sup>

The application of the derivation principle to offshore revenue has also been a source of debate, albeit a diminishing one. In April 2002, in a case between the federal government and eight coastal states, the Supreme Court held that the derivation principle applies only to resources derived from the seaward boundary of coastal states, defined as a state's "low water mark of the land surface", or for archipelagos, the "seaward limits of inland waters".<sup>28</sup> This meant that the derivation principle would not apply to offshore oil resources. The 2004 Offshore/Onshore Oil Dichotomy Abolition Bill provided that the derivation principle does apply to offshore oil at a depth of less than 200 metres. However, little oil is produced within this limit, so the law has not significantly increased the revenues of oil-producing coastal states.<sup>29</sup>

## B. THE DELTA ON THE BRINK

*The idea by some is to hold the country together long enough to plunder the Delta. Every person of influence has an interest in the Delta, and it is that convergence of influences that has kept the country together.*<sup>30</sup>

The debate over resource control and revenue allocation is coming to a head in the desperately poor and underdeveloped southern oil region of the Niger Delta, where decades of peaceful protest have given way to violent militancy. An audit of the NNPC revealed that from 1999 to 2004, Nigeria amassed over \$96 billion in oil revenue.<sup>31</sup> Delta communities, however, have had little benefit. In 1994, the report of a federal government-constituted ministerial fact-finding team (MFFT) which toured the region observed that "basic facilities like roads, potable water, electricity, health care and education are completely absent in many communities and non-functioning in others where they exist... On the whole, the scale of physical neglect of the oil producing areas is enormous".<sup>32</sup>

The struggle, initially for a larger share of federally-allocated revenue and more recently for resource control, has become a potent rallying cry in the Delta, accompanied by the emergence of numerous pressure groups, including the Movement for the Survival of the Ijaw Ethnic Nationality in the Niger Delta (MOSIEND), the Ijaw National Congress (INC), the Ijaw Youth Council (IYC), the Itsekiri General Assembly, the Urhobo Union, and the Chikoko Movement, as well as the once prominent Movement for the Survival of the Ogoni People (MOSOP).<sup>33</sup>

In recent years, the demands have become more militant and radical, including calls for self-determination and even outright secession. In early 2004, the Niger Delta People's Volunteer Force (NDPVF), led by Alhaji Mujahid Dokubo-Asari, emerged from the mangrove swamps to threaten dissolution of the Nigerian state and all-out war against not only the oil companies but also the federal and state governments. Its activities destabilised oil prices and grabbed international headlines. In October 2004, the federal government granted an amnesty in a bid to subdue the group but in September 2005 it charged Asari with treason.<sup>34</sup>

Since Asari's incarceration, other militant groups have emerged, in particular MEND, a tactically astute and strategically coherent militia that is disdainful of old-line local leaders it believes have betrayed the Niger Delta communities.<sup>35</sup> It demands local control of oil wealth, Asari's release and compensation for oil pollution. A dramatic wave of attacks on oil installations in February 2006 reduced the country's oil output by about 25 per cent.<sup>36</sup> It kidnapped nine foreign oil workers, released them in March and promised renewed violence against oil facilities.

MEND has exhibited media and technical savvy: its email promises of attacks helped raise crude oil prices to \$70 a barrel. The Port Harcourt car bomb, its first move into urban areas, was detonated by cell phone. The availability of large quantities of small arms, the growing numbers of unemployed youth and the persistence of widespread dissatisfaction with the federal and state governments in the Delta are a lethal combination that

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<sup>27</sup> Crisis Group interview, member of house of representatives, Abuja, 21 April 2006.

<sup>28</sup> *Attorney General of the Federation vs. Attorney General of Abia State & 35 Ors*, Supreme Court of Nigeria, 5 April 2002.

<sup>29</sup> Crisis Group interview, human rights lawyer, Abuja, 18 April 2006.

<sup>30</sup> Crisis Group interview, lawyer, Abuja, 18 April 2006.

<sup>31</sup> Y. Ebosele, "Crude oil prices rise to \$71.40 per barrel; government makes N12.4 trillion in five years", *The Guardian*, 18 April 2006.

<sup>32</sup> Mudiaga Ofuoku, "The Bomb Is Ticking", *Newswatch*, Lagos. 17 May, 1999, pp. 9-10.

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<sup>33</sup> For discussion of armed struggle in the Niger Delta, see Crisis Group Report, *The Swamps of Insurgency*, op. cit.

<sup>34</sup> This reversal has made militias like MEND hesitant to trust government promises.

<sup>35</sup> Crisis Group interview, lawyer and civil society leader, Abuja, 19 April 2006.

<sup>36</sup> New offshore production came online around the same time, diminishing the effect on Nigeria's total crude production.

creates a fertile recruiting ground for MEND and other militant organisations.<sup>37</sup>

These include the Martyrs Brigade, which attacked the Banisede flow station belonging to Shell Petroleum Development Company (SPDC) on 15 January 2006, killing some fourteen people including the five army guards; the Niger Delta Liberation Army (NDLA) which in June threatened to assassinate the chairman of the Economic and Financial Crimes Commission (EFCC), Nuhu Ribadu, over the continued detention of the former Bayelsa state governor, Diepreye Alamiyeseigha, who is on trial for corrupt enrichment and money laundering; and the Coalition for Militant Action in the Niger Delta (COMA), which in July broke an alliance with the Joint Revolutionary Council<sup>38</sup> on the grounds that it had become "too soft and too tolerant with the leaders of Nigeria". COMA has said it will resume hostage taking but henceforth target local politicians and other high-profile Nigerians.

Oil theft is also rampant in the Delta.<sup>39</sup> This practice, known locally as "bunkering", takes its name from the technical term for loading crude oil into a tanker. Illegal bunkering ranges from the artisanal, in which ordinary citizens cut holes in pipelines to siphon off some of the oil, through the illicit filling of entire tankers, with profits accruing to influential individuals, including local politicians and community chiefs, leaders of militant groups and youth gangs, oil company staff and senior military officers. Indeed, large-scale bunkering could not occur without the complicity of powerful officials. Nigeria loses hundreds of millions of dollars – an estimated 5 per cent of its oil output – each year to bunkering.<sup>40</sup> Struggles among violent youth gangs for dominance of the illegal bunkering trade have added a further dimension to the conflicts in the region, just as the local communities,

forsaken by federal, state and local officials, often engage in deadly competition over the meagre development aid offered by oil companies seeking their cooperation for oil drilling and exploration.

Since 1999, the federal government has responded to the crisis with both developmental and military measures. One of Obasanjo's earliest actions was to propose establishment of a special development agency, the Niger Delta Development Commission (NDDC), which came into being on 21 December 2000, with a mandate to "offer a lasting solution to the socio-economic difficulties of the Niger Delta region" and "facilitate the rapid, even and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable, ecologically regenerative and politically peaceful". It reports that it has initiated over 2,000 development projects, including roads, bridges, hospitals, classroom blocks, university hostels, jetties, canals and shore protection facilities; embarked on over 300 electrification projects to help local small businesses; launched an agricultural program emphasising large-scale production and processing of cassava and rice; and trained over 6,000 youths.<sup>41</sup> Although these claims have been disputed, there is no doubt that NDDC has had some positive impact. But what it has delivered remains a distant cry from what the peoples of the region had expected and demand.

In 2001, the federal government created the Special Security Committee on Oil Producing Areas. Although its terms of reference were almost entirely security-oriented, it reported to Obasanjo on 19 February 2002 that the problem in the Niger Delta was primarily political and required political solutions that would subsequently translate into greater oil security.<sup>42</sup> It recommended a review of conflict-generating legislation such as the Land Use Act and Petroleum Act and increase of the derivation principle to 50 per cent.<sup>43</sup>

Implementation of these recommendations could have eased the simmering tensions in the Delta. The federal government, however, sat on them, probably in deference to pressures from political forces outside the region that have consistently rejected the notion that the oil and gas found there belong exclusively to the peoples of the Delta or that the region should receive any special compensation. This inaction suggested to many in the region that the

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<sup>37</sup> Crisis Group interview, government official, Abuja, 26 April 2006. Elected officials have allegedly distributed weapons to militias during prior election periods. In addition, youth militants have bought weapons with the proceeds from illegal oil bunkering and kidnapping oil workers. "Nigerian oil fuels Delta conflict", BBC, 25 January 2006.

