

APPRAISAL OF THE FUNCTIONS AND POWERS OF NIGER DELTA  
DEVELOPMENT COMMISSION (NDDC)

BY

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## **CERTIFICATION**

I **IBIJOLA ADENIKE LYDIA**, hereby certify that apart from references to other peoples' works which have been duly credited, this work is the result of my own research.

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**AUTHOR**

## **DEDICATION**

This work is dedicated o Almighty God and to all the Oil and Gas Law Students in Nigeria, particularly University Of Jos. Also to the Indigenes of the Oil bearing region of Nigeria, Niger Delta.

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## CHAPTER ONE

### INTRODUCTION

#### 1.1 GENERAL BACKGROUND

The Niger Delta Development Commission is a Federal Government agency established by former Nigerian president, Olusegun Obasanjo in the year 2000 with the sole mandate of developing the oil-rich Niger Delta region of southern Nigeria. The genesis of the NDDC is largely a response to the demands of the population of the Niger Delta, a populous area inhabited by a diversity of minority ethnic groups. During the 1990s these ethnic groups, most notably the Ijaw and the Ogoni established organisations to confront the Nigerian government and multinational oil companies like Shell. The minorities of the Niger Delta have continued to agitate and articulate demands for greater autonomy and control of the area's petroleum resources. Their grievances were justified by the extensive environmental degradation and pollution from oil activities that have operated in the region since the late 1950s. However, the minority communities of oil producing areas have received little or no help from the foreign multinationals and corrupt government officials; environmental remediation measures are limited and negligible. The region is highly underdeveloped and is one poor region even by Nigeria's low standards for quality of life.

The circumstances eventually precipitated active and sometimes violent confrontation with the state and oil companies, as well as with other communities. As a result, oil production has been hamstrung as disaffected youth or organisations deliberately disrupt oil operations in attempts to effect change. These disruptions have been extremely costly to the Nigerian oil industry, and both the multinationals and the federal government have vested interest in permitting uninterrupted extraction operations; the NDDC is a result of these concerns and is attempted to satisfy the demands of the delta's restive population.<sup>1</sup>

Prior to the creation of the NDDC, previous efforts have been made to develop Niger-Delta, though, they failed. The first constitutional step taken to develop the Niger Delta Region was the appointment of Henry Willink-led Minority Rights Commission in September 1957, Henry Willink Commission then recommended a Federal Board to consider the problems of the Niger Delta. Based on the recommendations of Henry Willink Commission, subsequently the

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<sup>1</sup> Encyclopedia: Niger Delta Development Commission.

Niger Delta Development Board (NDDDB) was created by the 1960 Constitution. Section 14 of the 1960 Constitution established the NDDDB to provide physical development for the Niger Delta Region. The section enjoins that the NDDDB shall be responsible for advising the government of the Federation of Nigeria and the government of Western Nigeria and Eastern Nigeria with respect to the physical development of the Niger Delta.

In 1961, Nigeria's federal parliament enacted the Niger Delta Development Board Act of 1961 to comply with Section 14 of the 1960 Constitution. The Board, however, could not provide any meaningful development for the Niger Delta Region because of lack of political will and commitment.

The Federal Military Government of General Ibrahim Babangida promulgated Oil Mineral Producing Area Development Commission (OMPADEC) Decree No 23 of 1992 to address the years of neglect of the Niger Delta Region, Section 2 of the decree states that OMPADEC is to receive and administer the monthly sums from the allocation of the Federation Account in accordance with confirmed ratio of oil production in each state for the rehabilitation and socio-economic development of Niger-Delta areas.

Section 4(a)(2) of the Allocation of Revenue (Federation Account) (Amendment Act No 106 of 1992) provides that 3 percent of the federation account derived from mineral revenue be paid into a fund to be administered by OMPADEC. Once again, OMPADEC also failed to ensure the development of the Niger Delta Region. Abandoned, uncompleted white elephant projects of OMPADEC are now common features in the region. Government officials and their cronies appointed into OMPADEC looted the funds set aside for the region's development. For instance, the implementation of the objectives of OMPADEC was stalled and defeated by large-scale fraud, corruption and fund diversions by some of the chairman and staff of the commission. Failure to implement the law destroyed its genuine intention while the commission became a conduit pipe through which large sums of money belonging to the Niger Delta and its people were misappropriated. OMPADEC lacked clear performance guidelines or controls; resulting to inefficiency and corruption in the organization.<sup>2</sup> The OMPADEC was expected to mediate between the oil companies and the communities, as well as receive and administer the monthly allocation from the federation account in accordance with confirmed oil-production ratio in each

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<sup>2</sup> Fryans (2001:38).

state of the Niger Delta.<sup>3</sup> The OMPADEC performed unsatisfactorily as it only provided electricity and pipe-borne water to some villages, while most of its funds were misappropriated. A major limitation of OMPADEC was corruption, which was so entrenched that in quick succession its first two sole administrators, Albert K. Horsfall and Professor Eric Opia, were dismissed. Opia was removed in September 1998 for his inability to account for N6.7 billion, then worth about U.S. \$80 million.<sup>4</sup> Opia allegedly embezzled \$200 million<sup>5</sup>.

The Association of Oil Producing Communities of Nigeria (ASOPCON) accused OMPADEC of embarking on projects without first ascertaining the needs of the people. They also raised the issue of abandonment of projects, arbitrary revocation of on-going projects and re-awarding them to friends or relatives, indiscriminate granting of loans, and preferential treatment to some oil producing states to the detriment of others in the citing of development projects<sup>6</sup>.

The poor performance of OMPADEC could be attributed to insufficient regulatory mechanisms to monitor its activities. In the first three years of its establishment, OMPADEC commenced projects worth \$500 million, but the bulk of the money was said to have been paid to contractors whose addresses could not be traced<sup>7</sup>. Other major problems that confronted the OMPADEC included the inadequate funds and its eventual politicization. The federal government reportedly withheld about N41 billion due to the commission. Politically, the federal government reorganized the commission three times and replaced its Director (Opia from Delta State) with an Assistant Inspector General of Police (Alhaji Bukar Ali from Northern Nigeria)<sup>8</sup>.

The failure of this intervention agency again fuelled more agitation and violence, which reached its peak in 1998 when youth disrupt oil production activities more frequently. OMPADEC was scrapped by the former President Olusegun Obasanjo, and was replaced with Niger- Delta Development commission (NDDC).

There is an infraction by the Executive on legislative authority and jurisdiction. Without even having the courtesy of consulting with the National Assembly, it was announced that the Niger Delta Development Commission will be collapsed into a parastatal for the Ministry. This cannot be done without amendment or an outright repeal of the NDDC Act passed in July 2000

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<sup>3</sup> OSUNTA AND Nwilo 2005; Okonta, 2006; Sanya, 2006

<sup>4</sup> Franyans 2001:38

<sup>5</sup> Okonta 2006, Sanya 2006

<sup>6</sup> The Guardian, 28 June 1994. Page 9.

<sup>7</sup> Supra

<sup>8</sup> Omotola 2007



and the Niger Delta Development Commission (NDDC), being a creation of statute, can only be repealed by parliament.<sup>9</sup>

The creation of ministry of Niger delta collapses the Niger delta development commission, making the Commission to be under the supervision of the Ministry of Niger Delta<sup>10</sup>. It should exist side by side with the Ministry of Niger Delta in order for them to complement each other. There has been Ministry of the Federal Capital Territory existing side by side with the Federal Capital Development Authority (FCDA). There is also the Ministry of Petroleum Resources existing side by side with the Nigerian National Petroleum Corporation (NNPC). On the difference between the functions of the ministry and the NDDC, Chief Ufot Ekaette, Minister of the Niger-Delta Ministry said the commission is an intervention agency superintended by the presidency while the ministry has representation at the national executive council meeting where it can always make representation on behalf of the people of the area to government.<sup>11</sup>

## **1.2 AIMS AND OBJECTIVES:**

The aims and objectives of this study are stated as follows:

- (i) To examine the previous efforts that has been made by the federal government to develop Niger-Delta region.
- (ii) To examine the functions of Niger Delta Development Commission (NDDC) as it relate to the development of Niger-Delta region.
- (iii) To make an overview of Niger Development commission Act.
- (iv) To examine the powers of NDDC.
- (v) To suggest remedies for failure of NDDC to perform their sole mandate.

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<sup>9</sup> Vanguard April 28 2009: Ministry Of Niger Delta and Rule Of Law by Akpo Mudiaga Odoje

<sup>10</sup> allAfrica.com: Nigeria: Niger Delta Minister Must Not Come From Region-Rep.

<sup>11</sup> Vanguard Online Edition, 3<sup>rd</sup> February 2009: Obligations: Niger-Delta Ministry.

### **1.3 SIGNIFICANCE OF THE STUDY**

The functions of administrative bodies in the development of Niger delta and oil producing areas cannot be overemphasized. The study under consideration would be of interest and great use to Oil and Gas Law Students, Administrative Law Students, Geologist and Miners, Natioanlised Oil and Gas industries who are in dare need of knowing their rights, the entire indigenes and residents of Oil producing Areas in Nigeria.

Findings from this project would be useful in any effort made by the Federal Government towards the development of Oil producing Areas in Nigeria and funding of administrative bodies created with the sole aim of developing such areas.

The study will be of value in the amendment of statutes like Niger-Delta Development Commission (Establishment etc) Act 2000 Act No 6, Petroleum Act CAP.350 L.F.N 1990 ACT CAP. P10 L.F.N 2004 and The Land Use Act of 1978 which is overdue for amendment.

### **1.4 METHODOLGY OF RESEARCH**

The research methodology adopted for this project is the use of Library method, the review of current literature, internet research, newspaper reports, media reports, opinion of jurist and a continuous research for current related materials. Also the report of the Board of the Commission, report of multinational oil companies Niger Delta Development Commission Act 2000, Land Use Act 1978, Petroleum Act as amended Cap. 350 LFN 1990 will be referred to under this study.

## CHAPTER TWO

### AN OVERVIEW OF SOME PARTS OF THE NDDC ACT

#### 2.1 ESTABLISHMENT OF THE NIGER-DELTA COMMISSION AND THE GOVERNING BOARD

NDDC Act provided for the repeal of the Oil, Mineral Producing Areas Commission Decree 1998, and among other things, establish a new Commission with a re-organised management and administrative structure for more effectiveness; and for the use of the sums received from the allocation of the Federation Account for tackling ecological problems which arise from the exploration of oil minerals in the Niger-Delta area and for connected purposes.<sup>12</sup>

The Governing board of the Niger delta Development Commission consists of:

A Chairman, one person who shall be an indigene of an oil producing area to represent each of the following member States: Abia State, Akwa-Ibom State, Bayelsa State, Cross River State, Delta State, Edo State, Imo State, Ondo State, and Rivers State<sup>13</sup>, Three persons to represent non-Oil mineral producing States provided that such membership should be drawn from the remaining geo-political zones which are not represented in the Commission<sup>14</sup>, one representative of Oil producing companies in the Niger- Delta nominated by the Oil producing companies<sup>15</sup>, One person to represent the Federal Ministry of Finance<sup>16</sup>, one person to represent Federal Ministry of Environment<sup>17</sup>, the managing Director of the Commission<sup>18</sup>, two executive Directors.<sup>19</sup>

The position of Executive Chairman of the NDDC has been a subject of much debate. A compromise was reached where the position would be rotated within the nine oil producing states in alphabetical order: Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers as it is contained in section 4 of the NDDC Act, 2000.

The chairman from 2000 to 2005 was Onyema Ugochukwu from Abia state and from 2005 to 2009 the chairman was Samuel Edem from Akwa Ibom State. President Umaru Musa Yar'Adua approved the dissolution of the Board of the Niger Delta Development Commission

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<sup>12</sup> Preamble of NDDC Act

<sup>13</sup> S. 2(1)(a)(b) NDDC Act, 2000

<sup>14</sup> S. 2(1)(c)

<sup>15</sup> S.2(1)(d)

<sup>16</sup> S.2(1)(e)

<sup>17</sup> S.2(1)(f)

<sup>18</sup> S.2(1)(g)

<sup>19</sup> S.2(1)(h)

with effect from April 12 2009 and nominated the former chairman of the Directorate for Food, Roads and Rural Infrastructure (DFRRI), Air Vice Marshal Larry Koinyan (rtd) from Bayelsa state as the chairman of the reconstituted board of NDDC.<sup>20</sup> This is in fulfillment of the **Section 3(1) of the NDDC Act, 2000** which provides four-year tenure for members of the Board, other than ex-officio members, from the date of appointment at the first instance.

A statement signed by the President's Special Adviser, Media and Publicity, Mr Olusegun Adeniyi on Thursday April 9, 2009 said that in the new Board to be reconstituted, Bayelsa State will produce the Chairman, while Rivers State will produce the Managing Director. The Executive Directors (Finance and Administration) and (Projects) will be produced by Delta and Akwa Ibom States, respectively. <sup>21</sup>

Similarly, in line with **Section 2(1) of the Act**, the North-West, North-East and North-Central Zones will produce three representatives of the non-oil producing States on the Board, while oil Producing Companies will nominate a representative to the Board in accordance with **Section 2(d) of the NDDC Act, 2000.**

The greatest of the problems that the NDDC face relates to its composition. The NDDC Act also lacks other appropriate and necessary participatory provisions. In particular, the NDDC Act does not make provision for the representation of the indigenous people (for whose benefit the Act was made) in the executing body nor is there a provision for their participation in the planning and execution of projects. Certainly, the provision for the representation of state members in the Commission cannot be properly regarded as affording representation to the local people, since they have no input in the process of appointment. The problem with this situation lies in the fact that such appointees are likely to see themselves as representing the state authorities that appointed them, and not the people. Moreover, they may be persons who are unfamiliar with the problems and needs of the local people and such appointees will hardly be critical of the policies of the body. Justifying the need for local representation in such a body, the Willink Commission on the Fears of Minorities in Nigeria and Means of Allaying them observed in its 1958 report that such elements are necessary in order to have '*men who are ready to criticize*'. As it is, there are arguably no elements in the NDDC as presently constituted who are ready to criticize.

The lack of provision for the participation of the local people in the planning and execution of the Commission's projects can be considered a violation of their human right to

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<sup>20</sup> The Guardian, July 4 2009:Yar' dua Names New Board For NDDC.

<sup>21</sup> Supra

development, which makes participation a key element of the right. As Anne Orford would say, implicit in the right to development is the recognition that *'peoples have the right to determine their model of development'*.<sup>22</sup> In the same vein, the Human Rights Council of Australia has properly argued that participation as an aspect of the right to development means that *'people should have control over the direction of the development process, rather than simply being consulted about projects and policies that have already been decided upon'*.<sup>23</sup>

The implication of the foregoing is that a key reason for the failure of OMPADEC i.e want of participation is still present under the provisions of the NDDC Act.

In the political history of Nigeria, development or regulatory agencies have often failed to achieve their mandates because of abuse of power and lack of accountability. Based on this lesson, the NDDC Act should have created provisions that empower ordinary residents of the community where the agency is embarking on development work to request for disclosure of financial information about the project. The act should not have left consultation with community leaders a matter of disposition of NDDC officers. The Act should require and mandate such consultation so that aggrieved communities can seek judicial review of administrative actions by NDDC officers.

It is perceived that Niger delta is synonymous with the oil-producing areas of Nigeria i.e Niger delta is the same as the oil producing areas. In other words Niger delta include the folio states: Abia, Imo, Edo, Delta, Rivers, Bayelsa, Cross River, Akwa Ibom and ondo which is synonymous with the Government definition of Niger Delta under the Oil Mineral Producing Areas Development Commission.(OMPADEC). There is a specific geographical location referred to as Niger delta within the terrain of Delta State, Akwa Ibom State and parts of Edo State, not even Ondo State. The fact that, over the years, money from Niger Delta has been spent in prospecting for oil in sokoto, should not mean that sokoto is, if it has oil at all, should be included as a member states of Niger delta commission. What happens if oil is eventually found in Bauchi or Borno states. Will they become member states of the NDDC like Abia, Imo and Ondo States? It is better to revert to the former name OMPADEC which gave better focus or some version of it, e.g. OPAC (Oil Producing Areas Commission) or HYPAC (Hydrocarbon producing areas commission). In doing this, the concept of an oil producing acommunity must be clearly defined.

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<sup>22</sup> Kaniye S.A Ebeku: Appraising Nigeria's NDDC Act, 2000.

<sup>23</sup> supra

## 2.2 STRUCTURE OF THE COMMISSION

The objective of the NDDC is to ensure a "re-organised management and administrative structure for more effectiveness and for the use of the sums received from the allocation of the Federation Account for tackling ecological problems which arise from the exploration of oil minerals in the Niger Delta Area and for connected purposes".<sup>24</sup>

The Act provide for the office of the following Directorate in the head office of the Commission<sup>25</sup>

- The Directorate of Administration and Human Resources,
- The Directorate of Community and Rural Development,
- The Directorate of Utilities Infrastructural Development and Waterways,
- The Directorate of Environmental Protection and Control,
- The Directorate of Finance and Supply;
- the Directorate of Agriculture and Fisheries
- The Directorate of Planning, Research, Statistics and Management Information System;
- the Directorate of Legal Services
- The Directorate of Education, Health and Social Services;
- The Directorate of Commercial and Industrial Development, and
- The Directorate of Projects Monitoring and Supervision.

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<sup>24</sup> Preamble of NDDC Act 2000

<sup>25</sup> Section 9

Appointments to the NDDC have become a matter of political cronyism and a process of capturing political votes. Because of the delicate political configuration of power in Nigeria and how this configuration has been bureaucratized, appointments and disciplining of erring officials are usually politicized. This adversely affects the capacity of the Commission to deliver on its mission.<sup>26</sup>

The Act did not make provision for the requirement of persons into the office of the directorate. For instance, **S.9(1)(h) of the NDDC ACT** provides for the appointment of the directorate of legal services without any criteria like an expert in Oil and Gas Law, post call experience. Lack of such criteria has called for agitation in the various oil producing regions in Nigeria.

Part of the Governing board of the commission is the managing director<sup>27</sup> who shall be appointed by the President, Commander-in-Chief of the Armed Forces, subject to the confirmation of the Senate, in consultation with the House of Representatives and must be person of proven integrity and ability.<sup>28</sup> The Managing Director is entitled to hold office for a term of 4 years at the first instance and may be re-appointed for a further term of 4 years and no more.<sup>29</sup>

The current managing director is the person of Mr. Chibuzor Ugwoha of Akwa Ibom state. It is doubtful whether the criteria as contained in the Act has been strictly followed, the indigenes of Niger-Delta region has questioned the appointment of the current Managing Director as it was seen in the petitioning of the president Umaru Yar'Adua over the alleged incompetence of the Managing Director of NDDC.

*“We urge you, sir, to revisit the appointment of Mr. Chibuzor Ugwoha as Managing Director of the NDDC. We say so because since his appointment, he has been unable to lead the management of the NDDC and we perceive, and you know that, perception is reality; that the MD manifests weak character, zero aggressiveness and no drive to champion the development of the Niger Delta.”<sup>30</sup>*

**Section 9 of the Act** established 11 directorates in the head office of the Commission for the purpose of carrying into effect the functions and powers of the commission more specifically

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<sup>26</sup> The mission is contained in the preamble of the Act.

<sup>27</sup> Section 2(1)(g)

<sup>28</sup> Section 2(2)(a)(b)

<sup>29</sup> Section 3

<sup>30</sup> Punch February 5 2010: A call for sack of NDDC Boss

stated under **section 7 of the Act**. These directorates headed by officers in the public service together with the "Managing Director (MD), two Executive Directors (ED) and such number of other members as may be determined from time to time by the Board" constitute the Management Committee of the Commission established under **section 10 of the Act**.

The Management Committee of which the MD is head and where the Executive powers reside could be referred to as the engine room of the commission. The MD under **section 12 of the Act** is the Chief Executive and accounting officer and shall, subject to the general direction of the Board, be responsible for the day-to-day administration of the commission and the administration of the secretariat of the Board.

It is inconceivable and totally inconsistent with the provisions of **section 4 and section 12 of the Act** that those states from which the MD or EDS have been appointed in the past will still be considered for appointment while other states have not taken their turns. How rotational for instance is an arrangement where Delta state that produced the pioneer MDS and later occupied the position of Executive Director Of Finance And Administration (EDF&A) in the immediately dissolved Committee and currently acting as the MD in the interim is again being considered for the position of an ED at all not to mention the retention of the same EDF&A from where it has just been dissolved?<sup>31</sup>

The structure of the NDDC contributes to its failure to achieve its mission. The law that set up the commission fails to settle the conflict between its political and development mission. Given the disastrous human condition in the region, the NDDC should have been designed to be less political and more development focused.

The management composition reflects the overbearing importance of political symbolism. The NDDC Act provides that the governing board should consist of representatives of the nine oil-producing states.<sup>32</sup> The chairmanship of the board is rotated between representatives of states on fixed term.<sup>33</sup> Next to the Governing Board is the Management Committee consisting of directors of the directorates created in the Act. There are eleven directorates covering such things as administration and human resources, community and rural

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<sup>31</sup> The Nation 31<sup>st</sup> May 2009: The Need For Equity In NDDC Appointment by: Sola Ebiseni

<sup>32</sup> Section 2 of the Act.

<sup>33</sup> Section 3 of the Act



development, environmental protection and control.<sup>34</sup> The structure is overloaded with political appointees, and in the political culture of prebendalism and clientelism prevalent in Nigeria, it is a recipe for failure.

Although it might be considered politically realistic for the Act to focus on political symbolism in the appointment of directors in order to respond to the ethnic realities of Nigerian state, the cost of this realism is that the NDDC is structured like a government agency set to dispense political gains. Given the grave challenges of development in the region, the act should have focused on creating an agency that is administratively trim and professionally resourced to undertake the task of human development. More importantly, the Act should have created incentives for responsible behavior on the part of directors and managers of the commission by empowering the communities in the Niger Delta to engage the commission and apply to courts or other supervisory bodies to compel it to perform its functions. The ability of the communities to enforce rights against the commission is the key to effective human development of the Niger Delta and the protection of its ecology.

It was gathered that the battle for the office of the chairman, managing director and the executive directors is fierce among the major stakeholders, whose desperation probably stem from the ignorance of the law or deliberate mischief.<sup>35</sup> There is nowhere in the NDDC Act that requires a governor of any of the member states or any leader regardless of his or her past and present status to make recommendation as a condition for the appointment of any indigene of the oil rich-region into the board and management of the commission. If the president requests a recommendation from any state governor for the purpose of appointing a member of the NDDC board, it is not a legal responsibility, but an act of political courtesy.

Going by the prevalence of impunity, abuse of power and misuse of discretion by public officers in Nigeria, the Act should have gone a step further to clearly delineate the functions of the agency and the duties of its administrative officers in ways that impose costs for failure to act. It ought to set clear standards to guide the officials on what to do. The absence of clear standards helps public officials to evade their responsibility and act in manners that inhibit efforts to compel performance by aggrieved communities. For instance, the Act does not require any kind of consultation with community leadership and groups in respect of its activities in the

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<sup>34</sup> Section 9 of the Act

<sup>35</sup> The Punch, Monday, 30<sup>th</sup> March 2009: N'Delta, battle for NDDC's soul.

Niger Delta. In this legal lacuna it becomes difficult for persons who complain against the manner the agency is spending public funds or carrying out projects to effectively seek redress for themselves or their community. The only entity that can act to restrain or constrain the agency is the government, which may not have the incentive to scrutinize the agency.

The relationship between law and development is that law should seek to transform the problematic behaviors that retard development. In the context of public provisioning of social goods in Nigeria, the basic problematic behaviors are corruption, abuse of power and misuse of discretion. To address these bad behaviors, the act should have given incentives and legal capability to those likely to be affected by non-performance to challenge it before the court or other reviewing institutions.

It seems the NDDC is recognizing its structural problems. Its group session on “Governance, Democratization and Development” argues for an overhaul of its institutions and structures. Notably, it urges the establishment of rule of law frameworks that allow for accountability, and the revision of laws that clog access and control of resources by local communities. In this wise, it recommends the re-conception of the practice of federalism.<sup>36</sup>

The organizational structure of NDDC is more representative of all stakeholder interests than that of OMPADEC, yet the selection and dismissal process is predominantly controlled by the President. The fact that the Board representatives, Advisory Committee members, or Monitoring Committee members are not elected by the communities undermines the legitimacy of the agency as there are no means of ensuring accountability through elections or impeachment.

The management structure should be transformed accordingly. For example, it should be governed by a Board of Trustees made up one Federal Government representative, one representative from each of the oil producing States, three representatives of oil companies and four representatives of civil society organizations (e.g. NLC, NCWS, NYC, NBA), all of whom must be indigenes of oil producing areas

## **2.4 FINANCIAL PROVISION OF THE COMMISSION**

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<sup>36</sup> The report of Governance, Democratization and Democracy posted on NDDC website

The funding of the Commission is basically derived from the following:

1. The Federal Government, the equivalent of fifteen percent of the total monthly statutory allocations due to member States of the Commission from the Federation Account; this being the contribution of the, Federal Government to the Commission.<sup>37</sup>
2. Three percent of the total annual budget of any oil producing company operating, on shore and off shore, in the Niger-Delta Area; including gas processing companies.<sup>38</sup>
3. Fifty percent of monies due to member States of the Commission from the Ecological Fund.<sup>39</sup>
4. Such monies as may from time to time, be granted or lent to or deposited with the Commission by the Federal or a State Government, any other body or institution whether local or foreign.<sup>40</sup>
5. All moneys raised for the purposes of the Commission by way of gifts, loan, grants-in-aid, testamentary disposition or otherwise.<sup>41</sup>
6. Proceeds from all other assets that may, from time to time, accrue to the Commission.<sup>42</sup>

The NDDC is different from OMPADEC in terms of the huge amounts of resources that have been channeled into it. For instance, in 2004, the government allocated a budget of nearly 300million dollars to the NDDC.<sup>43</sup>

Unwillingness on the part the Federal Government of Nigeria not to pay their statutorily recognised contribution to the purse of the Commission and that of the oil exploration companies has also been discovered not to be up to date with their own part of the bargain as their contributory funding continues to suffer a short fall.

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<sup>37</sup> Section 14(2)(a) of the Act

<sup>38</sup> Section 14(2)(b) of the Act

<sup>39</sup> Section 14(2)(c) of the Act

<sup>40</sup> Section 14(2)(d) of the Act

<sup>41</sup> Section 14(2)(e) of the Act

<sup>42</sup> Section 14(2)(f) of the Act

<sup>43</sup> Ibeanu 2004:17

In the 2003 fiscal year alone, N10 billion (US\$ 77 million) was appropriated for NDDC from the federation account, only N5 billion (US\$38.5 million) was actually delivered to the agency). From 1999 to 2003, the commission received a total of N47 billion (US\$362 million) from all sources.<sup>44</sup> The Federal Government which establishes the Commission accrues a lot of debt in terms of the funding of the Commission. This led to the questioning of the Federal Government by the indigenes of Niger-Delta region.

*“where is the over N360b now being owed the Niger Delta Development Commission by the Federal Government as a result of its refusal to pay its statutory 15% contribution as set out in Section 14 of the NDDC Act ?”<sup>45</sup>*

The Speaker of the House of Representatives, Aminu Masari lent credence to the duplicity of the oil exploration companies while establishing the NDDC oversight committee of the House, disclosing:

*“We also note that some oil companies are not complying with the provision of the Act. We have also noted that even the Federal Government is not fully complying with the provision of the Act.”<sup>46</sup>*

Contrary to the provisions of the Act, some of the oil companies have not been paying the three per cent of their annual budget as required by law. The records show that they deduct first charges before calculating the three per cent from the balance. It is more like cutting the nose to spite the face, given that what they spend for the development of the Niger Delta is for their own good at the end of the day.

It is, indeed baffling to learn that the oil companies are defaulting in the discharge of their statutory obligations to government agencies charged with the responsibility of developing the Niger Delta. The recent disclosure that oil firms owe the Niger Delta Development Commission, NDDC, a whopping N7.55 billion came to many as a rude shock.

The oil companies are expected, according to the NDDC Act, to contribute 3% of their total budget for each year, it has been discovered that some of them are not complying with that

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<sup>44</sup> Social and economic right action(SERAC): Perpetuating Poverty, Consolidating Powerlessness (Oil and the Niger Delta)

<sup>45</sup> Vanguard, April, 28 2009: Ministry of Niger Delta and Rule of Law by: Akpo Mudiaga Odoje

<sup>46</sup> Proposed Amendment of NDDC Act by Jide Ajani

section of the Act. One of the major oil exploration companies has been discovered to be a major culprit in this regard. The company, which had its Year 2002 budget as \$2.235 billion may not have wholly contributed 3% of its budget for the year in question. The company, made a deduction of \$627 million from its total budget before making its 3% deduction from the remainder.<sup>47</sup>

Another exploration company which runs a joint name and is of the North American continent has also been discovered not to have honoured its contributory obligation to the fund. This company budgeted \$1.203 billion for the same Year 2002 but may not have contributed the 3% of that sum. In its own case, a sum of \$504 million was deducted from the total budget before the 3% was worked out. The deductions being made are referred to as First Charges. The 3% it then gave NDDC was 3% of the remainder of the budget.

Rivers State Information Commissioner, Magnus Abe, in a recent chat with journalists expressed the view that if anything has to be done to the NDDC Act, it should be done with a view to strengthening the funding of the Commission. It was discovered that as at June 2003, all that the oil companies have contributed to NDDC is N25billion while the federal government has paid only N20billion. The Federal Government has also been discovered to be paying only 10% as against its enacted 15%.<sup>48</sup>

According to the Managing Director of the Commission, Mr. Chibuzor Ugwoha, the foreign oil companies operating in the Niger Delta have accumulated \$50 million in unpaid royalties to the NDDC. This, he said, is besides other statutory returns payable in naira, which the oil firms have also not remitted to the Commission.<sup>49</sup>

Ugwoha said the 2005 audit report of the Nigeria Extractive Industry Transparency Initiative (NEITI) showed that some of the oil firms did not remit the funds, which represented part of the three per cent of their total budget which they are legally obliged to pay to the NDDC every year.<sup>50</sup>

Timi Alaibe, the Executive Director of Finance and Administration of the NDDC, excuses the Commission's failure to satisfy the needs of people in the Niger Delta based on its

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<sup>47</sup> Vanguard online Reliably gathered from National Assembly Sources

<sup>48</sup> supra

<sup>49</sup> Daily champion Nigeria 12<sup>th</sup> Oct 2009 : Oil Companies and Niger Delta Development

<sup>50</sup> supra

lack of financial resources. As he said, “the condition of things in the Niger Delta in particular is pathetic and would require sustained development over a period of time to be able to make a significant impact.”<sup>51</sup>

The NDDC as it presently constituted does not have the capacity and what it takes to develop the Niger Delta region. The NDDC is a political configuration set up by the federal government to ease the tension in the area. It is a temporary structure, it is not permanent. It cannot provide concrete solution because it does not have what it takes. The federal government and the multinational oil companies are not paying up their quota. The possibility of solving the problem of Niger Delta seems impossible due to lack of sufficient fund. As a result of this, Senate Leader, Senator Teslim Folarin, expressed concern over the rising needs of communities within the Niger Delta region, saying the leadership of the National Assembly has no choice but to support the calls for increased funding of the Niger Delta Development Commission (NDDC)<sup>52</sup> Also, Chief Olusola Oke, the commissioner representing the Commission in Ondo State said that the oil companies have also defaulted in the funding of Commission, adding that money that is given to the Commission by both government and oil companies was smaller than what is being owed them going by the provision of the law establishing NDDC. The Commissioner who was giving report of the Commission's activities at Igbokoda said that the Commission had impacted positively on the lives of the people in the area but more could have been done if the Commission had been adequately funded.<sup>53</sup>

The problem of the Federal Government and that of Oil companies to comply with the provision of the Act as regards their contribution to the funding of the Commission is due to lack of sanction in the Act for failure to comply with the provision of the act.