<sup>38</sup> The Joint Revolutionary Council (JRC) consists of MEND, NDPVF and the Martyrs Brigade.

<sup>39</sup> See also Crisis Group Africa Report N°118, *Fuelling the Niger Delta Crisis*, 28 September 2006, especially section II.B.1.

<sup>40</sup> "Insecurity in Nigeria's oil Delta here to stay", Reuters, 23 March 2006. A July 2005 report estimates that the volume of stolen oil was as high as 200,000 to 3000,000 b/d in early 2004, falling to around 80,000 b/d during periods of relative stability, with a concomitant loss in revenue of at least \$1.5 billion over a year's time David Goldwyn and J. Stephen Morrison, "A Strategic U. S. Approach to Governance and Security in the Gulf of Guinea", Centre for Strategic and International Studies, Washington, July 2005, p. 3.

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<sup>41</sup> Obong Akpaekong, "Agency marks fifth year", *NewsAfrica*, London, 30 April 2006, p. 29.

<sup>42</sup> The committee was chaired by the army chief of staff, Lt. General A. O. Ogomudia. The rest of the committee was made up not of civil society and human rights groups, but of military men, governors, and representatives of the oil companies.

<sup>43</sup> "Report of the Special Security Committee on Oil producing Areas", submitted to the President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, 19 February 2002.

Obasanjo administration was continuing the same policy as previous governments, which systematically ignored the demands of the Niger Delta communities.

Faced with mounting violence in the region, President Obasanjo inaugurated a 50-member Consolidated Council on Social and Economic Development of Coastal States of the Niger Delta on 18 April 2006 and put forward what he described as a "Marshall Plan", which included a development program proposing creation of new jobs in the military and police forces and envisaged a \$1.8 billion motorway project. The Council, however, began with a serious legitimacy problem.

First, it comprises the governors of the coastal oil-producing states and other local elites – the same people the communities believe have failed them by squandering federal revenue transfers and pocketing money that should have been used to provide infrastructure and social services.<sup>44</sup> The failure to appoint leaders or representatives of credible civil society groups from the Niger Delta raised serious doubts about the government's sincerity.

Secondly, militant groups and ordinary citizens in the region found it insulting that Obasanjo offered jobs in the same security forces that have burned down villages and killed civilians in the oil-producing region over the years.<sup>45</sup> Other residents denounced the president's plan as offering too little too late. MEND rejected the plan as inadequate for not addressing its calls for resource control and denounced the "so-called Ijaw leaders who have made themselves a part of this fraud".<sup>46</sup> A civil society leader noted: "When people have modest demands and even those modest demands are not met, what they do is step up their demands. So, what would have satisfied people in the Delta five years ago would in no way satisfy them now".<sup>47</sup> The plan has also drawn strong criticism from the governments of Abia and Imo States, which are recognised as part of the Niger Delta in the NDDC Act but are excluded from the Council; they see the exercise as a ploy to undermine oil-state solidarity.

A day after Obasanjo opened the Council in Abuja, MEND detonated its first car bomb in Port Harcourt. On 29 April, it claimed responsibility for a second bombing that damaged fuel tankers and houses on the outskirts of Warri, Delta State. That same day, it issued a warning to

China, which had secured oil contracts during President Hu Jintao's state visit that month.

The government's response to violent attacks in the region, including the attacks by MEND and others, has been Operation Restore Hope, which involves deployment of a military joint task force (JTF). While the JTF has undoubtedly helped discourage inter-ethnic conflict and curb oil theft, its activities have sometimes resulted in destruction and death in poverty-stricken villages.<sup>48</sup> On 20 August 2006, in what looked like a case of mistaken identity or overzealousness, JTF personnel who were patrolling the creeks opened fire and killed nine Ijaw youths and an SPDC community liaison officer who, at the instance of the Bayelsa state government, had just negotiated the release of a kidnapped oil worker.

### C. TOWARD RESOURCE CONTROL

The emergence of organised armed groups like MEND in the Niger Delta has highlighted the differences between those who argue for increased revenue allocation to the states within the region and those who now demand that the region be allowed total control of its natural resources. The mainstream position advanced by the Delta's political class and its business and professional elites is that more money should go to the oil-producing states under an augmented derivation principle. The younger, more militant generation, which champions local control of the oil itself,<sup>49</sup> sees these people not as authentic representatives of the region but rather as self-interested beneficiaries of a corrupt system.

The federal government, which must also take into account the interest of non-oil states, has naturally been inclined to engage more with the political class and its business and professional allies, as evidenced by the composition of the Consolidated Council. Rejecting the more radical option, the government first ordered the training of military and intelligence officers as hostage negotiators<sup>50</sup> to deal with the activities of youth militants they dismiss as criminals and oil thieves.<sup>51</sup> In August

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<sup>44</sup> Crisis Group interview, human rights advocate, Abuja, 2 May 2006.

<sup>45</sup> Crisis Group interviews, Rivers and Bayelsa States, 24-30 April, 2006.

<sup>46</sup> "Militants reject new agenda for Niger Delta, Threaten to resume new attacks", *The Guardian*, 20 April 2006.

<sup>47</sup> Crisis Group interview, Abuja, 19 April 2006.

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<sup>48</sup> The JTF's tactics are sometimes, though not always, extreme. Its response to MEND's threats, for example, has been relatively muted in comparison with the way "Operation Hakuri" in 1999 employed massive reprisals against communities in which security personnel had been killed, such as Odi (Bayelsa State) and Choba (Rivers State).

<sup>49</sup> Crisis Group interview, government worker, Abuja, 26 April 2006.

<sup>50</sup> K. Omonobi and N. Onuora, "FG orders training of hostage negotiators", *The Vanguard*, 9 May 2006.

<sup>51</sup> Crisis Group interview, international observer, Abuja, 18 April 2006.

2006, Obasanjo ordered the security forces to crack down more vigorously on all militant elements in the region.

Even if the moderate position prevails and the derivation principle is increased to 50 per cent, it is questionable how much effect there would be on the living conditions of average citizens. This is because of the widespread corruption and lack of accountability, not only in the federal government but even more so at state and local levels. In 2004, when the 36 states received over \$6 billion from the Federation Account, nearly a third went to the four major oil-producing states<sup>52</sup> but despite this influx of annual revenue, local communities in the Niger Delta continue to live in villages that often lack basic infrastructure and services because of systematic looting of funds by federal, state and local officials. With a population of at least twenty million, the per capita share of nearly \$2 billion is relatively low, and those states can ill afford the siphoning off of large amounts.

It is not unheard of for local officials to receive the monthly federal allotment and then disappear until the next federal allotment is due.<sup>53</sup> A civil society leader noted:

The federal government is involved in the draining of blood from the states to which it then gives a transfusion but this transfusion becomes contaminated along the way. When states and local governments ask the federal government for more money, people do not feel entitled to ask their leaders for accountability.<sup>54</sup>

There is a political culture that presses for equal ethnic access to plum government posts and revenue (especially at the federal level) but at the expense of demands for democratic governance and accountability of representatives at all levels of the system. Communities entrust political leaders to fight on their behalf for a bigger piece of the federal cake while turning a blind eye to their corrupt practices. Deepening poverty in the country is bringing with it strong feelings of betrayal. Nevertheless, the mass impoverishment over the last two decades has disempowered most communities, shutting citizens out of any meaningful participation in questioning their leaders. A long-time political observer noted: "People can't afford to buy newspapers or phone cards to phone into radio talk shows, so a lot of ordinary men and women cannot be heard. The power of public opinion that can act as a check on leaders is absent".<sup>55</sup> Accountability also suffers because of compromised state legislatures

that fail to check the powers of governors, as well as state political and security machines that attempt to silence civil society groups.

If the crisis in the Niger Delta is to be resolved, the debate must move beyond resource allocation and derivation to resource control. Civil society representatives and academics in Nigeria have argued that granting the states full ownership of natural resources while simultaneously strengthening and enforcing anti-corruption laws would encourage a healthier federalism and enable more resources to reach the grassroots.<sup>56</sup> There is some merit in this but proponents often gloss over monumental state-level theft. The federal government tends to be characterised as the lead villain in the federalist experiment – it has indeed usurped too much power – but the states are as much to blame for the poverty that cripples communities throughout the country, most starkly evident in the Niger Delta.

For decades, human rights and civil society organisations in the Niger Delta peacefully pressed the government for greater local control of resources. Their non-violent activism was met with either disregard or violent retaliation, as evidenced by the 1995 execution of the Ogoni rights activist Ken Saro-Wiwa.<sup>57</sup> In response to increasing militancy, the federal government must now find a way to come to terms with this demand. Even if it does not like the faces or approve the tactics of its proponents, it needs to articulate a long-term plan to vest significant resource control with the communities in the region.

Some Nigerians, especially from non-oil producing areas, are concerned that any government attempt to engage in dialogue with youth militants in the Delta risks legitimising violence.<sup>58</sup> The point that needs to be borne in mind, however, is that MEND and other youth militias are comprised of individuals with varying motives, from thuggish criminals to activists genuinely motivated by political principles of fiscal federalism and local empowerment. The growing coherence of the message from these militants and the increasing coordination of their activities appear to result from the fact that, alongside the thuggery and organised crime, is a good measure of principled political action. Although the government and civil society should condemn violent tactics, especially those that cost human life, those tactics should not invalidate the message of need for greater local control of resources.

<sup>52</sup> "Blood and Oil", editorial, *The New York Times*, 16 April 2006.

<sup>53</sup> Crisis Group interview, government worker, Abuja, 26 April 2006.

<sup>54</sup> Crisis Group interview, Abuja, 19 April 2006.

<sup>55</sup> Crisis Group interview, Abuja, 26 April 2006.

<sup>56</sup> This would probably entail some change in the role of the NNPC as well.

<sup>57</sup> For more on the Ken Saro-Wiwa episode, see Crisis Group Report, *The Swamps of Insurgency: Nigeria's Delta Unrest*, op. cit.

<sup>58</sup> Crisis Group interviews, Abuja, April 2006.

Under the new revenue allocation formula the RMAFC is still working on, the government should immediately raise derivation to 25 per cent while working out the details of a new resource control scheme. Once a new resource control framework is in place, derivation should be abolished completely. Under such a framework, the government should vest 50 per cent of ownership of natural resources by law in the states in which they originate, 50 per cent in the federal government, with a percentage of the revenue accruing from the federal government's share to be split among the states and local government areas (LGAs).

Local disbursement of funds should be the primary goal of this arrangement. States should split one-third of the revenue accrued from state ownership among the state government and LGAs and pass the remaining two thirds directly to incorporated development trusts at the local level. Mechanisms should be created to ensure public control and accountability at the state level. There should be no cash transactions: each community should incorporate its development trust and hold bank accounts so as to create paper trails.<sup>59</sup>

Such a refashioned resource control regime is imperative in Nigeria's present political circumstances, particularly the deepening crisis in the Niger Delta. Too much too soon would risk internal destabilisation by the non-oil states, but too little too late would play into the hands of the militants, whose immediate goal is to shut down oil production so as to starve the central government of funds.

A resource control framework placing increased emphasis on local control would inevitably hurt the non-oil states for a time, because three decades of oil-centric revenue allocation has crippled their economic creativity and discouraged incentives to generate revenue internally.<sup>60</sup> Only Lagos State supports itself through internally raised revenue. To minimise the dislocation, the federal and state governments should cooperate to help the non-oil states develop other revenue-generating means.

There are already nascent efforts in this direction. The ministry of solid minerals has begun a privatisation drive by pre-qualifying 60 national and international investors who have expressed interest in bitumen, coal, and other mining properties in Enugu, Benue, Kogi, Ondo, Ogun, and Delta States.<sup>61</sup> As the solid minerals sector

development drive gains momentum, the government must also work to avoid the types of community disenfranchisement that have accompanied oil exploitation in the Niger Delta.

The federal government should also ensure that local communities are no longer divorced from the resources originating in their home areas. The first step in guaranteeing greater local control of resources should be to heed the call for reform of the Land Use Act of 1978 and repeal both the Minerals Act and the 1969 Petroleum Decree.

Proposals to remove mines and minerals, including oil fields, oil mining, and natural gas, from the list of subjects reserved for exclusive federal legislation and place them entirely under state control, however, are not realistic. Even with the payment of significant taxes into the Federation Account by the oil-producing states, such a drastic move would destabilise the country. Too many states are presently wholly dependent on the allocation of oil-derived revenues, and so radical a restructuring could spark revolt. "People will go to war before they let the oil-producing states take all the oil", a security analyst warns.<sup>62</sup> A further reason for not touching the exclusive legislative list is to ensure that the federal government can continue to pass resource control legislation guaranteeing uniformity across the country.

Meanwhile, the federal government should de-emphasise the military option in addressing the problems of the Niger Delta. While its army would most likely eventually win any all-out war against the militants, it would be naïve to believe the conflict would be quick and easy in the labyrinthine creeks of a region awash with weapons and cadres of unemployed, enraged youths. Military crackdowns would inevitably result in death and destruction among civilians and push many fence sitters into the militant camp. As the chief of the defence staff, General Martin Agwai, once observed, the crisis in the Niger Delta "is not purely military. It is more of a civilian crisis".<sup>63</sup> The present chief of the army staff, Lt. General Andrew Azazi, concurs that "the problem in the Niger Delta is a governmental problem, not an army problem".<sup>64</sup> The solution must be found not in further militarisation but in the reform of Nigeria's federal

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<sup>59</sup> A subsequent Crisis Group report will discuss in more depth such community development corporations, some of which are already operating successfully in the Delta region.

<sup>60</sup> Crisis Group interview, human rights lawyer, Abuja, 18 April 2006.

<sup>61</sup> O. Ezigbo, "105 firms jostle for mining assets", *This Day*, 24 April 2006; O. Ezigbo, "FG pre-qualifies 60 firms on mining assets bidding", *This Day*, 2 May 2006. There are hints

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of possible oil finds in the country's poor north-eastern corner, around the Lake Chad basin. Oil fields there would be a continuation of those being exploited in southern Chad. Exploration is also ongoing in neighbouring areas of Niger.

<sup>62</sup> Crisis Group interview, Abuja, 26 April 2006.

<sup>63</sup> "Military will restore peace to Warri, says Army Chief", *The Guardian*, 5 September 2003, p. 7.

<sup>64</sup> Onome Osifo-Whiskey and Dayo Aiyetan, "Niger Delta: My Dilemma", *TELL* (Lagos), 11 September 2006, p. 22.

system to ensure greater equity, justice and development for the peoples of the Niger Delta.

That solution must also include measures to curb corruption and promote good governance. The federal government needs to enhance accountability in the region by increasing the presence, visibility and effectiveness of such agencies as the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC), which themselves need to engage more actively with credible civil society organisations that are already playing a watchdog role over the use of public funds. Passage by the legislature of the Nigerian Extractive Industries Transparency Initiative bill and its robust implementation could potentially greatly reduce corruption and increase public awareness of the uses of hydrocarbon revenues.

#### IV. INTER-COMMUNAL CONFLICT IN PLATEAU STATE

##### A. THE FEDERAL CHARACTER PRINCIPLE AND "INDIGENEITY"

Like many Sub-Saharan African nations, Nigeria grapples with the challenges of accommodating diversity, fostering inclusiveness and promoting national unity, not only among its numerous ethnic groups, but also across religious and gender lines. Among its strategies has been an "ethnic balancing arrangement" known as the federal character principle, a type of quota system to redress regional and ethnic disparities, ensure equal access to educational and public sector employment opportunities and promote equal access to resources at the federal, state and local levels. However, the flawed application of this principle by marrying citizenship and representation to the controversial concept of "indigeneity" or "state of origin", has promoted exclusion rather than inclusion.