The NDDC is also crippled financially, as its borrowing capacity requires the approval of the President.<sup>54</sup> **In Section 18**, the Act states that the Nigerian President should present the NDDC's annual budget to the National Assembly for approval and should keep a proper book of account, which must be audited at specified intervals. The Act also empowers the president to appoint a monitoring committee to monitor the management of NDDC's funds and projects.<sup>55</sup>

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<sup>51</sup> The Guardian, Monday, September 22, 2003, p. 15

<sup>52</sup> Nigeria: why we must Support Increased Funding for NDDC, Niger Delta, 19<sup>th</sup> Jan 2009

<sup>53</sup> From OMPADEC to the NDDC: an assessment of state responses to environmental insecurity in the Niger Delta, Nigeria

<sup>54</sup> Section 17 of the Act

<sup>55</sup> Section 21

There is an overbearing dominance of the Presidency on the activities of the Commission as was with the defunct OMPADEC. The Commission should be independent of the Federal Government /Presidency and should be insulated from political influences. It should be transformed into an autonomous body, with funding from the National Assembly (say 5% of oil revenue) and other independent sources

Interestingly enough, the Act also makes provision for corruption as **section 16** states:

“The Commission may accept gifts of land money, or other property on such terms and conditions, if any, as may be specified by the person or organisation making the gift.”

The board could easily hide under this section if they are been questioned for anything they receive without accounting for it. NDDC act does not make provision for accountability as regards the collection of gift.

SECTION 20 of the Act provides that:

“The Board shall prepare and submit to the President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, not later than 30th June in each year, a report in such form as the President, Commander-in-Chief of the Armed Forces may direct on the activities of the Commission during the immediately preceding year...”

Yearly report should be submitted to the National Assembly for debate, rather than the President, and it should also be made available to the public.

Amendments to the NDDC Act are necessary to ensure that its focus is on developmental work, implementation of sanction for failure to comply with the provision of the Act and public participation rather than token gestures.

# CHAPTER THREE

## POWERS OF THE COMMISSION

### 3.1 NATURE OF POWER

Power is the legal right or authorization to act or not act, a person's or organisation's ability to alter, by an act of will, the rights, duties, liabilities, or other legal relations either of that person or of another<sup>56</sup>. Power which is another form of a legal right could be public or private. Public powers are those vested in a person as an agent or instrument of the functions of the state. It comprises various forms of legislative, judicial and executive authority.<sup>57</sup> Private Powers on the other hand are those in persons to be exercised for their own purpose and not as agent of the state.<sup>58</sup> When a statute confers a power to the holder of an office, it is public power, and unless the contrary intention appears from or in the statute, the power may be exercised only *virtute officii* (i.e by the holder of the office and by his successor-in-office or the holder of the office for the time being). The power exercised by the board of NDDC is that of public powers as conferred by the NDDC Act.<sup>59</sup>

That administrative bodies have assumed position of great power is not open to doubt. However, the power these seemingly necessary bodies have assumed, have always been a matter of public concern because much of this power remains ill defined and arbitrary. Arbitrary power is certain in the long run to be despotism.

Since these powers are mostly conferred on the administrative bodies through legislation, it only takes a glance at the volume of such legislation to be able to appreciate the huge powers being transferred to the administrative agencies.

### 3.2 MANAGEMENT AND SUPERVISION

The Board of the NDDC is empowered to manage and supervise affairs of the Commission.<sup>60</sup> This which it carries out through the instrumentality of the management Committee, consisting of a Chairman who is the Managing Director, two Executive Directors,

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<sup>56</sup> Black's Law Dictionary. Eight Edition.

<sup>57</sup> Nigeria Engineering Works.V. Denap Ltd[2001]12. S.C.N.J

<sup>58</sup>(SALOMON: JURISPRUDENCE 12<sup>TH</sup> edition pages 229-230, chapter 42)

<sup>59</sup> Section 8 of NDDC Act

<sup>60</sup> Section 8(a)



the Directors responsible for the Directorates and such number of other members as may be determined from time to time by the Board. The Managing Director and two Executive Directors are to be appointed by the president.<sup>61</sup> The Management Committee is responsible to the Board for the general administration of the Commission.<sup>62</sup> The Managing Director is responsible for the day to day administration of the Commission, for keeping the books and Proper records of the proceedings of the Board and for the administration of the secretariat of the Board, and the general direction and control of all other employees of the Commission.<sup>63</sup> A monitoring and evaluation unit under NDDC monitors the progress of interventions in all States and the transparency and accountability including public participation in their operations, it consist of such number of persons as the as the President may deem fit to appoint from the public or civil service of the Federation.<sup>64</sup>

Administrative authorities possess coercive powers of investigation in the guise of supervision. In supervising the affairs of the commission, the Advisory Committee is charged with the responsibility of advising the Board and monitoring the activities of the Commission, with a view to achieving the objective of the Commission. The Advisory committee consists of the Governors of the member States of the Commission and two other persons as may be determined, from time to time, by the President.<sup>65</sup>

In evaluating the powers of the Commission as regards supervision and management, the management and the advisory committee are the major actors. The managing director who is also the accounting officer<sup>66</sup> is to be appointed by the president who is an Executive member and the members of the advisory committee are the Governors of the member States of the Commission who are also Executive members. Majorly, the power of supervision and management is vested in the Executive members who created the commission; because members of the management committee are not appointed by the members of the commission, so also that of the advisory Committee. The power vested in the commission is only a shadow of the power of supervision and management.

### **3.3 MAKING OF RULES AND REGULATION**

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<sup>61</sup> Section 12(1)

<sup>62</sup> Section 10

<sup>63</sup> Section 12(2)

<sup>64</sup> Section 21

<sup>65</sup> Section 11

<sup>66</sup> Section 12(1)(b)

The board is empowered to make rules and regulations for carrying out the functions of the commission.<sup>67</sup>

Administrative authorities have powers of legislation through the making of rules and regulation which to all intent and purposes are valid and capable of imposing sanctions as the Acts of legislature. NDDC is an agency in the [machinery of government](#) that is responsible for the oversight and administration of specific functions.

The commission is empowered to make rules specifying the manner in which the assets or the fund of the Commission are to be held, regulating the making of payments' into and out of the fund; requiring the keeping of proper accounts and records for the purpose of the fund in such form as may be specified in the rules<sup>68</sup>.

The power of the commission to make rules and regulation are advisory in nature because they are not conclusive. **Section 29 of the NDDC Act** provides that: the commission may, with the approval of the president, commander-in-chief of the armed forces, make regulations, generally for the purposes of giving full effect to this act.

Problems of interpretation may not arise where powers are conferred in clear and unambiguous language. The problem arises where the powers are conferred in vague, ambiguous and often subjective words. Wide discretionary power is conferred on the board of the commission to make rules and regulations for carrying out the functions of the commission. Because discretionary powers are usually conferred in wide, sweeping and subjective terms, they are arbitrary and can easily be abused.

### **3.4 INSPECTION OF PREMISES AND PROJECTS**

The board is empowered to enter and inspect premises, projects and such places as may be necessary for the purposes of carrying out its functions. Administrative authorities possess coercive powers of investigation in the guise of inspection.

The commission is empowered to survey the Niger-Delta area in order to ascertain measures which are necessary to promote its physical and socio-economic development<sup>69</sup>,

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<sup>67</sup> Section 8(b)

<sup>68</sup> Section 14(3)

<sup>69</sup> Section 7 (1)(c)

identify factors inhibiting the development of the Niger-Delta area,<sup>70</sup> assess and report on any project being funded or carried out in the Niger-Delta area by oil and gas producing companies and any other company including non-governmental organisations and ensure that funds released for such projects are properly utilized,<sup>71</sup> tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger-Delta area and advise the Federal Government and the member States on the prevention and control of oil spillages gas flaring and environmental pollution<sup>72</sup>. Oil companies and private buildings of the Niger delta area could be surveyed as a result of the power vested on the board of the commission.

The power vested on the Commission allows the board to supervise its projects judiciously. NDDC has threatened to blacklist all non performing consultants responsible for the delay in the completion of some of its projects. The Commission's Executive Director Projects, Arch Esoetuk Ikpong Etteh, who announces this at a meeting with consultants handling various jobs for the NDDC, said henceforth the consultants will be held accountable for delays as well as defects in projects execution. While assuring hardworking consultants of prompt payment he warned that fraudulent ones would face the full wrath of the law. He said: *The era of unnecessary delay of projects is over; consultants must take resident supervision of projects seriously. We shall hold you responsible for any failure.*

Arch Esoetuk charged them to guard against unnecessary request for general upward review of contracts, adding that there must be a clear difference between variation and fluctuation. He disclosed that valuation of ongoing projects will no longer be the exclusive reserve of only one person, but will be done jointly between the Commission, the contractor and the supervising consultants. He further said: *NDDC is being repositioned for better service delivery”, adding “I urged you to strive to reposition yourselves to meet up with the trends,*<sup>73</sup>

The act of the commission could amount to trespass to land when the board enter and inspect any premises and projects if is not for the sole aim of carrying out its functions. Trespass to land may be defined as an unjustifiable interference with the possession of land. It is constituted by an unlawful interference with land in the possession of another.<sup>74</sup> Trespass to land

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<sup>70</sup> Section 7(1)(f)

<sup>71</sup> Section 7(1)(g)

<sup>72</sup> Section 7(1)(h)

<sup>73</sup> [www.nddc.org-nddc](http://www.nddc.org-nddc) threatens to blacklist non performing consultants.

<sup>74</sup> Ogunbiyi. V. Adewumi [1988]5 N.W.L.R (pt 93) p. 215; [1935]2W.A.C.A 258 PER DEANE C.J

called ‘*quare clausum fregit*’ is committed where the defendant without unlawful justification enters upon the land in the possession of the plaintiff or remains upon such land or directly places or projects any material object upon land. The tort is aimed at preventing breaches of peace and this remains one of its cardinal functions since law in general is of primary importance in the settlement of land boundary dispute. For the act of the board to amount to trespass, it need not have committed damage on the land or premises because trespass to land is actionable per se, all the plaintiff will need to prove is the act of trespass and the court will presume damage in its favour. This position is supported by the decision of the supreme court in the case of **ADESANYA.V.OTUEWU**<sup>75</sup> Where it was stated that:

*“As a matter of legal theory, every unlawful or un-authorized entry on land in the possession of another is trespass for which an action in damage lies. Even if no actual damage is done to the land or fixtures in it. So where a person alleges bare possession and proves interference with it, there is actionable trespass.”*

Where fatal and specific act of damage are proved, the plaintiff will be entitled to more compensation, but the mere fact that no actual damage is proved is not fatal to the action.

The act of the board will not amount to trespass if it is justified by law, i.e if it is for the sole aim of carrying out the function of the commission.

### **3.5 PAYMENT OF REMUNERATION**

The Board is empowered to pay the staff of the Commission such remuneration and allowances as appropriate<sup>76</sup>.

The power of the board of Commission for payment of remuneration is not a total power because the power of the Commission to generate fund is subject to payment of the fifteen percent of the total monthly statutory allocations due to member States of the Commission from the Federation Account by the federal Government.<sup>77</sup> Three percent of the total annual budget of any oil producing company operating, on shore and off shore, in the Niger-Delta Area; including

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<sup>75</sup> [1993]1 SCNJ 77

<sup>76</sup> Section 8(d)

<sup>77</sup> Section 14(2)(a)

gas processing companies.<sup>78</sup> Fifty percent of monies due to member States of the Commission from the Ecological Fund.<sup>79</sup> such monies as may from time to time, be granted or lent to or deposited with the Commission by the Federal or a State Government, any other body or institution whether local or foreign<sup>80</sup>, all moneys raised for the purposes of the Commission by way of gifts, loan, grants-in-aid, testamentary disposition or otherwise<sup>81</sup>, proceeds from all other assets that may, from time to time, accrue to the Commission.<sup>82</sup>

The commission is empowered to apply the fund generated from the above sources to the cost of administration of the Commission, the payment of salaries, fees, remuneration, allowances, pensions and gratuities payable to the members of the Board or any committee of the Board and the employees of the Commission; the payment for all contracts, including mobilisation, fluctuations, variations, legal fees and cost on contract administration, the payment for all purchases; and undertaking such other activities as are connected with all or any of the Functions of the Commission under this Act.<sup>83</sup>

The major financial provision of the Commission is from the Federal Government and oil companies but unwillingness on the part the Federal Government of Nigeria not to pay their statutorily recognised contribution to the purse of the Commission and that of the oil exploration companies has also been discovered not to be up to date with their own part of the bargain as their contributory funding continues to suffer a short fall. Where there is such default in payment to the Commission the money required for the development of the Commission and the Niger Delta region, it will be handicapped in exercising the power vested on the Commission for payment of remuneration and allowances.

The commission cannot independently borrow to pay remuneration because the power vested on the Commission to borrow is subject to the consent of the President due to the fact that the Act provides: *The Commission may, with the consent of the President, Commander-in-Chief of the Armed Forces, borrow, on such terms and conditions as the Commission may determine, such sums of money as the Commission may require in the exercise of its functions under this Act.*<sup>84</sup>

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<sup>78</sup> Section 14(2)(b)

<sup>79</sup> Section 14(2)(c)

<sup>80</sup> Section 14(2)(d)

<sup>81</sup> Section 14(2)(e)

<sup>82</sup> Section 14(2)(f)

<sup>83</sup> Section 15

<sup>84</sup> Section 17

The Act shows that NDDC is within the whims and caprices of the president.

### **3.6 CONTRACTUAL POWER**

The commission is empowered to enter into such contracts as may be necessary or expedient for the discharge of its functions and ensure the efficient performance of the functions of the Commission.<sup>85</sup>

The executive Directors of project has some level of executive powers as provided by the acts guiding the commission they are to come together and work for the overall interest and development of the Niger delta region. This provision empowers the board to pay the contractors.

This power has often been abused because unfortunately, those who should serve as watch dogs on the Commission have become some of its key contractors adulterating the mandate to serve their constituencies with sudden greed and unbelievable desire to acquire wealth. Members of the House of Assembly such as Senators, and so-called members of the House of Representatives have abandoned their calling to pursue after contracts with the Commission. Some of them have won road contracts, others jetty construction contracts etc. The major problem is once they get themselves this compromised, most of them loose the nerve to condemn the Commission when they do not get it right. Worse still, it is these same politicians who abandon contracts very frequently after receiving mobilization. Some of our so-called traditional rulers have become more guilty in this area as they leave their kingdoms to scavenge for contracts at NDDC demeaning themselves and their people in the process. Our people are slowly becoming slaves to the enterprise called NDDC living on the hopes and promises that they may get a contract opportunity someday. That hope and promise has become a tool for the manipulation of politicians, youth leaders, traditional rulers, members of the house of assembly etc. As a result, people who should speak up and speak out against the evils currently being perpetrated there keep quiet.<sup>86</sup>

Going by the prevalence of impunity, abuse of power and misuse of discretion by public officers in Nigeria, the act should have gone a step further to clearly delineate the powers of the

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<sup>85</sup> Section 8(1)(e)

<sup>86</sup> Cynthia Whyte Joint Revolutionary Council Interview Series: why the board of NDDC must be suspended immediately.

commission as regards awarding of project, the duties of its administrative officers in ways that impose costs for failure to act. It ought to set clear standards to guide the officials on what to do empowering them to deal with contractors who fail to perform their functions. The absence of clear standards helps public officials to evade their responsibility and act in manners that inhibit efforts to compel performance by aggrieved communities. The only entity that can act to restrain or constrain the agency is the government, which may not have the incentive to scrutinize the agency.

The relationship between law and development is that law should seek to transform the problematic behaviors that retard development. In the context of public powers in Nigeria, the basic problematic behaviors are abuse of power and misuse of discretion. To address these bad behaviors, the act should have given incentives and legal capability to those likely to be affected by non-performance to challenge it before the court or other reviewing institutions.

## CHAPTER FOUR

### FUNCTIONS OF NDDC

#### 4.1 FORMULATION OF POLICIES AND GUIDELINES

The Commission is mandated to formulate policies and guidelines for the development of the Niger- Delta area.<sup>87</sup>

The major policies and guidelines formulated for the development of Niger Delta is contained in the master plan of the commission. This function is performed through the instrumentality of the Directorate of Planning, Research, Statistics and Management Information System<sup>88</sup>.