The federal character principle is constitutionally entrenched and stipulates that:

The composition of the government of the federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in the Government or any of its agencies.<sup>65</sup>

Introduced in the 1979 Constitution, the principle applies equally to government agencies at the state and local government levels.<sup>66</sup> General Mohamed had instructed the 1976 CDC to explore a quota system to ease educational and employment disparities between different parts of the country. This was against a historical background in which British colonisers had emphasised Western education in the South, while northern religious and political leaders had emphasised Koranic education, creating a legacy of inequality in terms of qualification for gainful employment in the modern public sector. Mohamed, himself a Northerner, felt the need to address the imbalance.<sup>67</sup>

The CDC debated the merits and drawbacks of an "ethnic-balancing" principle in education, employment and access to national resources. Some supported this as a way to

<sup>65</sup> Constitution (1999), Chapter II, §14 (3).

<sup>66</sup> Ibid, Chapter II, §14 (4).

<sup>67</sup> Crisis Group interview, political scientist, Abuja, 26 April 2006.

temper inter-ethnic rivalry in the central government. Others countered that the constitution's guarantees of equality already were sufficient to protect the interests of all. The CDC eventually agreed on "federal character" as an inoffensive compromise, whose acceptance "lay partly in its novelty, partly in its cosmetic character, partly in its rhetorical appeal, but above all in its vagueness".<sup>68</sup> The definition of the concept as a "distinctive desire of the peoples of Nigeria to promote national unity, foster nationality, and give every citizen a sense of belonging to the nation" was included in the 1979 Constitution.<sup>69</sup>

Implementation has been imprecise and polarizing, with the rights of so-called "indigenes" of a state being recognised to the exclusion of those of other residents, often referred to as "non-indigenes" or "settlers". The 1979 Constitution defined an indigene of a state as a person whose parents or grandparents historically originated from a community within that state.<sup>70</sup> At the state level, the principle was applied to those deemed to be indigenes of an LGA within the state.<sup>71</sup>

While the principle was introduced into the federal public service in 1979, no institution was mandated to monitor implementation until the Federal Character Commission (FCC) was created in 1996, mandated to "promote, monitor and enforce compliance with the proportional sharing of all bureaucratic, economic, media, and political posts at all levels of government".<sup>72</sup> The FCC's charter requires it to guarantee that the "best and most competent candidates from the federating units nationwide are employed to fill vacant positions meant for indigenes of such units".<sup>73</sup> Foreshadowing the problems ahead, there were immediately charges that the FCC itself did not reflect the federal character because its chairman and secretary were both Northerners.<sup>74</sup>

In practice the principle has "created a ripple effect of exclusion" by legitimising the concepts of indigene and

non-indigene.<sup>75</sup> The "Indigeneity Clause" in the 1999 Constitution explicitly ties the federal character principle to indigeneity. Thus, "in giving effect to the provisions aforesaid the President shall appoint at least one Minister from each State, who shall be an indigene of such State".<sup>76</sup> Thus, no matter the length of an individual's residency in a state, the president might not be able to include him or her in the cabinet unless that person can prove indigeneity.<sup>77</sup>

The 1999 Constitution endorsed indigeneity as a legitimate basis on which to make political claims and created justifications for indigene communities, along with state and local officials, to deny non-indigenes equal rights.<sup>78</sup> Although the constitution guarantees all citizens freedom from discrimination and freedom of movement,<sup>79</sup> the twin concepts of federal character and indigeneity have created a paradoxical constitutional justification for discrimination against those whose forebears may have migrated from their alleged "state of origin". In the competition for limited educational and increasingly scarce employment opportunities, claims to indigeneity have become the basis for excluding potential competitors.<sup>80</sup>

To claim indigene status is to demand entitlements to certain benefits. Indigeneity has accordingly become yet another method of fashioning artificial boundaries between communities. It has taken on a life of its own, especially at the state and local levels, where implementation of the federal character principle has been most contentious. Nowhere has the clash between indigenes and settlers played out more violently than in Plateau State, once promoted as the "home of peace and tourism", now a hotbed of inter-communal clashes and bloodshed.

## B. PLATEAU PLUMMETING

Since 1999, inter-communal clashes in various parts of the country have displaced over three million and led to the deaths of more than 14,000.<sup>81</sup> Once peaceful Plateau State, home to over 40 ethno-linguistic groups and 3.5 million

<sup>68</sup> A.E. Afigbo, *Federal Character Principle: Its Meaning and History* (Owerri, 1986)

<sup>69</sup> Ibid.

<sup>70</sup> Constitution (1979), Chapter VIII, Part IV, §277.

<sup>71</sup> Crisis Group interview, political scientist, Abuja, 26 April 2006.

<sup>72</sup> Constitution (1999), Third Schedule, Part I, §8 (1) (b), incorporating the provisions of Decree 34 (1996).

<sup>73</sup> Federal Character Commission, Charter, Functions/Targets § ii. It is also mandated to publish the percentage of state indigenes in public agencies, but rarely does so. Crisis Group interview, civil society leader, Abuja, 19 April 2006.

<sup>74</sup> The chairman was eventually replaced. J.A.A. Ayoade, "The Federal Character Principle and the Search for National Integration", in K. Amuwo, A. Agbaje, R. Suberu, G. Héroult (eds.), *Federalism and Political Restructuring in Nigeria* (Ibadan, 1998).

<sup>75</sup> Crisis Group interview, civil society representative, Abuja, 19 April 2006.

<sup>76</sup> Section 147.

<sup>77</sup> Sam Egwu, "The Challenge of Citizenship and Residency Rights in the Nigerian Constitution", in O. Igbuzor and J. Ibrahim (eds.), *A Citizens' Approach to Making a People's Constitution in Nigeria* (Lagos, 2005).

<sup>78</sup> Nabile Isa-Odidi, "Ethnic Conflict in Plateau State: The Need to Eliminate the Indigene/Settler Dichotomy in Nigeria", *Human Rights Brief*, Vol. 2, Issue 1, 2004.

<sup>79</sup> Constitution (1999), Chapter IV, §§41-42.

<sup>80</sup> Crisis Group interviews, political scientist and government worker, Abuja, 26 April 2006.

<sup>81</sup> "Violence left 3 million bereft in past 7 years, Nigeria reports", Reuters, 13 March 2006.



people, is now the setting for recurring violence and has recorded the highest number of internally displaced persons (IDPs) in the country since the return of civilian rule in 1999.<sup>82</sup> While an estimated one million Nigerians were displaced by internal conflicts between 1999 and 2004, fighting in Plateau State between February and May 2004 alone generated some 250,000 IDPs. Many of its inter-communal clashes begin as struggles for political control of LGAs, access to land and competition for other resources and are fuelled by the entrenched bias of local and state officials who have crafted policies that favour indigenes and deny non-indigenes opportunities for educational advancement and civil service jobs. These officials also accept the exclusion of non-indigenes from political life and continually demonstrate anti-settler bias in the provision of social welfare services.<sup>83</sup>

Since 2001, violence between indigene and non-indigene communities in Plateau State has killed thousands. In the 2001 "Jos Crisis", the appointment of a Hausa politician to a state-wide post in a federal poverty eradication program sparked clashes that cost over 1,000 lives between indigenes, who are mostly Christian, and the Hausa non-indigenes who, along with the Fulani and Jarawa, are mostly Muslims. Christian groups argued that their status as indigenes entitled a member of their community to the state appointment.

Violence erupted in 2002 and 2003 in Wase between predominantly Christian Tarok farmers on one side and Muslim Hausa communities and Fulani cattle herders on the other. Hundreds were killed and 72 villages were burned to the ground. The Tarok, who claim indigeneity, call the Hausa and Fulani intrusive settlers and accuse them of attempting to seize political power. The bloodshed continued in 2004, when a Tarok-Hausa disagreement over local elections claimed twenty lives. It escalated in May of that year when the Tarok and other Christian groups claiming indigeneity all but destroyed the town of Yelwa, burying hundreds of Muslim Jarawa in a mass grave and driving thousands from their homes. The Christian indigene groups regard the Jarawa as interlopers attempting to claim benefits to which they were not entitled.

On 18 May 2004, President Obasanjo declared a state of emergency in Plateau State for six months, suspending the elected Governor Joshua Dariye (accused of incompetence) and replacing him with retired General Chris Alli, a former chief of army staff. This was accompanied by several efforts to prevent the recurrence of violence, such as a weapons collection program, reconciliation meetings involving

local and religious leaders and a state probe of the conflict by a commission of inquiry. Nevertheless, fighting again erupted in April 2006. In Namu village, in the Quaan Pan LGA, 25 miles from Yelwa, the Gomai and Pan ethnic groups, including the Doemack and Kwalla, were engaged in a simmering dispute over location of a new state-run special development area. Although the Pan conceded they migrated to the community and were given land by the Gomai, they maintained that their majority status necessitated the designation of this area as a Pan town. The Gomai sought administrative autonomy and claimed their status as original inhabitants entitled them to their own exclusive special development area.<sup>84</sup>

After a Gomai man took sand from a riverbed in Namu in an area claimed by the Pan, the dispute turned violent. Gomai believed they did not have to ask permission, arguing that their indigene forebearers had granted Pan settlers use rights, not ownership of the land in the area. Pan attacks spread to Shendam, where Gomai responded with reprisal killings. Machete-wielding and gun-toting ethnic militias ran wild. Three days of communal clashes left over 100 people dead, 8,000 displaced, and 200 Pan militants arrested.<sup>85</sup>

By designing policies that identify Hausa, Fulani and Jarawa communities as settlers in order to exclude them from state-sponsored benefits, leading politicians have advanced the notion of Plateau State as the embodiment of Christian indigene emancipation from the Hausa-Fulani domination of the former Northern Region. Plateau State was created in the state proliferation of 1976 partly as a concession to agitation by Middle Belt ethnic minorities who complained of political domination by the Northern Hausa and Fulani. Christians dominate state and local political positions, and their pro-indigene policies curry favour with Christian indigene communities who harbour a sense of entitlement to government resources.<sup>86</sup>

Claims to indigeneity carry great weight but it is often difficult to discern which communities are indigenous to certain areas and which were migratory. As elsewhere in West Africa, populations are the result of successive waves of migration, intermarriage and the mixture of ethnic groups. The groups that claim indigene status are often themselves migrants who arrived just before those they call settlers. The histories of different ethnic groups are politically charged and hotly debated. The Tarok claim indigeneity to exclude Jarawa, Hausa, and Fulani but some have argued that they too were migrants to the areas they now claim. Hausa and Jarawa communities, many of whose ancestors migrated to the Middle Belt almost two centuries ago,

<sup>82</sup> "Nigeria: 800,000 internally displaced across country - refugee agency", IRIN, 2 January 2004.

<sup>83</sup> "They Do Not Own This Place", Government Discrimination Against 'Non-Indigenes' in Nigeria", Human Rights Watch, 25 April 2006.

<sup>84</sup> Crisis Group interviews, Plateau State, May 2006.

<sup>85</sup> Crisis Group interviews, Plateau State, May 2006.

<sup>86</sup> "Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States", Human Rights Watch, 25 May 2005.

vigorously contest the historical narratives and labels used to exclude them. "It is all about power relations", says a Nigerian political scientist. "The people who are already in power often define others as outsiders, but if you apply the same historical narrative to these communities you will find that they themselves do not pass the test as insiders".<sup>87</sup>

### C. REDEFINING CITIZENSHIP

In the context of Nigeria's diversity, a constitutionally-based tenet that seeks to foster inclusiveness is a worthy ideal.<sup>88</sup> But the federal character principle, as construed and implemented, legitimises a logic that fuels ethnic hostilities and recurrent bloodshed in places like Plateau State. There is a compelling need to divorce citizenship and entitlement from indigeneity in order to stem the discrimination of communities perceived as settlers.

As a growing number of Nigerians migrate to and reside in locales outside their states of origin in pursuit of economic and educational opportunities, increasing numbers no longer live within the LGAs where they would technically be considered indigenes. Thus, the definition of indigeneity strictly in terms of state of origin is more and more seen as self-defeating, because it relegates a large portion of the population to de facto second-class citizenship.<sup>89</sup> Many argue that residency, as opposed to indigeneity, should now be recognised as the basis of state citizenship and entitlement to government benefits.

As early as 1980, Dr Nnamdi Azikiwe, the first titular president of Nigeria, urged the introduction of such a principle into the national discourse:

In Nigeria, we are bedevilled by the fractious idea of "State of Origin" which encourages discrimination against Nigerian citizens in Nigeria. To me, this practice will not ensure peace and stability. It will disturb, and indeed it has disturbed, the political equilibrium in Nigeria particularly in the distribution of scholarships, admissions into schools, employment opportunities, allocation of land, etc. What should be done without equivocation in order to avert disequilibrium in Nigerian federalism is to abolish the idea of "State of Origin" and substitute in its stead the principles of domicile.<sup>90</sup>

Azikiwe argued that the government should not strip any Nigerian of the benefits of state citizenship by a principle as dubious as indigeneity. Any person who had resided in a state for at least two years without intention to change domicile and so was eligible to pay taxes and vote there should enjoy the full benefits of its citizenship, he said.<sup>91</sup>

In 1976, Dan Suleiman, then governor of Plateau State, proffered what was locally known as the "Suleiman Principle": any Nigerian born in Plateau State or who had resided there for twenty years should enjoy native privileges. Had his principle succeeded, indigene rights would have been extended to the Hausa, Fulani and Jarawa communities that had migrated to the state as far back as the early nineteenth century.<sup>92</sup>

In 1986, the political bureau the Babangida government set up to explore a new constitutional framework expressed great doubt over the link between the federal character principle, government entitlements and indigeneity. Calling for urgent reform of the indigeneity concept as interpreted by the 1979 Constitution, it said that tying citizenship to indigeneity was akin to the situation under colonial rule when, in some Northern cities, Nigerians from elsewhere (especially the largely Christian south) were labelled "native foreigners" and permitted to live only in the outer settlements,<sup>93</sup> not with the natives. The bureau therefore recommended laws to guarantee any Nigerian born in a state or resident in a state for at least ten years the same rights as those enjoyed by indigenes of that state.<sup>94</sup>

More recently, the Citizens' Forum for Constitutional Reform (CFCR), a coalition of over 60 civil society organisations, has also urged a new interpretation of residency rights. It argues that governmental legitimisation of indigeneity has undercut "the notion called Nigeria" and recommends tying citizenship to five-year residency.<sup>95</sup>

In line with such recommendations, the government should initiate reforms to strengthen the foundation of the federal character principle by replacing indigeneity with residency. Some concerns have been expressed that the use of residency instead of indigeneity as the appropriate basis for applying the federal character principle might create new problems, in particular a situation in which the president, while superficially complying with the constitutional requirement to appoint one minister from each state of the federation, could select a cabinet dominated by members of his own ethnic group, spread across a number of states. This

<sup>87</sup> Crisis Group interview, Abuja, 26 April 2006.

<sup>88</sup> Crisis Group interviews, Abuja, April 2006.

<sup>89</sup> Crisis Group interview, civil society leader, Abuja, 19 April 2006.

<sup>90</sup> A. Oye Cukwurah, *Citizens, Nationalities, Indigenes and Settlers: The National Question in Nigeria's Search for One Indivisible and Indissoluble Sovereign State* (Abuja, 2004).

<sup>91</sup> Ibid.

<sup>92</sup> A.E. Afigbo, *Federal Character Principle*, op cit.

<sup>93</sup> In Hausa these were known as *sabongari*.

<sup>94</sup> A.E. Afigbo, *Federal Character Principle*, op cit.

<sup>95</sup> Crisis Group interviews, Citizens' Forum for Constitutional Rights representatives, Abuja, 19-26 April 2006.

possibility exists in theory but its real life occurrence is virtually impossible given the provision of Section 147(2) of the constitution that every ministerial nominee must be scrutinised by the Senate, whose members are elected from all parts of the country.