The Master Plan is basically conceived as a tool that the millions of people of the Niger Delta Region can use to actualize their common vision and build their future to the standard they desire. The Master Plan is designed to offer stakeholders at all levels (individual, group and community) the opportunity to participate fully in the planning and decision making process. Specifically, the Commission requires the ideas and opinions of stakeholders as basis for defining focus areas for development and for producing a vivid picture of what the people want the Niger Delta region to look like within 15 years of the master plan implementation. This implies that the input of stakeholders today is what will determine the state of affairs (both for individuals and communities) in the region tomorrow. The Master Plan, for which satellite mapping had been completed and the resource consultants appointed, is expected to cover the following areas: Demography, Environment and hydrology, Agriculture and aquaculture (with focus on economic activities), Biodiversity, Transport(infrastructure), Rural, urban, regional planning and housing, Community Development, Governance and capacity development, Health, Small and medium enterprises, Water supply, Energy (electricity), Telecommunication Vocational training (with focus on employment generation), Waste management and sanitation, Large-scale industry, Solid minerals, Tourism Social welfare, Arts, Sports and Culture, Women and Youth employment, Conflict prevention, Financial instruments and access and Investment promotion.<sup>89</sup>

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<sup>87</sup>Section 7(1)(a) of NDDC Act, 2000

<sup>88</sup> Section 9(1)(g)

<sup>89</sup> [www.nddc.org/home](http://www.nddc.org/home), 24<sup>th</sup> March 2010.



The NDDC Annual Report 2005 lists a number of key achievements, including the initiation 2047 infrastructural development projects across the Niger Delta, covering roads and bridges, electrification, water supply, canalization and school construction. A range of human development programmes were established, including youth empowerment programmes and skills acquisition programmes. The commission also advised the federal and state governments to take practical steps to empower communities to protect their environment through policies and legislations laid down by the commission to obligate oil companies to apply best practices and grant communities the right to determine how and when oil operation are compatible with human conditions in the communities, to also recognize that destruction of agricultural prospects in rural communities through irresponsible oil operations is an indirect violation of the right to life and the right to a safe environment, and also a negation of the policy of economic diversification. The commission made policies to ensure good health in Niger delta area through provision of safe water drinking, reduction of poverty and improvement on farming.<sup>90</sup>

The right to safe drinking water is a fundamental right that imposes duties on governments to respect, promote, protect and fulfill it. The least that can be done is meet the UN prescribed minimum of 20 liters per person per day, and ensure that no oil operation or economic development activity impedes the realization of the right of every person to adequate liters of water per day. To fulfill the obligation to protect the right to adequate and safe drinking water, the government must develop a policy and legislative framework that practically articulates processes and institutions that ensure the protection of water sources. Such a framework should resemble the South African bold intervention via the Year 2000 revision of Water Act, which guarantees 6,000 liters of water free for every household every month.

Providing rural communities with sufficient liters of free water will help cut down the death toll linked to water-borne diseases. As the economic mainstay of the communities is farming, income is low in these communities so the people cannot afford to provide water for themselves. They thrive on subsistence agricultural with most households principally deriving income and food supply from local sources. These communities do not boast of any industries or other income-generating enterprises. In the past, they were food baskets. Today, however, agriculture has declined due to the discovery of oil and Shell's pollution, and people face the danger of malnutrition.

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<sup>90</sup> Niger Delta Development Commission 2005

But assessment of development in the Niger Delta since the NDDC was established shows that poverty reduction progress has been slow, particularly given the Niger Delta's substantial natural resource endowments and additional federal government resources. However, the effectiveness of the NDDC cannot be measured. We also do not know much about which programme components are more or less effective at achieving the programme's overarching goals.

The NDDC may not have lived up to its high billings after all, despite the number of Projects it boasts of having commissioned and completed. Some of these official claims may be fictitious, exaggerated, or handled in manners inimical to the advancement of public interest which is the amelioration of the people's living conditions. The task of evaluating the performance and effectiveness of the NDDC presents us with a measurement dilemma. This is because there are no good independent studies of the effectiveness of NDDC projects, and so we must for now rely on the opinion of interested parties. To complicate matters, opinions are sharply divided regarding the effectiveness of the NDDC in discharging its responsibilities, and a large proportion of available views on the issue are negative. This explains why skepticism about project effectiveness is warranted.

Agitations have arisen as regards the fact that participation of the communities should not stop at policy formulation. They should also be given a role in project implementation by setting up volunteer community oversight boards to monitor project execution for instance.<sup>91</sup>

## **4.2 IMPLEMENTATION OF RULES AND REGULATIONS**

The commission is mandated to conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development of the Niger-Delta area in the field of transportation including roads, jetties and waterways, health, education, employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications.<sup>92</sup>

The Commission through the instrumentality of the Directorate of Utilities Infrastructural Development and Waterways<sup>93</sup>, the Directorate of Education, Health and Social Services<sup>94</sup>, the Directorate of Commercial and Industrial Development<sup>95</sup> and in conjunction with the Partnership

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<sup>91</sup>Ebere Onwudiwe: The NDDC and Peace strategy in the Niger Delta.

<sup>92</sup> Section 7(1)(b)

<sup>93</sup> Section 9(1)(c)

<sup>94</sup> Section 9(1)(i)

<sup>95</sup> Section 9(1)(j)

for Sustainable Development Forum (PSDF) is fast-tracking the full implementation of the Niger Delta Regional Development Master Plan (NDRDMP). The commission advised the PSDF on the principles and tools to use in implementing sustainable community development actions for the 9 States of the Niger Delta Region. The commission also advised private sector and government on sustainable community development in the Niger River Delta region, Nigeria (West Africa) to design and develop programmes that would implement an NDDC Master Plan for the rapid, even, and sustainable development of the Niger Delta Region of Nigeria, the commission also designed a process which outlined the minimum human and logistics capacities required in each directorate of the NDDC in light of anticipated responsibilities for guiding implementation of the region's Master Plan.

The effective implementation of the NDRDMP needs commitment from all stakeholders: the Federal Government, states, local governments, oil companies, international development organisations, community-based groups, and non-governmental organisations.

The Commission through the master plan has been able to implement rules and regulations for the sustainable development of Niger delta area. The NDDC Master Plan, for which satellite mapping had been completed and the resource consultants appointed, is expected to cover part of the following areas: Environment and hydrology, Agriculture and aquaculture (with focus on economic activities), Transport(infrastructure), Rural, urban, regional planning and housing, Community Development, Health, Water supply, Energy (electricity), Women and Youth employment e.t.c.

At the head office in Port Harcourt, a meeting was held which was aimed at deepening the involvement of the stakeholders and democratizing the master plan's implementation process, bringing participants from the multilateral development agencies, represented by the United Nations Institute for Training and Research (UNITAR) and the United Nations Development Programme (UNDP); chief executives of the oil and gas companies operating in the Niger Delta region, as well as the Ministry of Niger Delta Affairs.<sup>96</sup>

The following quotation shows a comment about the Master Plan:

*In so far as all stakeholders embrace it (the plan) and implement it, then we are going to see substantial improvement in the quality of education... This is very*

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<sup>96</sup> NDDC: stakeholders begin fast track implementation of Niger Delta Master Plan. Thursday, 13 August 2009.

*fundamental. A lot of things are tied around education, even unemployment is tied to quality education, conflict has some of its root in poor quality education, because people come out of school, they cannot get jobs and they cannot go back to farming, they find themselves in the middle of nowhere and they become ready recruits for militants...Details of the infrastructure that needs to be developed to deliver the plan will become known with time as the plan is implemented. In the mean time, it is hoped that the execution of the plan will bring to an end the neglect, poverty and the resultant unrest in this important area of the country.<sup>97</sup>*

The commission developed instruments and procedure for testing all Master Plan programs and projects, including the NDDC's defined Quick Impact Projects (QIPs) for social, economic and environmental sustainability, facilitated Participatory Regional Assessment (PRA) activities to build human capacity in target communities for sustainable revitalization action programs, emphasizing equally economic, environmental, and social justice issues. The Commission also provided guidance on processes for the monitoring and evaluation of projects designed and implemented under the NDDC Development Master Plan, designed and implemented communications and advocacy projects to ensure sustained stakeholder confidence and participation in the NDDC sustainable community development plan implementation, advised public and private stakeholders on the design of a Sustainable Technology Industrial Park (STIP) that emphasized principles of industrial ecology and eco-efficiency and stressed the importance of business attention to the triple bottom line.

One of the reasons NDDC was setup is to provide social amenities to wit; good roads, pipe borne water, renovation and building of schools both primary and secondary etc. In respect of this, NDDC has performed a little above average with the lean financial resources at its beck and call. A lot still need to be done in area of road construction especially in remote villages.

The NDDC claims it has built forty roads, constructed ninety units of water projects, 129 electricity projects, and forty-seven shore protections and jetties as at February 2003. Social And Economic Right Action Centre's (SERAC) fact-finding mission visited some of the communities where NDDC claims to have provided development projects. In its website it lists that it built a jetty at Oloibiri.<sup>98</sup> The contract for the jetty was award to Wuema Co. Ltd. The problem with these claims is that the costs quoted are usually above what such projects should cost in market value. The NDDC water jetty was a project started by the defunct OMPADEC.

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<sup>97</sup> Okereke 2007:3

<sup>98</sup> [www.nddconline.org](http://www.nddconline.org): NDDC projects and its operations. 24<sup>th</sup> march 2010.

All that NDDC has done is to resuscitate the project. The high cost quoted for some of these projects reinforces the allegation by opposition politicians that NDDC was a war chest for the electoral victory of the Peoples Democratic Party (PDP).<sup>99</sup>

Even if we overlook the astronomical cost of these projects, the question remains whether NDDC's report card is good enough in the face of the overwhelming development needs in the Niger Delta. Is constructing forty roads enough evidence of commitment in an area as deprived as the Niger Delta? What about hospitals, clinics, schools and the most basic: pipe-borne water? In Oloibiri community in Rivers State, the only secondary school was built decades ago by the old Rivers State government. The only primary school there belongs to a missionary group. In the Egbokodo community in Delta State, NDDC has provided no development assistance. Chief Gordon Afejuku, Chairman of the Community Council has no trust in the commission because, according to him, "the NDDC is seen to be biased against the Itsekiri ethnic group probably because an Urhobo, Mr. Godwin Omene, is the Managing Director".<sup>100</sup> Also in Ozoro community, NDDC has recorded no presence.

Is the jetty a priority project in Oloibiri in the face of the community's grave poverty and total lack of basic medical and educational facilities?<sup>101</sup> The Chairman of the Oloibiri Chiefs Council, Chief S.F. Inengite Ikpesu, faulted the claim by NDDC that the jetty is the biggest in Bayelsa. He argues that the jetty has been of little use to the people due to the fact that NDDC is constructing a footbridge to link Oloibiri Ogbia town and this will hamper fishing activities and sea travel because boats and canoes will find it difficult to move through bridge.<sup>102</sup> SERAC's research confirmed that the jetty is rarely used because it is situated far away from residential homes, and more expensive than local alternative means of transportation.

The deplorable state of key roads in the rural areas which link rural dwellers with their urban counterparts is quite alarming. The advantage derivable from building roads in the rural areas cannot be overstated. It is common knowledge that some agricultural produce seen in the cities are produced in remote villages whose roads are most times impassable. It is believed that if key roads in the remote villages are constructed and linked to cities it will lead to more of

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<sup>99</sup> *supra*

<sup>100</sup> Interview conducted by SERAC team at the palace of Chief Gordon Afjeku, Chairman, Egboko Community Council

<sup>101</sup> NDDC posted a press release stating that the Monarch of Oloibiri Kindom, His Royal Majesty King J.C Egba commended the Agency for constructing the largest jetty in Bayelsa State in the community.

<sup>102</sup> REPORT OF SERAC Team of July 2004.

agricultural produce finding its way into the city. This in the short run will bring down the price of agricultural produce, cost of transportation as well as save motorists the pain of changing automobile spare parts regularly..

Despite the short coming on NDDC, it had implemented some rules and regulations leading to construction of roads, building of schools and youth employment though it may not be sufficient. The effort of the Commission has been commended largely.

*At this point, I want to commend NDDC for its road projects especially here in Rivers State, and other states. The renovation and building of school blocks, youth employment, and provision of boreholes amongst others are praiseworthy initiative even though the Federal Government has starved you of the necessary financial backbone in the past, as alleged in some quarters.*<sup>103</sup>

The federal and state governments have not done enough to address the problems of water in the Niger Delta. It is against this background that the NDDC stepped up to fill the yawning gap. Since 2001, the commission has undertaken 283 water supply projects. Out of this, over 90 have been completed. Most of them are delivered with standby generators, purpose-built generator houses, and water treatment facilities as well as service quarters.

Now, the commission is focusing on solar-powered water projects to bypass the problem of fuel and generator hiccups. The Ogonis were recently given a feel of the new solar technology, which eliminates the problem of power failure. The people of Sii in Knana Local Government Area of Rivers State were full of gratitude recently when the NDDC commissioned a N39.4 million solar-powered water project for them.<sup>104</sup>

#### **4.3 SURVEYANCE OF NIGER DELTA AREA**

The commission is mandated to survey the Niger-Delta area in order to ascertain measures which are necessary to promote its physical and socio- economic development.<sup>105</sup>

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<sup>103</sup> Overt letter to the Inaugurated Board of NDDC by Onukwube Uwanu

<sup>104</sup> Daily Independent, 5<sup>th</sup> November 2008: ALL Africa Media Reports On Ecotilities and NDDC's Biseni Water Project by Ifeatu Agbu

<sup>105</sup> Section 7(1)(c)

In surveying the Niger Delta Area, NDDC the instrumentality of the Directorate of Administration and Human Resources<sup>106</sup> partners with other organisations to actualise its Mandate. There is a forum, which brings NDDC and other relevant stakeholders together to collaborate, harmonize and pursue the development of the region. The partners include Federal Government, local government, State government, Oil Companies, the National Planning Commission, Non Governmental Organisations (NGOs), community based organizations (CBOs), etc. Specifically, the PSD Forum is designed to enable all partners across the Region collaborate in navigating, monitoring and funding the implementation of the Niger Delta Regional development Master Plan (NDRDMP), beginning with the Quick Impact Project. This is to maximize synergy and complementarily of efforts for the optimal implementation of NDRDMP and accelerated development of the region. An inventory is made of what the different communities say they have suffered through some kind of report or an inventory of damage (including a record of disasters such as fires and oil spills) and then, to translate these claims into various creative development projects. The various communities identified pollution by the various oil companies and lack of water facilities.

Specifically, the Commission requires the ideas and opinions of stakeholders as basis for defining focus areas for development and for producing a vivid picture of what the people want the Niger Delta region to look like within 15 years of the master plan implementation. This implies that the input of stakeholders today is what will determine the state of affairs (both for individuals and communities) in the region tomorrow.<sup>107</sup>

Shell's operations in Ozoro (Delta State) clearly illustrate how rural economies collapse when oil operations are unregulated. In 1999, Shell returned to Well 3 (Ibo Bush) in Isoko Deep Field in Isoko North Local Government Area in Ozoro in order to revive a well that it abandoned in 1978. Upon its return, Shell made visible preparation for oil production, including installing a wellhead for drilling. However, the community alleges that this was a calculated attempt by Shell to deceive the community and conceal the actual nature of Shell's operations at Well 3 to dump toxic wastes in the abandoned well. Soil sample tests conducted independently at the University of Benin/Owena River Basin Joint Analytical Research Laboratory and Geo-Consult of the Department of Geology, University of Nigeria, Nsukka confirmed that the dump was toxic. The test results conclusively noted the levels of toxicity in the sample as "harmful to both plants and animals because of the presence of heavy metals such as lead, copper and zinc.