Furthermore, as the objective of the federal character principle was to ensure greater inclusiveness and equitable representation of all components of society, there is an imperative to strengthen its application by introducing a long-overdue gender element. Section 14 (3) of the constitution highlights state, ethnic and sectional distinctions as targets for balancing within the government and its agencies. Gender, however, about which there is copious documentation of under-representation and outright discrimination, is glaringly absent. It is surprising that equal representation of women has received such scant attention in the debate. A leading Nigerian human rights expert calls "the lack of gender...one of the great fallacies of the federal character principle".<sup>96</sup>

Women are routinely under-represented at all levels of government. According to the 1991 census, they constitute 49.6 per cent of the population but in 2001 they held less than 2 per cent of the country's top political positions.<sup>97</sup> The Obasanjo administration, since 1999, has appointed women to lead important ministries such as finance, foreign affairs, transport and solid mineral development, and also to the deputy position in other ministries such as defence, science and technology. These appointments are unprecedented in the country's history but to improve gender balance in the governmental structure in a systematic manner, there is need to amend Section 14 (3) of the constitution to specify gender as one of the guiding elements of the federal character principle.

The government should also fortify and expand the Federal Character Commission's (FCC) mandate by amending its 1996 constituent act. Civil society groups and other observers often dismiss the FCC as a politicised body that serves a narrow monitoring role but does not provide redress for those who feel wrongly excluded from government benefits.<sup>98</sup> Individuals and organisations and agencies acting on behalf of individuals should be allowed to file complaints with the FCC regarding misapplication of the federal character principle. It should then investigate, mediate disputes, dismiss spurious claims or bring discrimination suits in federal court. Once the constitution is appropriately amended, it should also focus on gender equity.

## V. MILITIAS, VIGILANTES AND SEPARATISTS

### A. NATIONS WITHIN A NATION

Federalism is meant to nurture strength in the centre by fostering a sense of belonging among diverse constituencies. Yet, in spite of their adherence to a federal system of government since independence in 1960, Nigerians still lack an enduring sense of national identity. Most citizens feel betrayed by corrupt state and local officials, and ignored by the distant central government in the new capital of Abuja. The failure of political leadership at all levels has created the conditions for ethnic identity-politics to flourish. Many communities retain primary allegiance to their ethnic groups because the federal experiment has not produced a viable alternative.

The allegiance to ethnicity is also a by-product of the colonial legacy, which bestowed upon independent Nigeria an unmanageable three-region federation carved along the fault lines of its major ethnic groups. The tri-partite struggle for power among the Hausa, Yoruba and Igbo has spawned a recurrent narrative of marginalisation and exclusion that stereotypes the Hausa as monopolisers of political power and the Yoruba and Igbo as beneficiaries of Western education. The hundreds of minority ethnic groups, largely shut out of this contest, remain embittered by their status as second-class citizens. Although the Yoruba and Igbo, and increasingly the Ijaw, have often expressed resentment over perceived political marginalisation, many ethnic minorities view them as bullies who have received more than their fair share of the nation's wealth.

Nigeria has adopted a political system that subordinates demands for good, democratic governance to demands for ethnic equity and a bigger slice of the federal cake.<sup>99</sup> This advantages elites at all levels of government and in all ethnic groups, who loot the country's wealth while marginalised members of the various ethnic groups squabble over what is left. Political elites have had a vested interest in encouraging the politics of ethnic identity because it shifts the focus from structural challenges and the failings of individual leaders to a blame game that stereotypes entire groups. The lack of democratic space and the poverty of public discourse, compounded by security sector shortcomings, the increasing number of young adults without meaningful education and jobs and the proliferation of small arms, have contributed to the emergence of ethnic militias, community protection forces

<sup>96</sup> Crisis Group interview, Abuja, 2 May 2006.

<sup>97</sup> Otiye Igbuzor, "Constitution Making", op. cit.

<sup>98</sup> Crisis Group interviews, civil society representatives, Abuja, 19-26 April 2006.

<sup>99</sup> Crisis Group interview, security analyst, Abuja, 26 April 2006.

and separatist movements. All these, in the final analysis, are manifestations of the failing federal experiment.<sup>100</sup>

The legacy of military rule is a further factor in the emergence of the militias and other such organisations. Post-independence history has been dominated by military regimes that cracked down on the pan-Nigerian civil society groups that were seen as rallying points for pro-democracy campaigns. Ethnic militias emerged in the 1990s as civil society struggled with the emotional, psychological and financial fatigue that accompanied years of combating unchecked military rule, especially during the brutal reign of General Sani Abacha.<sup>101</sup>

It is difficult to homogenise the ethnic militias' aims. The O'odua Peoples' Congress (OPC) purports to represent Yoruba demands for shared national political power. It has also operated as a security outfit in Lagos State. The Movement for Actualisation of the Sovereign State of Biafra (MASSOB) and the now silent Nigeria Delta People's Volunteer Force (NDPVF) have demanded independent nation states for the Igbo and the Ijaw, respectively. The Bakassi Boys in the Igbo-dominated states of the South East operate as vigilantes. The Hisbah Guards in the North have functioned as pseudo-militias by claiming to assert Muslim identity through enforcement of Sharia law.

Regardless of their diverse aims, these organisations reflect profound shortcomings in Nigeria's organisation. While some may be thuggish elements exploiting security sector weaknesses, others actually desire a fundamental restructuring of the system. The diverse array of ethnic militias is also connected by the country-wide violence that has followed in their wake. Since their appearance in the mid-1990s, thousands have died in clashes connected to their activities and thousands more have been injured.

The OPC is considered one of the most radical groups. It appeared in 1994, following the annulment of the June 1993 presidential elections which were widely believed to have been won by a Yoruba politician, Moshood Abiola. Many Yoruba believed the invalidation of his victory indicated the unwillingness of the Hausa-

dominated military government to cede power and meant their continued marginalisation. The 1999 election of Obasanjo, a Yoruba, did nothing to soothe the perceived slight of the 1993 annulment, partly because many Yoruba have long regarded him as a puppet of Northern powerbrokers.<sup>102</sup>

The OPC's often violent activities have included vigilantism, clashes with other ethnic groups and conflicts with rival Yoruba groups that have left many civilians dead. From 1999 to 2002, there was recurrent, major violence in Lagos State as OPC members, on the pretext of fighting crime, clashed with Hausa. The fighting left homes, schools, shops and markets in ruins, and civilians on both sides dead or displaced. Police have often targeted OPC members or those with perceived OPC affiliations, arbitrarily arresting, torturing and killing hundreds.<sup>103</sup>

In 2003-2004 in Rivers State, Asari Dokubo's NDPVF clashed violently with a rival militia, the Niger Delta Vigilante (NDV), over control of riverine villages south of Port Harcourt, for oil bunkering and arms trafficking. This cost the lives of dozens of civilians and hundreds of young fighters, displaced thousands and destroyed property in an already poor pocket of the country.<sup>104</sup>

In the South East, MASSOB has been active since 2000, agitating for an independent Ibo nation state. Clashes with police have been common. As recently as March 2006, police killed MASSOB separatists who had argued that Igbos should no longer be regarded as Nigerians and attempted to prevent their inclusion in the census. Although MASSOB leaders mainly enjoy support from unemployed youth – many who do not remember the Biafran war's horrors – they have also tapped into the sentiment that lingering national resentment over the Biafran secession attempt continues to shut them out of political power.<sup>105</sup> "I no longer believe in separatist movements, and I am now a loyal Nigerian nationalist", said a 70-year-old former speechwriter for Biafran leaders in the late 1960s. "But Biafra is always somewhere in the back of my mind".<sup>106</sup>

The Bakassi Boys of the Igbo-dominated south-eastern states are an example of an ethnic militia group that does

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<sup>100</sup> See Tunde Babawale (ed.), *Urban Violence, ethnic militias and the challenge of democratic consolidation in Nigeria* (Lagos, 2003), and Nnamdi K. Obasi, *Ethnic Militias, Vigilantes and Separatist Groups in Nigeria* (Abuja, 2002).

<sup>101</sup> The military regimes of General Ibrahim Babangida and General Sani Abacha proscribed critical pan-Nigerian groups such as the Nigerian Labour Congress, the Academic Staff Union of Universities, the Nigerian Bar Association, the National Association of Nigerian Students, the National Union of Journalists, and other pan-Nigerian pro-democracy organisations. Said Adejumobi, "Ethnic Militia Groups and the National Question in Nigeria", *GSC Quarterly*, spring 2003.

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<sup>102</sup> Many Yoruba have never forgiven Obasanjo for not supporting the Yoruba politician Obafemi Awolowo during the 1979 and 1983 elections. Crisis Group interview, civil society leader and academic, Abuja, 26 April 2006.

<sup>103</sup> "The O'odua Peoples' Congress: Fighting Violence with Violence", Human Rights Watch, February 2003.

<sup>104</sup> "Rivers and Blood: Guns, Oil and Power in Nigeria's Rivers State", Human Rights Watch, February 2005.

<sup>105</sup> Crisis Group interview, international observer, Abuja, 18 April 2006.

<sup>106</sup> Crisis Group interview, 27 April 2006.

not purport to advance a particular political ideology. Since 2000, they have operated as vigilantes, claiming to fill an urgent policing void in states such as Abia and Anambra. Members claim magical powers and became notorious for burning and hacking to death suspected armed robbers.<sup>107</sup> They have also clashed with the police and are linked to numerous human rights abuses.

The Hisbah Guards, Muslim volunteer groups organised by the governments of Sharia states and charged with enforcing that law, operate as pseudo-militias. Although many Nigerian Muslims traditionally follow Sharia in civil matters, the governor of Zamfara State, Sani Ahmed Yerima, controversially introduced Sharia criminal law in 2000. Within two years, eleven more Northern states followed. Many Muslims initially felt the Sharia penal code, with its strict penalties, could establish order where the federal government, police and courts had failed. Sharia also validated their Islamic identity in a country increasingly influenced by Western cultural values. Governors posing as champions of an endangered Islamic identity and values used Sharia to curry popularity but it soon wore thin.<sup>108</sup> Although Sharia stresses a government's responsibility to its citizens, states like Zamfara remained desperately poor while uneducated judges in lower Sharia courts handed down harsh sentences (*hudud*) of amputation for theft and stoning for adultery.<sup>109</sup> In many of these cases the lawyers were hampered in defending their clients by their own minimal understanding of the law.

The emergence of the Hisbah militias also contributed to Sharia's waning popularity. In states such as Kano and Zamfara, the Hisbah groups, operating under the governors, began widespread campaigns of harassment against ordinary citizens. They have seized thousands of motorbikes ("okadas") from male taxi drivers who, they claimed, transport female passengers in violation of the dictate that non-related men and women should not travel together. They have thus deprived many men of their livelihoods and women of cheap transport. The same governors who supported the Hisbah harassment have failed to establish ombudsmen to monitor the actions of public officials, a customary mandate of Sharia.<sup>110</sup> The Hisbah have continually clashed with civilians who have

resisted their intrusions and with the federally-controlled police, who accuse them of attempting to usurp their role.<sup>111</sup>

## B. GOVERNORS, GODFATHERS AND STATE POLITICS

Other militias, including OPC and the Bakassi Boys, have also maintained close political relationships with state governors and other ethnic elites. These "Godfathers", as they are referred to in local political discussions, have found them useful in the vicious, sometimes violent struggles for local power or against other ethnic or sectarian groups. Some have aided in intimidation of political opponents. Although some Delta militants openly criticise state government officials, others often benefit from the protection they receive through close ties.

The Bakassi Boys, for example, have at various times been recognised as state vigilantes and sponsored by governors. Legitimised as Anambra Vigilante Service (AVS) between 1999 and 2003, they were suspected of involvement in several political muggings, abductions and assassinations, and widely perceived as the thuggish instrument of the then governor, Chinwoke Mbadinuju. No serious efforts were ever made to prosecute even those members who were alleged to have been involved in extra-judicial killings.

From 2004 to 2005, Mbadinuju's successor, Chris Ngige, used the Bakassi Boys to guard himself and key officials at the Government House in Awka, following the federal government's withdrawal of his police guards and other security privileges. In Abia State, Governor Orji Kalu has argued that, given the level of violent crime, the Abia State Vigilance Group Bill, which legitimised a state-based vigilante organisation, was a necessity, and that the outfit is not related to the Bakassi Boys.<sup>112</sup> Many citizens, however, believe that they are one and the same and that while they may have some value as a security force for now, their political masters could easily shift them to political purposes. "There is nothing romantic about the ethnic militias", a Nigerian human rights advocate said. "It is nothing but politics".<sup>113</sup>

## C. POWER SHARING AND ACCOUNTABILITY

The federal government considers that the ethnic militias, sectarian vigilantes and separatist groups violate the constitution's provisions that Nigeria is "one indivisible and

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<sup>107</sup> D. Smith, "The Bakassi Boys, Vigilantism, Violence and the Political Imagination in Nigeria", *Cultural Anthropology* 19(3), pp. 429-455.

<sup>108</sup> John N. Paden, *Muslim Civic Cultures and Conflict Resolution: The Challenge of Democratic Federalism in Nigeria*, (Washington, DC 2005); "Political Sharia? Human Rights and Islamic Law in Northern Nigeria", Human Rights Watch, September 2004.

<sup>109</sup> Crisis Group interview, human rights leader, Abuja, 2 May 2006.

<sup>110</sup> Crisis Group interview, lawyer, 21 April 2006.

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<sup>111</sup> Crisis Group interview, human rights leader, Abuja, 2 May 2006.

<sup>112</sup> "Vigilance group law, a necessity in Abia - Kalu", *Daily Sun*, Lagos, 6 February 2006, p. 7.

<sup>113</sup> Crisis Group interview, human rights leader, Abuja, 2 May 2006.

indissoluble sovereign state”,<sup>114</sup> and the federal police are the only legitimate security actors in the federation.<sup>115</sup> On this basis, its general response has been to criminalise the groups and charge some of their leaders with treason.

In late 1999, the government banned the OPC, six of whose leaders are currently on trial for treason, including Frederick Fasehun and Gani Adams. The government has also arrested hundreds of MASSOB militants and charged twelve leaders, including the movement's helmsman, Ralph Uwazuruike, with treason. In February 2006, it banned the Kano State Hisbah Guards and arrested their leader, Sheik Farouk Yahaya, and others, accusing them of seeking foreign assistance to train volunteer jihadis.<sup>116</sup> It also banned the Abia State Vigilance Group, accusing both the Kano and Abia state governments of constitutional breaches by owning and managing “illegal police services”.<sup>117</sup> The NDPVF's Asari Dokubo is currently on trial for treason in the federal high court in Abuja.

Any attempt to characterise these many groups uniformly as romantic embodiments of popular resistance would be a gross misreading. Individual members within ethnic militias have been involved in criminal activities that have caused death and destruction, and the federal government has the obligation to prosecute them. But the arbitrary arrests, detentions and treason trials of the leaders have been diversionary. The government cannot “wipe the militias out of existence by legal fiat”.<sup>118</sup> Its tactics do not address the core issues the militia and separatist phenomena raise: the politics of marginalisation, the appeals to ethnic and religious identities that flourish in the absence of an effective federal system and the glaring weaknesses of the security sector, which enable these non-state armed groups to emerge and operate.

The government's current approach may have already backfired. The arrest and arraignment of Asari, for instance, seems to have created space for the emergence of the even more militant MEND.<sup>119</sup> Many militia leaders currently on trial for treason, such as Frederick Fasehun, remain respected not only within their militant circle but across their ethnic communities. Their arrests and detentions have helped transform them into martyrs.<sup>120</sup> The recent

ban of the Kano State Hisbah without tackling the issue of political use of Sharia is a prime example of how the government has inadvertently helped foster the environment from which militias benefit.

As the debate over religion and secularism, legal pluralism, and state power raged in 2000, the federal government remained notably silent. President Obasanjo's administration has refused to address the issue of political Sharia lest it seem anti-Islamic and alienate a sizeable part of the population.<sup>121</sup> Instead it has focused on symptoms like the Hisbah. Although the enforcement of *hudud* penalties has drastically declined, the use of Sharia in criminal cases remains an issue the federal courts must face. This has proven difficult because a test case cannot be brought to the Supreme Court without a plaintiff. Most who are the objects of criminal Sharia judgements are poor and simple people unwilling to adjudicate an element of their faith in a federal court.<sup>122</sup> While civil society organisations should continue to search for individuals willing to participate in test cases, the federal government should not fail to speak on an important national question of law and power.