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<sup>106</sup>106 Section 9(1)(a)

<sup>107</sup> ibid

Government and Shell-sponsored tests conducted by Peak Engineering Limited also confirmed the toxicity of the waste and the possibility of harmfulness. The Peak report noted that, “the re-injection project at Ibo bush is likely to remain environmentally friendly if spills of materials are completely avoided and well leakages are continually guaranteed.” A fourth laboratory at the Delta State Environment Protection Agency (DELSEPA) similarly concluded that, “the heavy metals obtained in the samples could be sources of pollution in open water bodies and drains, if such substances are not confined.” The sum of the independent tests is that any spill from the Ozoro well could be calamitous

On the July 1, 2003, community members observed that the well was leaking odious gas and liquid. Shell Petroleum Development Company (SPDC) was immediately alerted and cleaning lasted between July 3 and 12, 2003. Community members who visited the well site reportedly fell critically ill. Additional persons became ill after visiting polluted farmlands or bathing with stream waters close to the dump site. Vegetation such as cassava started decaying and fish in neighboring ponds died. Water around the well turned greenish, and soon ponds started to dry up. It was observed the community deserted the as a result of fear and uncertainty. Though Shell claims to have cleaned the leakages, the community is fearful of going back to the farmlands and the village streams for agricultural and other social needs.

The case is mirrored across other communities in the Niger Delta. Both Ugbo, an Ilaje community in Ondo State and Oloibiri in Bayelsa State suffer acute shortages of safe drinking water, in spite of the abundance of streams, rivers and creeks. In these communities, all the natural water supplies are polluted by oil spills and gas flares. The pollution of natural water supplies presents the people with grave hardship. In Oloibiri, the villagers have the choice of paddling canoes for an hour for safe drinking water to the neighboring village, Amakalakala or traveling for six hours to an Agip flow station in Nembe Local Government Council. In June 2003, such a risky and arduous journey in search of drinkable water resulted in the death of a twelve-year-old girl in a canoe accident. In Ugbo, the problem is not pollution from oil operation as such, but the lack of water facilities. The only source of water for the community is the village stream. Because of excessive and unhygienic use (it is used to wash clothes, religious oblation and ritual, and for toileting), the river water has blackened and now poses health risks to the people.



The identification of the various factors helped the Commission in determining what will be contained in the master plan for the development of Niger Delta Area. These informations are majorly gathered by organizing conferences where the community leaders will be allowed to air their views and make recommendations.

There have been agitations that not all the Niger Delta areas have been surveyed. Oil bearing Communities in Akwa Ibom State have called for the scrapping of the Niger Delta Development Commission (NDDC) for failing in its primary responsibilities to the people. Prominent opinion leaders in Eket, Ibeno, Esit-Eket and Onna communities expressed extreme disappointment with the way and manner NDDC has carried out its programmes in these areas and other parts of the state, as there is no comparative impact as regards projects on ground. They argued that from reports gathered every year Mobil Producing Nigeria spends over N6 billion as its own counterpart funding to NDDC for use in the development of their immediate communities and other parts of Akwa Ibom State “*yet there is nothing tangible on ground to justify such a huge contribution*”. The communities further noted that before the creation of NDDC the oil companies like Mobil Producing Nigeria (MPN) under a Memoranda of Understanding (MOU) used to call the communities together seeking their opinion on various projects of their interest and such projects were executed, but now it is not so since NDDC came and a huge chunk of monies meant for community development has been diverted to the purse of NDDC. One of the Elders of the oil bearing communities and the Village Head of Mkpanak in Ibeno Local Government Council, Chief Edet Ndarake said, “*I am not satisfied with the performance of NDDC.*” According to him, “*with the much money paid to NDDC, they suppose to develop this place for us.*” Mobil gives them much money yet nothing is here for one to see as a major project from NDDC. Apparently fuming with anger, Chief Ndarake said,

*Go to Iwoachang-Okoritip road, for 4 years now the road is still there and nothing has been done. The bridge is there and no progress. I am not happy about it and am sure is the same thing in Esit-Eket and other places*

He also pointed out that

*In the past we had MOU and Mobil will call us and ask the jobs we want but now money is sent to NDDC yet nothing, what the people of his community want is development and employment from NDDC and Mobil.*

A Youth Leader in Esit-Eket, Mr Samuel Eshiet noted that,

*Since NDDC has been functional, we have not benefited from it...the fact is that the Federal Government should scrap NDDC and think of an alternative way of solving our problems and forget this showmanship NDDC is doing.<sup>108</sup>*

#### **4.4 PREPARATION OF MASTER PLAN AND SCHEMES**

The commission is mandated to prepare master plans and schemes designed to promote the physical development of the Niger-Delta area and the estimates of the costs of implementing such master plans and schemes.<sup>109</sup>

NDDC was established in December 2000 following the federal government initiation of a master planning process for physical and social development to achieve speedy and global transformation of the Niger Delta into a zone of equity, prosperity, and tranquillity.

The idea of a master plan requires baseline data on the problems of the region. The most effective and human rights friendly manner of acquiring such a database is to consult widely with people and groups in the Niger Delta through the instrumentality of all the Directorates in the Commission<sup>110</sup> who make consultations with all the stakeholders. Such consultations will help the agency build-up confidence among the communities and generate the kind of collective action that is required for a qualitative transformation of the area. The idea of development that can resolve the socio-economic difficulties in the region is not one that is driven by technocrats who pay no attention to democratic engagement and participation in decision-making.

The Master Plan, which was designed by GTZ of Germany and patterned after Alaska and Alberta, was scheduled for implementation in different phases. The Master Plan, which is principally designed to develop rural communities and reduce rural-urban migration, is based on three 5-year phases, namely: *the foundation phase (2006-2010); the expansion phase (2011-2015); and the consolidation phase (2016-2020).*<sup>111</sup> The broad based targets of The Master Plan (for which satellite mapping had been completed) cover the following aspects: demography; environment and hydrology; agriculture and aquaculture; biodiversity ; transport; rural, urban, regional planning and housing ; community development; governance and capacity development; education; health; small and medium enterprises (SMEs); water supply; energy (especially

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<sup>108</sup> [www.thetidenews.com](http://www.thetidenews.com) Akwa Ibom Professional Incorporation International Inc: Akwa Ibom Communities want NDDC scraped. 25<sup>th</sup> March 2008.

<sup>109</sup> Section 7(1)(d)

<sup>110</sup> Section 9(1)

<sup>111</sup> Africa Research Bulletin, 2007.

electricity); telecommunication; vocational training (for employment generation) ; waste management and sanitation ; large-scale industry; solid minerals; tourism; social welfare; arts, sports, and culture; women and youth employment; conflict prevention; access to financial instruments; and investment promotion<sup>112</sup>.

As part of the development of the Master Plan in the foundation phase, NDDC had commission studies of the biodiversity, natural resources and water resources in the region. Potential regional environment-related roles for NDDC include: (i) monitoring of compliance with federal and state environmental regulations, environmental education and information sharing, periodic studies to identify and assess environmental issues; (ii) providing recommendations to the Federal and State Governments regarding environmental and social safeguards policy, mediation in environment impact-related disputes; and (iii) providing an example for government and private sector in terms of developing and implementing environmental and social safeguards policy.

In 2007, the Nigerian President (Umar Yar' Adua) endorsed The Master Plan as the policy framework for the Niger Delta Development. This gesture seems to settle the question of continuity. It is believed to be the first integrated development plan driven by stakeholders' participation in Nigeria. The plan covers different sectors including health, education, transportation, and agriculture, while its objectives embrace economic growth and infrastructural development. In particular, its major goal is to reduce poverty, induce industrialization, and ensure social economic transformation of the area. Thus, it is aimed at raising the people's living standard in accordance with the nation's 'Vision 2020' and the Millennium Development Goals (MDGs). Special road projects costing over N180 billion, new health facilities, and a full-fledged University of Petroleum Resources are listed in the Master Plan. It is believed that the Master Plan would be the means of solving problems such as unemployment and violence in the Niger Delta. It was estimated that \$50 billion (N6.4 trillion) would be required for the implementation of the Master Plan for 15 years.<sup>113</sup>

The effectiveness of the Master Plan depends on commitment from all stakeholders, especially the Federal Government, the Niger Delta states, and Oil companies. The development of a Master Plan would require a comprehensive approach with strong considerations for traffic, river hydrology and morphology, environmental assessment, socio-economic impact, and institutional strengthening (a re-engineering).

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<sup>112</sup> *ibid*

<sup>113</sup> Babalola 2008

Regrettably, NDDC has achieved very little. The Master Plan for the development of the Niger Delta was crafted by expatriate (GTZ of Germany) with the collaboration of few political elites and imposed on the Niger Delta people. Unlike the success stories of similar structures in Canada and the United States of America where special funds were provided from royalties for the development of Alberta and Alaska, respectively; the Nigerian NDDC Master Plan is retarded because the Commission formulates the policies, decides the contracts and to whom they are awarded, monitors their implementation, and equally pays the contractors themselves without any interference from any other party as contrary to what was declared by the Commission. Although the NDDC has generated services with improved accessibility, the broad consensus in the region favours empowerment, strengthened communal autonomy, and improvement in living standards. Unexpectedly, different militant gangs seem to have largely gained credibility in their struggle for liberation of the Niger Delta. Obviously, the NDDC has not shown capacities and strategies to address the lingering spate of militancy in the region. The future of the Niger Delta is dicey in light of current uncertainties. The outcomes of the rising militancy have attracted attentions worldwide. Different identity based social movements, including youth associations, militants, vigilantes, and cults, draw on repertoires of discourses and enter into hostile relations with state authorities and agencies, including NDDC. These groups mobilize members for resource control and community development in response to the Nigerian politics of plunder, endemic since the beginning of the oil boom, but locally perceived as having intensified from the 1990s onwards.

Insecurity arising from the activities of the social movements in the oil-rich Niger Delta has been a major drawback to the execution of NDDC projects. It remains an unavoidable risk and obvious hazard in the management of NDDC projects in spite of the Federal Government's efforts to ensure peace in the region. For example, a major oil company has purchased a high technology solution supplied by Blue Sky Network (a company in California) to help enhance the safety of its personnel and equipment. A major problem militating against successful operations of NDDC is hostage taking. Cases of hostage taking are on the increase in the Niger Delta where some kidnapped foreigners and indigenes were forced to pay a huge amount of money as ransom. The increase in hostage taking has been attributed to government's military attacks against militant groups in the Niger Delta. A militant youth noted as follows: *“our interest lies in how to bring the attention of everybody to the issue of the Niger Delta...to see physical development, both from the oil companies and the federal government.”* Undesirable socio-economic situations in the Niger Delta have bred a frustrated population, ethnic

polarization, communal suspicion, anti-establishment agitation, and hostility, all of which create instability and impede development. Basic amenities or infrastructure such, as good roads, safe drinking water, electricity, telecommunication, housing, transportation, health, and educational facilities are in short supply in the Niger Delta. The Niger Delta communities have been excluded in the management of the upstream and downstream operations of the oil industry through the **S.1 (1)(2) of the Petroleum Act promulgated in 1969**.

The actions of militants have adversely affected socio-economic development in Nigeria. For instance, some organisations have abandoned their productive activities in some areas due to insecurity and fear of militant groups. This abandonment has diminished volumes of oil production and lowered revenue generation from oil bearing communities. Similarly, the power generation has been adversely affected. Despite government's huge investment in the power supply, failure to maintain and utilize the installed capacities of power generating plants and damages to oil and gas pipelines feeding power generating stations have resulted to astronomical rise in power outages in Nigeria. According to NDDC one of the fundamental focus of the plan is quality education which is the key to solving Niger Delta unrest.

The following quotation shows a comment about the Master Plan:

*In so far as all stakeholders embrace it (the plan) and implement it, then we are going to see substantial improvement in the quality of education... This is very fundamental. A lot of things are tied around education, even unemployment is tied to quality education, conflict has some of its root in poor quality education, because people come out of school, they cannot get jobs and they cannot go back to farming, they find themselves in the middle of nowhere and they become ready recruits for militants...Details of the infrastructure that needs to be developed to deliver the plan will become known with time as the plan is implemented. In the mean time, it is hoped that the execution of the plan will bring to an end the neglect, poverty and the resultant unrest in this important area of the country.<sup>114</sup>*

The above statement contradicts findings of the recent studies showing that the vast foreign investments in the crude-oil and natural-gas (CONG) sectors have not resulted in significant benefits for most people in Nigeria where the government and multi-national companies have generated remarkable revenue from the sectors. Only minor contracts have been awarded to local contractors due to several factors ranging from inadequate finance, lack of technical expertise, and corruption to conflicting attitudes of multi-national operators and local contractors.

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<sup>114</sup> ibid

The rising conflict and ethnic militias that pervade the Niger Delta are eloquent testimonies to disappointment in the NDDC. This situation could be attributed to NDDC's seemingly intractable problems, such as financial limitations. An erstwhile NDDC Chairman noted that comprehensively developing the Niger Delta would require more than N400 billion but as of October 2004, the NDDC had spent N80 billion.<sup>115</sup> Also, some Niger Delta states queried the Federal Government on deduction from their allocations from the federation account. Corruption remains another problem, as suggested by the fact that the leadership of the NDDC has been changed four times in less than ten years, and a recent allegation of corruption that led to the indefinite suspension of Mr. Godwin Omene, the Managing Director of NDDC, is very much a re-enactment of history. In the light of the foregoing, the problems that confronted present development policies are currently confronting the NDDC. Therefore, a re-engineering of the NDDC policy framework would be necessary. A pellucid description of the NDDC problems shown above is extended further in this project work, which makes a case for re-engineering the NDDC's Master Plan for development of the Niger Delta.

Mr. Ugwoha the managing director of NDDC said: the Niger Delta Regional Development Master Plan is also due for review and urged the town planners to analyze it and make contributions.

*The Master Plan is not cast on stone, it is due for review, I urge you to look at it and the region as a whole and give your opinion as a body*

He offered the Institute's hands of partnership in the development of the region adding: *We recommend the creation of physical planning department in the Commission to assist in the interpretation and implementation of the Master Plan.*

Though the NDDC package appears comprehensive it seems incapable of providing the desires of the Niger Delta communities. The NDDC, despite its seemingly good intentions, has not solved the issues on target. The Master Plan approaches are still falling short, especially as the intensity and complexity of violence has grown. The persistent volatile conflicts seem to demand new models and new ways of thinking to crack them. Solving the problems of the Niger Delta is not just a matter of mobilizing more funds for NDDC but also developing entirely new models and ways of achieving sustainable development.

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<sup>115</sup> [www.nddc.org/home](http://www.nddc.org/home): NDDC 2004. 18<sup>th</sup> march 2010.

This reality makes social reconciliation approaches that would achieve better leverage on resources, enhance effectiveness through collective negotiations, and enable more sustainable social impact increasingly relevant. The unfortunate gaps between the Niger Delta communities and their heritage have not been bridged as people continue to confront chronic deprivation arising from anti-community policies, such as sections **34 and 36 of the Land Use Act of 1978** dealing with transitional provisions in Urban and non-urban areas. In protesting against the Nigerian state imposition of people unfriendly policies, organised bodies of militia groups have found violence a handy weapon and resisted human rights violation in their communities.

The modalities for addressing the relatively long history of activism on the Niger Delta issues seem to be missing in the NDDC master plan. As the continuing implementation of the master plan has not significantly improved the living standards of majority and pacified the aggrieved militant agencies, it is necessary to reexamine the commission's relevance within the context of the community development discourse. The operations of NDDC cannot elude the questions of alienation and communal catastrophe, escalating from the ambivalence of its hegemonic influence and authoritarian construct. The need to reengineer the Master Plan in the institutional frameworks aimed at repositioning the Niger Delta for sustainable development is inevitable. Such re-engineering must lend credence to the necessity of collective reconciliatory movement that is capable of addressing the collective needs and providing lee-ways towards achieving them. The contradictory situations in the Niger Delta require a holistic approach. Instead of the budding bureaucrats, parochial politicians, profligate professionals, and local elites only dictating the pace for the rest of the Niger Delta communities, the multi-layered spheres of influences and powers of all agencies should be captured and engaged within the contexts of local idioms and communal development. The importance of culturally nuanced strategy for the development of the Niger Delta should not be underrated. The inevitability of greater indigenous inputs towards successful implementation of the NDDC Master Plan is a major concern. The Niger Delta people, especially the less privileged that are in the majority rather than only the elites who constitute the minority, must be actively involved in programmes that affect them. Community based organizations (CBOs) that represent the interest of the poor should be co-opted to stand in for people who may be too weak to play an active role. All members driven collective community interests must be at the centre of all projects implementations. This will require rigorous survey and social mapping of the programs' impact assessment and evaluation development policies.

A Niger Delta Bank for Reconstruction and Development and a Development Board should be incorporated. The operators of Oil and Gas business in Niger Delta, the traditional owners of land, and the people of the Niger Delta as defined by the Willink Report of 1958 should collectively negotiate and decide the membership of the Development Board whose funding should be from royalties due from the various operators of Oil and Gas in the Niger Delta. The above recommendations (re-engineering process) are crucial if equity and tranquility are desired in this resource rich region i.e the Niger Delta, which would help in implementation of the master plan.

Implementation of the Master Plan will also succeed if all the State and Local authorities as well as the Federal Government and other 'intervening stakeholders' in the public, private and voluntary sectors subscribe to the strategy and develop detailed plans for their own action in line with the regional strategy and in the proposed manner. This entails integrated planning and coordinated implementation, consultation with and respect for intervening and other stakeholders, transparency and accountability of decisions, budgets and processes. This need for collaboration dictates the way forward.

The success of the Master Plan's programmes and policies will depend on the combined efforts of all the stakeholders in the Niger Delta Region covering a wide range of interests ranging from the community of the smallest hamlet through to national agencies and the Federal Government.

#### **4.5 IMPLEMENTATION OF MEASURES FOR THE DEVELOPMENT OF NIGER DELTA AREA.**

The commission is mandated to implement all the measures approved for the development of the Niger- Delta area by the Federal Government and the member States of the Commission.<sup>116</sup>

NDDC has been mandated by the federal government which established it to tackle ecological problems which arise from exploration of oil minerals in the Niger Delta area and for connected purposes.<sup>117</sup>

The Commission through the instrumentality of the Directorate of Community and Rural Development implements the measures approved for the development of Niger Delta area<sup>118</sup>.

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<sup>116</sup> Section 7(1)(e)

<sup>117</sup> Preamble of NDDC act



The role of legislation in inducing responsible attitudes and behaviours towards the environment cannot be overlooked. Legislation made by Federal Government serves as an effective instrument for environmental protection, planning, pollution, prevention and control. Some of the legislation which are impliedly approved for the development of Niger Delta Area are discussed below.

#### **4.5.1 Constitution of the Federal Republic of Nigeria (1999)**

The constitution, as the national legal order, recognizes the importance of improving and protecting the environment and makes provision for it. Relevant sections are:

- **Section 20** makes it an objective of the Nigerian State to improve and protect the air, land, water, forest and wildlife of Nigeria.
- **Section 12** establishes, though impliedly, that international treaties (including environmental treaties) ratified by the National Assembly should be implemented as law in Nigeria.
- **Section 33 and 34** which guarantee fundamental human rights to life and human dignity respectively, have also being argued to be linked to the need for a healthy and safe environment to give these rights effect.

#### **4.5.2 National Environmental Standards and Regulation Enforcement Agency (Nesrea) Act 2007**

Administered by the Ministry of Environment, the National Environment Standards and Regulation Enforcement Agency (NESREA) Act of 2007 replaced the Federal Environmental Protection Agency (FEPA) Act. It is the embodiment of laws and regulations focused on the protection and sustainable development of the environment and its natural resources. The following sections are worth noting:-

- **Section 7** provides authority to ensure compliance with environmental laws, local and international, on environmental sanitation and pollution prevention and control through monitory and regulatory measures.

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<sup>118</sup> Section9 (1)(b)

- **Section 8 (1)(K)** empowers the Agency to make and review regulations on air and water quality, effluent limitations, control of harmful substances and other forms of environmental pollution and sanitation.
- **Section 27** prohibits, without lawful authority, the discharge of hazardous substances into the environment. This offence is punishable under this section, with a fine not exceeding, N1,000,000 (One Million Naira) and an imprisonment term of 5 years. In the case of a company, there is an additional fine of N50,000, for every day the offence persists.

#### **4.5.3 REGULATIONS (UNDER NESREA)**

##### **National Effluent Limitation Regulations**

- **Section 1 (1)** requires industry facilities to have anti-pollution equipment for the treatment of effluent.
- **Section 3 (2)** requires a submission to the agency of a composition of the industry's treated effluents.

##### **National Environment Protection (Pollution Abatement in Industries and Facilities Producing Waste) Regulations (1991)**

- **Section 1** Prohibits the release of hazardous substances into the air, land or water of Nigeria beyond approved limits set by the Agency.
- **Section 4 and 5** requires industries to report a discharge if it occurs and to submit a comprehensive list of chemicals used for production to the Agency.

##### **Federal Solid and Hazardous Waste Management Regulations (1991)**

- **Section 1** makes it an obligation for industries to identify solid hazardous wastes which are dangerous to public health and the environment and to research into the possibility of their recycling.
- **Section 20** makes notification of any discharge to the Agency mandatory.

- **Section 108** stipulates penalties for contravening any regulation.

#### **4.5.4 Environmental Impact Assessment (EIA) Act CAP E12, LFN 2004**

An Environmental Impact Assessment (EIA) is an assessment of the potential impacts whether positive or negative, of a proposed project on the natural environment: The E.I.A Act, as it is informally called, deals with the considerations of environmental impact in respect of public and private projects. Sections relevant to environmental emergency prevention under the EIA include:-

- **Section 2 (1)** requires an assessment of public or private projects likely to have a significant (negative) impact on the environment.
- **Section 2 (4)** requires an application in writing to the Agency before embarking on projects for their environmental assessment to determine approval.
- **Section 13** establishes cases where an EIA is required and
- **Section 60** creates a legal liability for contravention of any provision.

#### **4.5.5 Harmful Waste (Special Criminal Provisions) ACT CAP HI LFN 2004**

The Harmful Waste Act prohibits, without lawful authority, the carrying, dumping or depositing of harmful waste in the air, land or waters of Nigeria. The following sections are notable:

- **Section 6** provides for a punishment of life imprisonment for offenders as well as the forfeiture of land or anything used to commit the offence.
- **Section 7** makes provision for the punishment accordingly, of any conniving, consenting or negligent officer where the offence is committed by a company.
- **Section 12** defines the civil liability of any offender. He would be liable to persons who have suffered injury as a result of his offending act.

#### **4.5.6 Hydrocarbon Oil Refineries ACT, CAP H5 LFN 2004**

The Hydrocarbon Oil Refineries Act is concerned with the licensing and control of refining activities. Relevant sections include the following:-

- **Section 1** prohibits any unlicensed refining of hydrocarbon oils in places other than a refinery.
- **Section 9** requires refineries to maintain pollution prevention facilities.

#### **4.5.7 Oil In Navigable Waters ACT, CAP 06, LFN 2004**

The Oil in Navigable Waters Act is concerned with the discharge of oil from ships. The following sections are significant:-

- **Section 1 (1)** prohibits the discharge of oil from a Nigerian ship into territorial waters or shorelines.
- **Section 3** makes it an offence for a ship master, occupier of land, or operator of apparatus for transferring oil to discharge oil into Nigerian Waters. It also requires the installation of anti-pollution equipment in ships.
- **Section 6** makes punishable such discharge with a fine of N2, 000 (Two thousand naira).
- **Section 7** requires the records of occasions of oil discharge.

#### **4.5.8 Associated Gas Re-Injection ACT, CAP 20, LFN 2004**

The Associated Gas Re-Injection Act deals with the gas flaring activities of oil and gas companies in Nigeria. The following sections are relevant to pollution prevention:-

- **Section 3 (1)** prohibits, without lawful permission, any oil and gas company from flaring gas in Nigeria.
- **Section 4** stipulates the penalty for breach of permit conditions.

#### **4.5.9 The Endangered Species ACT, CAP E9, LFN 2004**

This Act focuses on the protection and management of Nigeria's wildlife and some of their species in danger of extinction as a result of overexploitation. These sections are noteworthy:

- **Section 1** prohibits, except under a valid license, the hunting, capture or trade in animal species, either presently or likely to be in danger of extinction.

- **Section 5** defines the liability of any offender under this Act.
- **Section 7** provides for regulations to be made necessary for environmental prevention and control as regards the purposes of this Act.

#### **4.5.10 Inland Fisheries ACT, CAP I10, LFN 2004**

Focused on the protection of the water habitat and its species, the following sections are instructive:

- **Section 1** prohibits unlicensed operations of motor fishing boats within the inland waters of Nigeria.
- **Section 6** prohibits the taking or destruction of fish by harmful means. This offence is punishable with a fine of N3, 000 or an imprisonment term of 2 years or both.

#### **4.5.11 Exclusive Economic Zone ACT, CAP E11, LFN 2004**

The Exclusive Economic Zone Act makes it illegal to explore or exploit natural resources within the Exclusive zone without lawful authority. The Federal Government regulates the activities of the Exclusive Zone.

#### **4.5.12 Oil Pipelines ACT, CAP 07, LFN 2004**

The Oil Pipelines Act and its Regulations guide oil activities. The following sections are pertinent;

- **Section 11 (5)** creates a civil liability on the person who owns or is in charge of an oil pipeline. He would be liable to pay compensation to anyone who suffers physical or economic injury as a result of a break or leak in his pipelines.
- **Section 17 (4)** establishes that grant of licenses are subject to regulations concerning public safety and prevention of land and water pollution.

#### **4.5.13 Oil Pipelines Regulations (UNDER OIL PIPELINES ACT)**

- **Section 9 (1) (b)** establishes the requirement of environmental emergency plans.
- **Section 26** makes punishable any contravention with a fine of N500,000 and/or an imprisonment term of six months.

#### **4.5.14 Petroleum ACT, CAP P10, LFN 2004**

The Petroleum Act and its Regulations remain the primary legislation on oil and gas activities in Nigeria. It promotes public safety and environmental protection. The following sections are relevant:

- **Section 9 (1) (b)** provides authority to make regulations on operations for the prevention of air and water pollution.

#### **4.5.15 REGULATIONS**

##### **Petroleum Drilling And Production Regulations:**

- **Section 17 (1) (b)** places restrictions on licensees from using land within fifty yards of any building, dam, reservoir, public road, etc.
- **Section 23 and 27** prohibits, without lawful permission, the cut down of trees in forest reserves.
- **Section 25** establishes that reasonable measures be taken to prevent water pollution and to end it, if it occurs.

##### **Petroleum Refining Regulation**

- **Section 43 (3)** requires the Manager of a refinery to take measures to prevent and control pollution of the environment.
- **Section 45** makes any contravention punishable with a fine of N100 or an imprisonment term of six months.

##### **Mineral Oil Safety Regulations and Crude Oil Transportation And Shipment Regulations**

These Regulations prescribe precautions to be taken in the production, loading, transfer and storage of petroleum products to prevent environmental pollution.

##### **Petroleum Products And Distribution ACT, CAP P12, LFN 2004**

Under this Act, the offence of sabotage which could result in environmental pollution is punishable with a death sentence or an imprisonment term not exceeding 21 years.

### **Territorial Waters ACT, CAP T5, LFN 2004**

The Territorial Waters Act makes punishable any act or omission committed within Nigerian waters which would be an offence under any other existing law.

### **Nigerian Mining Corporation ACT CAP N120, LFN 2004**

This Act establishes the Nigerian Mining Corporation. It has authority to engage in mining refining activities and to construct and maintain roads, dams, reservoirs, etc. In particular:

- **Section 16** creates a civil liability on the corporation for the physical or economic damage suffered by any person as a result of its activities.

### **Quarantine ACT, CAP Q2, LFN 2004**

The Quarantine Act provides authority to make regulations for preventing the introduction, spread and transmission of infectious diseases such as cholera, yellow fever, typhus, etc. Under this Act, violation of any regulation is punishable with a fine of N200 or an imprisonment term of 2 years or both.

Compensation now is a very critical issue and one that is hotly contested. The law requires that compensation be paid in cases of oil pollution. In the Oil Pipeline Act, 1956 section 11 (5) a-c, states that compensation should be paid:

- (a) To any one whose land or interest in land is injuriously affected in exercise of right conferred under the license.
- (b) To any person suffering damage by reason of neglect on part of holder of license or agents, servant workman etc. to protect, maintain or repair any work structure or thing erected under the license for any damage not otherwise made good.
- (c) To any person suffering damage (other than on account of his own default or an account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipelines or an ancillary installation, for any damage not otherwise made good

The function of the commission under this section is to ensure that all the Laws approved by federal Government for development in related areas should be adhered to, for instance in the area of prevention of pollution.

The member states of the Oil bearing Region provided the following measures for the development of the Niger Delta Region. Development of an NDDC Environmental and Social

Management policy framework, including a resettlement policy framework, which will provide guidance on environmental and social safeguards including impact assessments, mitigation and compensation strategies. Review of NDDC's policies and guidelines in the context of the legal and regulatory framework and social safeguards and assessment policy in Nigeria - both at the federal and state level, which will help define NDDC's role relative to other agencies with responsibilities for environmental and social safeguards, and would guide the design and implementation of NDDC's activities and projects. The framework would also specifically provide guidelines on environmental and social issues associated with community-scale micro-projects, for example, initial screening, assessments, and design of projects to avoid unwanted consequences, monitoring, and environmental management plans (EMPs). Follow up of the environmental and natural resource studies to be undertaken as part of the development of the regional Master Plan, including economic evaluation of strategy options and integration of environmental and social issues into the overall strategy for sustainable development with a poverty-reduction focus. Technical assistance and capacity building to enable NDDC to carry out its defined role, which would include training of teams within the Directorate for Environmental Protection and Control on environmental and social impact assessment for both large scale projects that NDDC might finance directly, and micro-projects to be implemented by communities with NDDC funding. Training for NDDC's partners, including training for civil society organizations in environmental impact screening, assessment, mitigation and environmental management plans in community-scale projects, and increased awareness of community rights under existing environmental regulations. The development of a public information resource center for environmental and social issues.<sup>119</sup>

#### **4.6 IDENTIFICATION OF FACTORS INHIBITING THE DEVELOPMENT OF NIGER-DELTA AREA**

The commission is mandated to identify factors inhibiting the development of the Niger-Delta area and assist the member States in the formulation and implementation of policies to ensure sound and efficient management of the resources of the Niger-Delta area.<sup>120</sup>

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<sup>119</sup> [www.nddc.org/the](http://www.nddc.org/the) regional development of master plan, 18<sup>th</sup> march 2010.

<sup>120</sup> Section 7(1)(f)



This function is in two folds: to identify the factors inhibiting the development of Niger Delta area and to assist the member states in the formulation and implementation of policies to ensure sound and efficient management of the resources of the Niger Delta area.

In identifying the factors inhibiting the development of Niger Delta Area, the commission through the instrumentality of the Directorate of Planning, Research, Statistics and Management Information System<sup>121</sup> offer stakeholders at all levels (individual, group and community) the opportunity to participate fully in the planning and decision making process. Specifically, the commission requires the ideas and opinions of stakeholders as basis for defining focus areas for development and for producing a vivid picture of what the people want the Niger Delta region to look like in years to come.

Oil bearing communities through their community leaders present duplicity by oil companies towards oil-bearing communities to the commission. Erovie is a community in Isoko North Local Government Area of Delta State. For years, Shell operated oil wells in the community as part of its Isoko Deep Field. In 1978, Shell abandoned these oil wells because they had run out of oil. But surprisingly, Shell returned back to Erovie in 1999 after two decades of abandonment. Hon. Abikelegba Odhegolor, former member of the Federal House of Representatives and spokesperson for the Erovie clan in Ozoro, described the manner Shell entered as creating the false impression that it was resuming oil production in the abandoned oil wells. But, it was not. It put up ostensible performances that mimicked oil operations.

Shell's entry had the marks of fraud. First, the company assured the community that it was resuming oil operation. However, according to Hon. Abikelegba, Shell did not disclose to community leaders that it was using the sight to dump toxic waste. It moved tankers and heavy-duty machines at night and, in order to conceal its operations, Shell set up a dummy: it cleared a site in a nearby farmland, installed very powerful water tanks, and pumped water through underground pipes to the toxic site. Shell stationed security personnel who guarded the site from visits by village leaders.

Some of the farmers began to suspect the activities at the Ibo bush. They questioned why the heavy-duty machineries only moved at night. They observed that, unlike other oil wells in the area, the platform of the old well was formidably concreted and reinforced as if whatever was buried underground risked escape. Soon, the putrid odor from the dump enveloped the farmland.