The emergence of ethnic militias and community vigilantes, especially the fact that some have claimed to fill a policing void at state levels, has also highlighted the core issue of state versus federal power. Police and other state security services are on the exclusive legislative list and thus within the purview of the federal government.<sup>123</sup> The constitutional designation of all police as federal, without state or local counterparts, is controversial. The federal government assigns police to states for service, but these answer to the Federal Police Inspector General, often undercutting police loyalty to the citizens they are directed to serve. State governors have long agitated for their own force, pointing out that most crimes are state offences and must be prosecuted in state courts.<sup>124</sup>

There have been calls to move police and government security forces to the list of topics for which the federal government and the states have concurrent legislative competence and create additional police forces at state,

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<sup>114</sup> Constitution (1999), Section 2(1).

<sup>115</sup> Ibid, Section 214.

<sup>116</sup> “Crackdown on Nigeria *Sharia* group”, BBC, 10 February 2006.

<sup>117</sup> Madu Onuorah and Adamu Abuh, “Govt accuses Abia, Kano of running illegal police”, *The Guardian*, Lagos, 10 February 2006, pp. 1-2.

<sup>118</sup> Crisis Group interview, political scientist, Abuja, 26 April 2006.

<sup>119</sup> Crisis Group interview, civil society leader, Abuja, 19 April 2006.

<sup>120</sup> Group-based claims have become a central feature of Nigerian democracy at the expense of constructive relationships between

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individuals and the state. Groups routinely assert “ethnic nationality”, a crude concept of identity and politics, in order to claim entitlements. Ethnic groups like Afenifere, the Yoruba political organisation, often exert more political influence locally than pan-Nigerian parties. The government should begin to address the ethnic militia phenomenon by confronting the complex issues that birthed these groups.

<sup>121</sup> Crisis Group interviews, member of house of representatives and lawyer, Abuja, 21 April 2006.

<sup>122</sup> Crisis Group interview, lawyer, Abuja, 21 April 2006.

<sup>123</sup> Constitution (1999), Second Schedule, Legislative Powers, Part I, Exclusive Legislative List, Item 45.

<sup>124</sup> Crisis Group interview, lawyer, Abuja, 19 April 2006.

local and community levels. However, this might simply devolve the police corruption long entrenched at the federal level to lower levels where it could exacerbate already volatile situations. Others have argued against state police forces from concern that governors would use them to intimidate, suppress or even eliminate political opponents. This is a legitimate concern but the federal government has also used security forces to attack political critics. After the December 2005 Sosoliso plane crash in Port Harcourt in which over 70 school children were killed, women's groups in Lagos gathered to protest the refusal to fire the aviation minister. The peaceful demonstration was met by the federal police with teargas.<sup>125</sup> Whether the police remain under federal control or are devolved to states, there is a compelling need for far-reaching reform of the entire security sector.

Although the debate over state and federal power often points toward devolution of certain central powers to the states, there may also be need to give the centre greater powers in some areas. For instance, issues related to the protection of vulnerable groups such as women, children and the disabled are on the residual list, allowing states to legislate without federal interference. This has led to state laws that vary widely. Children may well be more at risk, for example, in states whose child abduction laws provide relatively low penalties. If vulnerable groups were placed on the concurrent list, the federal government could set uniform minimum standards of protection, while states could still legislate as long as they did not deviate from the basic federal law.<sup>126</sup>

Little democratic space exists for the public to grapple with the complicated issue of balancing governmental power with governmental accountability. Civil society organisations have long urged a democratic constitutional reform process. Although this would be no panacea for its myriad problems, Nigeria cannot begin an honest debate on accountability and power sharing without reforming its constitutional framework. The government cannot simply attempt to excise ethnic militias. It should focus instead on strengthening democratic institutions that will ensure continuous and uninhibited dialogue among the various groups and interests in the Nigerian state, reform its security sector to make it more effective and accountable, and address more vigorously the economic and social inequalities that facilitate the emergence of the ethnic militias and other non-state armed groups.

## VI. CONCLUSION

At the 2005 burial of Chima Ubani, the former leader of the Nigerian Civil Liberties Organisation, who died in a car accident while coordinating a national protest against the federal government's repeated increases of fuel prices, a Nigerian flag was draped over the coffin to honour the dead man's dedication to Nigerian unity. MASSOB militants intercepted the funeral procession in Igbo-majority Abia State and, ignoring the protests of the family and funeral attendees, burned that flag, replaced it with a Biafran flag, and asserted that "Nigerians" had killed a "Biafran" hero. As they chanted protests during the funeral, most of their harshest words were reserved not for the Nigerian state but for members of the Igbo elite whom they felt had failed them.<sup>127</sup> Crisis in the Niger Delta, inter-communal conflicts in Plateau State and the rise of ethnic militias, sectarian vigilantes and separatist groups are all indictments of the federalist experiment and the failure of political leadership at every level.

Nigeria has had a federal framework since independence, yet calls for "true federalism" continually resonate. If the government continues to dismiss the above phenomena as simple criminality, it will do so at the country's peril. Nigeria is a political and economic giant in Africa but its future can either be a shining example for the continent or a cautionary tale of what happens when great potential is sabotaged by poor governance, lack of leadership and pervasive corruption. The government must address these core causes of the failing federal experiment or risk that Delta militias decapitate the oil industry, inter-communal violence spirals out of control, and ethnic militias, sectarian vigilantes and separatist groups continue to plague communities. Since such a destabilised Nigeria would be highly detrimental to the entire fragile West African region, still struggling to recover from the wars in Liberia, Côte d'Ivoire, Sierra Leone and Guinea Bissau, the international community has many reasons to encourage far-reaching reforms.

**Dakar/Brussels, 25 October 2006**

<sup>125</sup> Crisis Group interviews, civil society leader and lawyer, Abuja, 19-21 April 2006.

<sup>126</sup> Crisis Group interviews, lawyer and human rights leader, Abuja, 21 April-2 May 2006.

<sup>127</sup> Crisis Group interviews, civil society leaders, Abuja, April 2006.



## APPENDIX A

### MAP OF NIGERIA





## **APPENDIX B**

### **GLOSSARY OF ABBREVIATIONS AND ACRONYMS**

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<b>AVS</b>	Anambra Vigilante Service
<b>CA</b>	Constituent Assembly
<b>CENCORD</b>	Centre for Constitutionalism and Demilitarisation
<b>CDC</b>	Constitution Drafting Committee
<b>CFCR</b>	Citizens' Forum for Constitutional Reform
<b>CLO</b>	Civil Liberties Organisation
<b>COMA</b>	Coalition for Militant Action in the Niger Delta
<b>CRC</b>	Constitution Review Conference
<b>EFCC</b>	Economic and Financial Crimes Commission
<b>FCC</b>	Federal Character Commission
<b>ICPC</b>	Independent Corrupt Practices Commission
<b>IDPs</b>	Internally Displaced Persons
<b>INC</b>	Ijaw National Congress
<b>IYC</b>	Ijaw Youth Council
<b>JCRC</b>	Joint Constitution Review Committee
<b>JRC</b>	Joint Revolutionary Council
<b>LGA</b>	Local Government Area
<b>MASSOB</b>	Movement for Actualisation of the Sovereign State of Biafra
<b>MEND</b>	Movement for Emancipation of the Niger Delta
<b>MFFT</b>	Ministerial Fact Finding Team
<b>MOSEIND</b>	Movement for Survival of the Ijaw Ethnic Nationality in the Niger Delta
<b>MOSOP</b>	Movement for Survival of Ogoni People
<b>NDDC</b>	Niger Delta Development Commission
<b>NDLA</b>	Niger Delta Liberation Army
<b>NDPVF</b>	Niger Delta Peoples Volunteer Force
<b>NDV</b>	Niger Delta Vigilantes
<b>NNPC</b>	Nigeria National Petroleum Cooperation
<b>NPRC</b>	National Political Reform Conference
<b>OPC</b>	O'odua Peoples Congress
<b>PDP</b>	Peoples Democratic Party
<b>RMAFC</b>	Revenue Mobilisation, Allocation and Fiscal Commission
<b>SPDC</b>	Shell Petroleum Development Company

## APPENDIX C

### ABOUT THE INTERNATIONAL CRISIS GROUP

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The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with nearly 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

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