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<sup>121</sup> Section 9(1)(g)

Women who farmed near the site started feeling nauseous. This set the community on enquiry. Security personnel at the site confirmed that Shell tankers came at night to dump toxics into a 17,000 foot deep well through an airtight tube. Shell officials would dump the toxics deep to the earth crust and fill water from the dummy sites into the well to cover the waste and diffuse its components. The community leaders collected samples of these toxics for testing. Multiple tests conducted separately at the Universities of Benin and Nsukka confirmed that the waste was “harmful to both plants and animals because of the presence of heavy metals such as lead, copper and zinc”. The community leaders forwarded the report to the commission for appropriate action.<sup>122</sup>

The real problem with the dispute resolution approach to peace in the Niger Delta is that it glosses over the real provocation posed by oil companies’ duplicitous and manipulative modus operandi and underestimates the determination of some of these oil companies and their indigenous collaborators to continue in exploitation and oppression as long as these practices are financially rewarding. Until this perverse incentive is addressed oil companies will persist with the exploitative practices, and aggrieved communities, with no other alternatives, will continue to resort to violence.

The community leaders also identify corruption as part of the factors inhibiting development in Niger Delta area. Laws are viewed as inadequate and the judicial process as slow, corrupt and inevitably insufficient.

Corruption is a big hurdle to overcome for poor communities who are eager to enforce their rights against multinational oil companies. Although public outcry and administrative oversight have put the searchlight on the judiciary and invariably reduced the incidences of corruption, the degree of corruption among judicial officials and support staff constitutes a major barrier to access to justice and compensatory and remedial measures for these communities. A significant portion of official corruption in the public service is at the behests of multinational companies. Recently, the international community was startled by the admission by Halliburton, a US energy corporation, that it spent millions of dollars to bribe Nigerian officials to evade taxes.<sup>123</sup>

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<sup>122</sup> SERAC: Perpetuating Poverty and Consolidating Powerlessness-Oil and the Niger delta.

<sup>123</sup> The Guardian June 18,2003: the Federal Government ordered a probe into the financial scam of two oil companies estimated at N22.8 billion.

Where corruption is endemic, the powerful and rich gain more access to justice and are helped to avoid necessary costs. Oil companies have more resources to benefit from corruption in the judiciary. Some activists who have sued oil companies and have suffered avoidable delays or unfavorable rulings strongly believe that oil companies bribe court officials to obstruct justice. One remarkable illustration of delay and its consequences for poor communities obtaining justice is **Mobil Producing Nigeria Unlimited .V. Monokpo**<sup>124</sup>, where the Supreme Court overturned a decision of the High Court awarding substantial damages to an oil community because of an oil spillage .The Supreme Court reversed the verdict because of a procedural misstep, and ordered retrial. The question is, how can the community muster the required evidential and financial resources to re-engage Mobil with its huge resources? Mobil also now has the advantage of re-working its defence in the light of the evidence already tendered by the community.

Nigeria's judicial system is notoriously cumbersome and long-winded. Cases are expensive to litigate because of corruption, and exorbitant administrative costs and professional fees. The battle between poor communities and rich oil companies is like the battle of David and Goliath, with David not even having a sling as a weapon. Even when the community successfully overcomes the hurdle of litigation, it is left with a pyrrhic victory: it is awarded a paltry sum as compensation for winning a judicial fight that may have lasted decades. In fact, Nigerian courts are infamous for never awarding sufficient sums as damages. When a successful litigant goes home with a pyrrhic victory, there is little future incentive to litigate rights.

The commission also made recourse to the contribution of similar agencies and institutions. A workshop, convened by the World Bank and comprising a highly distinguished panel of experts on the Niger Delta titled 'Social and Conflict Analysis of the Nigerian Niger Delta' identified eight factors inhibiting the of the development the Niger Delta area, which provide an excellent basis for a synthesis of the current situation.<sup>125</sup>

- **Social and political exclusion:** The two post-military national elections (1999 and 2003) are widely agreed to have been extensively rigged in the Niger Delta states, with fraudulent results sustained by violence and threat and so leaving a serious democratic deficit. The political process is held in complete mistrust and considered exclusionary and corrupt. Formal institutions have failed and local customary institutions have become

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<sup>124</sup> [2004] ALL FWLR (PT.195), pages 575-661

<sup>125</sup> World Bank 2007:b

eroded. Youth have turned to violence and militancy to challenge the government and extort oil from oil companies.

- **Economic exclusion:** Despite substantial resource flows to the State government, and significant natural resource endowments, the people of the Niger Delta are destitute. The panel described the Niger Delta as an ‘iconic representation of destitution amongst the possibility of wealth’. The people of the Niger Delta feel excluded from the wealth generated by their resource rich region, substantiated by the region having the highest rate of unemployment in Nigeria. Remote rural communities have very limited economic opportunities and often cannot tap directly into the employment benefits of the oil industry because they lack capital resources or skills.
- **Poor governance and corruption:** Corruption, especially at the state and local level, is endemic and at the root of many of the region’s problems. Large sums are received at both the state and local level, but there is little evidence of this being applied to productive development endeavours. This situation exacerbates the sense of hopelessness, exclusion and anger of the citizenry of the Niger Delta, who have lost faith in existing governance structures.
- **Poor infrastructure and public service delivery:** The panel describes the current situation as ‘akin to a human emergency’ and describes infrastructure and social services as ‘generally deplorable. The general neglect of infrastructure, often rationalised by the difficult terrain of the region, has worsened the population’s access to fundamental services. For example, the town of Edeoha, in the state of Rivers, lacks basic services such as water, education, healthcare and electricity and jobs are hard to come by. There is no local government office in the town, the primary schools lacks chairs and desks, and the nearest hospital, which lacks medicine and equipment, is twenty kilometers away. Analysis above highlights the poor human development of the region.
- **Environmental degradation:** Oil exploration and production of gas led to environmental damage on many levels: land, water and air pollution, depleted fishing grounds and the disappearance of wetlands. These environmental changes have had significant implications for local livelihoods, and the alienation of people from their resources and land has led to the inefficient use of resources that remain and poor or inequitable land use practices. Measures to counterbalance environmental damage are inadequate and this is a major focus of community discontent.

- **Escalating violence and disorder:** The democratisation of the means of violence has emerged, as the state has lost monopoly of power over the use of force. This violence has emerged in many forms, and exists between communities over host community status, resource and land claims and surveillance contracts; within communities over compensation distribution; between communities and oil companies; and between communities and security forces. The fault lines of these conflicts often coincide with, or are justified in terms of, ethnic differences, persistent conflict, while in part a response to the region's poor human development, also serves to entrench it as it is a constant drag on the region's economic performance and opportunities for advancement.
- **A vicious cycle of violence:** Conflict has become militarised, with the intensive proliferation of arms, sabotage, hostage taking and the emergence of warlords and youth cults. This process is fuelled by the illegal bunkering of oil fuels. Since January 2006, the Movement for the Emancipation of the Niger Delta (MEND) have been central to this violence.
- **Landownership:** There is much juridical ambiguity over land rights. While the Land Use Decree of 1978 formally vested all land in State governments<sup>126</sup>, the expropriation of this has never been accepted by the individuals, families and communities that have made customary claims to the land. This has resulted in a double system, and combined with weak judicial systems has resulted in long running conflicts and ambiguity at many levels.
- **Attitude of Government:** One of the perverse and unintended consequences of the discovery of oil in Nigeria is that governments have almost completely abandoned agriculture in the mad quest for petrol dollars. The nation is a mono-economy, depending on the volatile fortunes of oil. Added to this governance failure is the further deterioration in agricultural fortunes caused by oil pollution. Thereby, oil pollution becomes an indirect violation of the right to life, even as it is a violation of the right to a safe and habitable environment.

The NDCC commission advised the member State government at a forum in Port Harcourt as regards the management of Niger Delta Resources that :

- Federal High Courts and Court of Appeal should be established in Delta and Bayelsa States, since it is the only Federal High Court that has the jurisdiction to entertain issues

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<sup>126</sup> Section 1(1)

of oil spillage, pollution and environmental degradation. In the same vein, process of litigation should be made expedient and cost of litigation should not be ridiculous or astronomical in nature bearing in mind that Niger Delta people are indigent.

- Physical development of the region just like the Federal Capital Territory in terms of roads, health centers, electricity and portable water especially because of oil spillage and pollution and other alleviation schemes.
- Tourist centre should be located in the area to attract foreigners and residents. With this unity and peace can be fostered and the level of investment will be on the increase.
- Availability of mechanized farming coupled with the policy of agricultural extension services.
- The Multi National Oil Companies operating in the area which are saddled with the social responsibility be made to have an impartial structure of giving scholarship to deserving students and to equally sponsor those graduate with second class upper division to overseas for the pursuit of their Master Degree.<sup>127</sup>

#### **4.7 TACKLING ECOLOGICAL AND ENVIRONMENTAL PROBLEMS.**

The commission is mandated to tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger-Delta area and advise the Federal Government and the member States on the prevention and control of oil spillages gas flaring and environmental pollution.<sup>128</sup>

Oil exploration and production of gas led to environmental damage on many levels: land, water and air pollution, depleted fishing grounds and the disappearance of wetlands These environmental changes have had significant implications for local livelihoods, and the alienation of people from their resources and land has led to the inefficient use of resources that remain and poor or inequitable land use practices.

Oil spills in the Niger Delta have been a regular occurrence, and the resultant degradation of the surrounding environment has caused significant tension between the people living in the region and the multinational oil companies operating there. It is only in the past decade that

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<sup>127</sup> Nigerian Law Registry: Oil and Gas Modeling.

<sup>128</sup> Section 7(1)(h)

environmental groups, the Federal Government, and the foreign oil companies operating in the Niger Delta began to take steps to mitigate the impacts. Large areas of the mangrove ecosystem have also been destroyed. The mangrove forest was in the past a major source of wood for the indigenous people. In some areas of Niger Delta it is no longer in a healthy state to sustain this use.

The oil companies in their search for the black gold, they have combed the swamps and ravaged the mangroves; polluted the rivers and rivulets; scorched the farmlands and left the people gasping for breath just like the fish in the region, which have been suffocated by oil spills. Rather than lead the assault on underdevelopment and injustice, however, some of the oil companies are busy throwing spanners in the works. For 51 years, they have planted more Christmas trees [capped oil wells] than those that would yield economic benefits.<sup>129</sup>

The Idoho oil spill traveled all the way from Akwa Ibom state to Lagos state dispersing oil through the coastal states, up to the Lagos coast. This culminated in the presence of sheen of oil on the coastal areas of Cross river state, Akwa Ibom state, Rivers state, Bayelsa state, Delta state, Ondo state and Lagos state.

Following the major Texaco spill of 1980, it was reported that 180 people died in one community as a result of the pollution. On several occasions, spills in their area had made people who drank the water sick, especially children.

Nigeria flares more natural gas associated with oil extraction than any other country on the planet, with estimates suggesting that of the 3.5 billion cubic feet (100,000,000 m<sup>3</sup>) of associated gas (AG) produced annually, 2.5 billion cubic feet (70,000,000 m<sup>3</sup>), or about 70% is wasted via flaring. This equals about 25% of the UK's total natural gas consumption, and is the equivalent to 40% of the entire African continent's gas consumption in 2001. All statistical data associated with gas flaring is notoriously unreliable, but AG wasted during flaring is estimated to cost Nigeria US \$2.5 billion per year.

The reason for this practice, which is universally agreed to be wasteful both economically and environmentally, is that in order to maximize production of crude oil, the associated gas accompanying it is often burned off. This occurs because it is costly to separate commercially

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<sup>129</sup> Daily Champion Nigeria: Oil Companies and Niger Delta Development. October 12, 2009.

viable associated gas from the oil. Therefore the AG found with oil is often burned off, in order to increase crude production. Even though companies operating in Nigeria also harvest natural gas for commercial purposes, they prefer to extract natural gas from deposits where it is found in isolation. This isolated gas is known as non-associated gas.

The international community, the Nigerian government, and the oil corporations are all in agreement that gas flaring has a negative impact and needs to be stopped. However, in reality, efforts at stemming gas flaring have been slow to be implemented. The practice of gas flaring, allowed since oil production began under the British, has become set in stone and an overhaul to reduce flaring would be costly. As a result, little is done by the oil companies. This is in spite of the fact that gas flaring in Nigeria has technically been illegal since 1984 under **section 3 of the Associated Gas Reinjection Act**. However, none of the regulations stipulated by this document have ever been made public.

OPEC and Shell, the biggest flarer of natural gas in Nigeria, alike claim that only 50% of all associated gas is burnt off via flaring at present. However, this statistic is accepted by few. The World Bank reported in 2004 that, Nigeria currently flares 75% of the gas it produces. Between 70 and 75% is the generally accepted percentage of gas flared.<sup>130</sup>

In tackling the ecological and environmental problems of Niger Delta area two major statutes were considered: Harmful Waste (Special Criminal Provisions Etc. Act) 1988 and Petroleum Act 1969.

### **Harmful Waste (Special Criminal Provisions Etc. Act) 1988**

This Act prohibits the carrying, depositing and dumping of harmful waste on any land, or territorial waters. In **section 1 (2)** it provides that any person who without lawful authority performs activities relating to the purchase, sale, importation, transportation, deposit or storage of any harmful waste on any land, territorial and inland waters or exclusive economic zone of Nigeria commits a crime under this Act.

For the purposes of this Act, harmful waste is defined in **section 15** as:

*Any injurious, poisonous, toxic or noxious substance and, in particular, includes nuclear waste emitting any radioactive*

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<sup>130</sup> Encyclopedia: environmental issues in Nigeria.



*substance if the waste is in such quantity, whether with any other substance, as to subject any person to the risk of death, fatal injury or incurable impairment of physical and mental health; and the fact that the harmful waste is placed in a container shall not by itself be taken to exclude any risk which might be expected to arise from the harmful waste.*

The crime can be committed by an act or omission. Those who collude, aid and abet, procure or counsel another to commit the above-mentioned crime are punished as though they had committed the crime themselves. Penalties for the crime include life imprisonment and the seizure by the federal government of any carrier used in transportation or importation of the harmful waste and any land on which harmful waste was deposited or dumped. For a company or organization to incur corporate liability, consent, connivance neglect must be proven on the part of the director, manager, secretary or "other similar office of the body corporate", or any other person purporting to act in the capacity of authority. In such an instance, both the person and the organization are held responsible. Where persons protected under the Diplomatic Immunities and Privileges Act commit the crime, such immunity from prosecution is not applicable.

### **Petroleum Act 1969**

Aspects of the Petroleum Act that are relevant to the impact of environmental pollution include **Schedule 24 of the First Schedule to the Act** which provides that:

*The minister may revoke any oil prospecting license or oil mining lease if, in his opinion, the licensee or lessee does not conduct operations with good oil field practice or has failed to furnish such operational reports as the minister may lawfully require. Where the minister has invited the licensee or lessee to make explanations and the minister is satisfied with the explanation, the licensee or lessee may be given a specified period with which to rectify the matter. If the licensee or lessee fails to make explanations, provides insufficient explanations, or does not rectify the situation within the time limit, the Minister may revoke the license or lease.*

Restrictions on the activities of licensees or lessees are dealt with in **regulations 17-19 of the Petroleum (Drilling and Production) Regulations** enacted under **section 9 of the Petroleum Act**. For instance, the licensee or lessee must permit the use of access to roads by persons at their own risk; must not injure or destroy venerated objects; must not cut any protective or productive trees without prior consent of the state authority and on payment of fees

and royalties; and must not exercise any rights or powers over sacred land. Where the licensee or lessee unreasonably interferes with the exercise of any fishing rights he must pay adequate compensation to the injured party. The payment of compensation also extends to those affected by the cutting or destruction of any protected or productive trees. An important aspect of the **Petroleum (Drilling and Production) Regulations is Regulation 25**, which makes it obligatory for the licensee or lessee to adopt practicable precautions during its activities to prevent pollution. **Regulation 25** provides that:

*“The licensee or lessee shall adopt all practicable precautions including the provision of up to date equipment approved by the Director of Petroleum Resources, to prevent the pollution of inland waters, rivers, water courses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might contaminate the water, banks or shoreline or which might cause harm or destruction to fresh water or marine life, and where any such pollution has occurred shall take prompt steps to control and, if possible, end it.”*

**Regulation 36** continues in this line and obliges the licensee or lessee to maintain all equipment, boreholes and oil wells in "good repair and condition" and must carry out all operations in accordance with good oil field practices including preventing the escape of petroleum into any bodies of water, and preventing damage, as much as possible, occurring to the surface of the relevant areas and trees, crops and other property. Regarding waste management, the licensee or lessee is required to "drain all waste oil, brine and sludge or refuse" into proper receptacles constructed in compliance with safety regulations, and to dispose the waste in a manner approved by the Director of Petroleum Resources, or as provided by applicable regulations.

NDDC has a Directorate of Environmental Protection and Control<sup>131</sup>. The Director is the Head of the Project Coordination Unit for the World Bank-assisted project. The commission also prepares an outline of a program for addressing environmental issues including environmental assessment, inventorisation of impacted areas, environmental audits, remediation and contingency planning. It is the Directorate of Environmental Protection and Control that ensures

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<sup>131</sup> Section 9 (1)(d)

that all the laws approved by the commission in preventing pollution in the Niger Delta area is enforced.

If all the stakeholders in the Niger Delta region, the multi-national oil companies should take the greater blame for the environmental devastation resulting from several decades of oil exploration and exploitation. The level of development in the Niger Delta Area will be greater than what it is at the moment.

The commission made a recommendation to the federal government the one way of dealing with the adverse incentive to exploitative behavior is to empower communities to impose real costs on oil companies. Since avoidance of costs is a priority for oil companies, it is important to help communities to impose costs on them in ways that would not degenerate to civil disorder and brigandage. This is where the efficacy of litigation as an instrument to protect the human rights of oil communities requires further analysis. The federal government is not compelled to yield to the advice of the commission because the commission can only make recommendation.

#### **4.8 TO LAISE WITH OIL MINERAL AND GAS INDUSTRIES FOR THE PREVENTION OF POLLUTION**

The commission is mandated to liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control.<sup>132</sup>

The Commission under this mandate has a duty to liaise with oil and gas companies and advice stakeholders on the control of oil spillages, gas flaring and other related forms of environmental pollution through the instrumentality of the Directorate of Environmental Protection and Control<sup>133</sup>.

From the statistics of the rate of pollution in Nigeria, it was recorded that:

- More than 6,000 oil spills have been recorded since 1976.
- Less than 25% of spills are remediated.
- Many Niger Delta residents suffer from oil poisoning.

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<sup>132</sup> Section 7(1)(i)

<sup>133</sup> Section 9(1)(d)

- More gas is flared in Nigeria than anywhere else in the world.
- Over 250 toxins have been identified in gas flare emissions.
- Breathing particulate from flaring is linked to disease and premature death.
- Potable water in the Niger Delta creeks region is virtually nonexistent due to oil contamination.
- Oil pollution has killed off fish, fouled the soil and caused wildlife to vanish.
- Handmade fishing nets can become useless in 6 months from acid rain caused by flaring.
- Acid rain acidifies bodies of water, damages vegetation and decays building materials.<sup>134</sup>

An instance of pollution by the oil companies in the Niger Delta region is Mobil Producing Unlimited explores oil offshore in the community. A major spill occurred in the community in 1998 when oil pipes burst and released thousands of liters of crude oil, degrading coastal waters in the Niger Delta, even up to Lagos coastal waters. This spill destroyed fauna and sea resources, and gravely impoverished the community. Mobil initially admitted responsibility, but later declined to pay compensation. Instead it mounted high-heeled litigation to shrug off liability.

Control of pollution in the Niger Delta Region is a major issue which has affected the livelihood of the residents of the Niger Delta region. NDDC through the office of the Directorate of Environmental Protection and Control of Environmental Protection unit of NDDC<sup>135</sup> in conjunction with some Non Governmental organizations was supposed to battle pollution in the Niger Delta Region. Due to increasing awareness in preventing and controlling spills in Nigeria, the Clean Nigeria Associates (C.N.A.) was formed in November 1981. The C.N.A. is a consortium of eleven oil companies operating in Nigeria, including Nigeria National Petroleum Corporation (NNPC). The primary purpose of establishing the C.N.A is to maintain a capability to combat spills of liquid hydrocarbons or pollutants in general. As a result of the focus on Shell's activities in Nigeria, Shell in collaboration with all the members of Oil Producers Trade Section (OPTS) of the Lagos Chambers of Commerce established the Niger Delta Environmental Survey (NDES). Shell, the OPTS and the Rivers and Delta States governments provided the necessary funding for the activities of NDES.

The NDES was expected to provide:

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<sup>134</sup> Environmental Law Research Institute

<sup>135</sup> Section 9(1)(i)

- A comprehensive description of the area, ecological zones, boundaries, and different uses of renewable and non-renewable natural resources;
- An integrated view on the state of the environment and its relationship to local people;
- An analysis of the causal relationships between land use, settlement patterns, industry and the environment, to provide a base line for future development planning;
- An indicative plan for the development and management of the Niger Delta.

The regulatory agency could work in cooperation with the environmental protection unit of NDDC in checking oil pollution, and in the provision of needed data necessary in the execution of its environmental laws.

In liaising with oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control, the laws regulating prevention and control of pollution should be greatly considered. The Laws as discussed above<sup>136</sup> are enumerated below:

Constitution of the Federal Republic of Nigeria (1999), National Environmental Standards and Regulation Enforcement Agency (NESREA) Act 2007, National Environment Protection (Pollution Abatement in Industries and Facilities Producing Waste) Regulations (1991), Federal Solid and Hazardous Waste Management Regulations (1991), Environmental Impact Assessment (EIA) Act. CAP E12, LFN 2004, Harmful Waste (Special Criminal Provisions) Act CAP HI LFN 2004, Hydrocarbon Oil Refineries Act, CAP H5 LFN 2004, Oil In Navigable Waters Act, CAP 06 LFN 2004, Associated Gas Re-injection Act, CAP 20, LFN 2004, The Endangered Species Act, CAP E9, LFN 2004, Inland Fisheries Act, CAP I10, LFN 2004, Exclusive Economic Zone Act, CAP E11, LFN 2004, Oil Pipelines Act, CAP 07, LFN 2004, Petroleum Act, CAP p10, LFN 2004, Petroleum Drilling and Production Regulations, Petroleum Refining Regulation, Mineral Oil Safety Regulations and Crude Oil Transportation and Shipment Regulations, Petroleum Products and Distribution Act, CAP p12, LFN 2004, Territorial Waters Act, CAP T5, LFN 2004, Nigerian Mining Corporation Act CAP N120, LFN 2004, Quarantine Act, CAP Q2, LFN 2004.

### **3.9 OTHER FUNCTIONS REQUIRED FOR THE DEVELOPMENT OF NIGER-DELTA AREA.**

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<sup>136</sup> Page 18-25 of this work (implementation of measures)

The commission is mandated to execute such other works and perform such other functions which in the opinion of the Commission are required for the sustainable development of the Niger- Delta area and its peoples.<sup>137</sup>

It is at the discretion of the Commission to decide the factors that are needed for implementation in the development of Niger Delta Area. Part of the outstanding act of the commission in such area is a re-orientation programme of Non-Violence Training Scheme initiated by the Commission in 2008 to assist in reforming the youths who would have resorted to anti-social activities as a result of joblessness. Then, the commission sponsored 600 militant youths from the Niger Delta for training in non-violence agitation. The training programme was organized by the Foundation for Ethnic Harmony in Nigeria (FEHN), a non-governmental organization. The youths were trained both in Lagos and South Africa.

However, in excising its functions, the Commission shall have regard to the varied and specific contributions of each member State of the Commission and be subject to the direction, control or supervision in the performance of its functions under this Act by the President, of the Federal Republic of Nigeria.<sup>138</sup>

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<sup>137</sup> Section 7(1)(j)

<sup>138</sup> Section 7(2)(3)

## CHAPTER FIVE

### CONCLUSION

#### 5.1 OBSERVATIONS

The NDDC Act was specifically made to replace the OMPADEC Decree and avoid the causes of the latter's failure. As stated in its preamble, it is an Act to provide for the repeal of the Oil Minerals Producing Areas Development Commission Decree and, among other things, establish a new Commission with a re-organized management and administrative structure for more effectiveness in tackling ecological problems which arise from the exploration of oil minerals in the Niger Delta and for connected purposes.

There is no doubt that the functions are laudable, these functions are similar to the functions with which OMPADEC<sup>139</sup> was previously tasked and it has made it doubtful whether the NDDC will succeed where OMPADEC failed. Whether the performance of the commission is assessed in terms of road networks constructed, hospitals built, pipe-borne water installed, schools established or supported, or in terms of poverty alleviation, the NDDC has failed to meet expectation levels. Some of the reasons for the failure relate to the structure, management and politics surrounding the establishment of the commission. Hence, the critical question is: what is 'new' about the 'new statute' and what are its prospects for success?

There is no statutory duty to consult the Oil bearing communities on proposed developmental projects or for them to participate in the discharge of the functions of the Commission, resulting into a situation in which the mistakes of OMPADEC might be repeated. In any case, the demand of the oil bearing communities lends support to the criticism of the NDDC Act for lacking in participatory provisions and indicates that the commission may fail unless the Act is amended to include participatory provisions.

Though the NDDC package appears comprehensive it seems incapable of providing the desires of the Niger Delta communities. The NDDC, despite its seemingly good intentions, has not solved the issues on target. The Master Plan approaches are still falling short, especially as the intensity and complexity of violence has grown. The persistent volatile conflicts seem to

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<sup>139</sup> The main objectives of OMPADEC were: (a) To rehabilitate and develop the Oil producing areas, (b) To tackle ecological problems that result from Oil exploration, (c) To Embark on development projects, (d) To execute other works and perform such other functions which in the opinion of the commission are necessary for the development of the Niger Delta region.

demand new models and new ways of thinking to crack them. Solving the problems of the Niger Delta is not just a matter of mobilizing more funds for NDDC but also developing entirely new models and ways of achieving sustainable development. This reality makes social reconciliation approaches that would achieve better leverage on resources, enhance effectiveness through collective negotiations, and enable more sustainable social impact increasingly relevant. The unfortunate gaps between the Niger Delta communities and their heritage have not been bridged as people continue to confront chronic deprivation arising from anti-community policies, such as sections 34 and 36 of the Land Use Act of 1978. In protesting against the Nigerian state imposition of people unfriendly policies, organised bodies of militia groups have found violence a handy weapon and resisted human rights violation in their communities. The modalities for addressing the relatively long history of activism on the Niger Delta issues seem to be missing in the NDDC master plan. As the continuing implementation of the master plan has not significantly improved the living standards of majority and pacified the aggrieved militants, it is necessary to re-examine the commission's relevance within the context of the community development discourse. The operations of NDDC cannot elude the questions of alienation and communal catastrophe, escalating from the ambivalence of its hegemonic influence and authoritarian construct.

It is perceived that Niger delta is synonymous with the oil-bearing areas of Nigeria i.e Niger delta is the same as the oil bearing areas. In other words Niger delta include the folio states: Abia, Imo, Edo, Delta, Rivers, Bayelsa, Cross River, Akwa Ibom and ondo which is synonymous with the Government definition of Niger Delta under the Oil Mineral Producing Areas Development Commission.(OMPADEC). There is a specific geographical location referred to Niger delta with a terrain of Delta, Akwa Ibom and parts of Edo, not even ondo. The fact that, over the years, money from Niger Delta has been spent in prospecting for oil in sokoto, should not mean that sokoto is, if it has oil at all, should be included as a member states of Niger delta commission. NDDC Act specifically provided that: There is hereby established for the Commission a governing Board (in this Act referred to as "the Board"), which shall consist of one person *who shall be an indigene of an oil producing area* to represent each of the following member States, that is, Abia State, Akwa-Ibom State, Bayelsa State, Cross River State, Delta State, Edo State, Imo State, Ondo State, and Rivers State<sup>140</sup>. In essence the name of the members of the board according to the NDDC Act is to be an indigene of oil producing area and not Niger Delta area. The commission ought to be named after the indigenes whose interests are involved

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<sup>140</sup> Section 2(1)(b) of NDDC Act, 2000



in the commission. i.e Oil producing areas and not Niger Delta or named after Niger Delta area if is to serve the need of its indigenes which presupposes that the members of the board will only be from Niger Delta. The name of the commission has failed to reflect its purpose.

NDDC is perceived as not been representative of the oil producing states since members of the commission are not nominated by the oil producing states, but by the president<sup>141</sup>.

The fact that the Commission shall have regard to the varied and specific contributions of each Member State of the Commission, and it shall also be subject to the direction, control or supervision of the president of the Federal Republic of Nigeria in the performance of its functions<sup>142</sup>, made the commission to be at the wimps and caprices of the state; thereby not making the commission to be an independent body. NDDC was designed to succeed but it has fail due to bureaucracy, power play and patronage

## 5.2 RECOMMENDATIONS

The Commission should be independent of the Federal Government or Presidency and should be insulated from political influences. It should be transformed into an autonomous body, with funding from the National Assembly (say 5% of oil revenue) and other independent sources

It will be better to revert to the former name OMPADEC which gave better focus or some version of it, e.g. **OPAC** (Oil Producing Areas Commission) or **HYPAC** (Hydrocarbon producing areas commission). In doing this, the concept of an "oil producing community" will be clearly defined.

The management structure should be transformed accordingly. For example, it should be governed by a Board of Trustees made up of one Federal Government representative, one representative from each of the oil producing States, three representatives of oil companies and four representatives of civil society organizations (e.g. NLC, NCWS, NYC, NBA), all of whom must be indigenes of oil producing areas.

The need to reengineer the Master Plan in the institutional frameworks aimed at repositioning the Niger Delta for sustainable development is inevitable. Such re-engineering must lend credence to the necessity of collective reconciliatory movement that is capable of addressing the collective needs and providing lee-ways towards achieving them.

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<sup>141</sup> Section2(2)(a)

<sup>142</sup> Section 7(2)(3)

The contradictory situations in the Niger Delta require a holistic approach. Instead of the budding bureaucrats, parochial politicians, profligate professionals, and local elites only dictating the pace for the rest of the Niger Delta communities, the multi-layered spheres of influences and powers of all agencies should be captured and engaged within the contexts of local idioms and communal development.

The federal government must also work to increase transparency in appointments to the NDDC board and management.

An independent panel should be set up to address the geographic boundaries of the NDDC because the commission failed to define the geographical boundaries of the commission.

There should be provision for multinational companies or any other subordinate to pay fine or punishment for violation of any of the provision of NDDC Act, as this will enhance enforcement and compliance with the provision of the Act.

Section 7(3) of the NDDC Act which provides: The Commission shall be subject to the direction, control or supervision in the performance of its functions under this Act by the President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria. This made the commission to be at the whims and caprices of the president. The decision of the commission should be made final without been subjected to the decision of any authority.

The importance of culturally nuanced strategy for the development of the Niger Delta should not be underrated. The Niger Delta people, especially the less privileged that are in the majority rather than only the elites who constitute the minority, must be actively involved in programmes that affect them. Community based organizations (CBOs) that represent the interest of the poor should be co-opted to stand in for people who may be too weak to play an active role. All members driven collective community interests must be at the centre of all projects implementations. This will require rigorous survey and social mapping of the programs impact assessment and evaluation development policies. The commission should ensure participatory in decision-making with oil-producing communities and government agencies, especially within the internal procedures of the Niger Delta Development Commission (NDDC) as this will make the oil producing communities to participate in the affairs of the community by making meaningful contributions. An amendment of the NDDC Act is necessary to ensure that its focus is on developmental work and public participation rather than token gestures.

Each of the state and local governments of oil producing communities as well as the NDDC and oil company should be made to produce a 10-year results-orientated poverty reduction strategic plan.

In line with the recommendation by Dafinone (2007), a Niger Delta Bank for Reconstruction and Development and a Development Board should be incorporated. The operators of Oil and Gas business in Niger Delta, the traditional owners of land, and the people of the Niger Delta as defined by the Willink Report of 1958 should collectively negotiate and decide the membership of the Development Board whose funding should be from royalties due from the various operators of Oil and Gas in the Niger Delta.

The above recommendations are crucial if equity and tranquillity are desired in this resource rich region- the Niger Delta, which would help in reversing the resource curse paradox.