

# DEPRIVATIONS, ENVIRONMENTAL DEGRADATION AND ARMED CONFLICTS: NEED FOR SUSTAINABLE DEVELOPMENT OF THE NIGER DELTA WETLANDS

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## **Introduction**

Almost as a rule, the world's natural resources which are currently being exploited are found mostly in regions inhabited by indigenous peoples. It is also in these regions that most of the violent crises have taken place.<sup>1</sup> Environmental conflicts manifest themselves as political, social, economic, ethnic, religious or territorial conflicts, or conflicts over resources or national interests or any other type of conflict. They are traditional conflicts induced by environmental degradation.<sup>2</sup> Scarcity, resulting from denying or limiting access to renewable natural resources and from growing environmental degradation is a major cause of conflicts that arise mainly out of the economic and ecological distortions.<sup>3</sup> Both scarcity and abundance of natural resources have been known to generate considerable tension conflicts, struggle for access to, and control and use of natural resource such as forests, water, pastures and land, minerals, and so on.

The case of Rwanda provides some example of how resource scarcity can significantly contribute to national social instability. Inequitable access to, and shortage of land resources has forced rural inhabitants into a vicious cycle of poverty, thereby compounding their dissatisfaction with the state.<sup>4</sup>

On the other side of the spectrum, Indonesia is an example of a country that has shown that abundance of resources can also be a cause of conflict over resources. According to reports, local communities who bore the brunt of the exploitation of these resources and whose traditional resource management systems, were swept aside in the name of "development" and under the authority of national laws that arrogantly declared that the central government owned 75% of the nation's land area where resources were found, were denied access to these resources. Conflict between local communities and milling or logging companies became inevitable.<sup>5</sup>

The United Nations Environmental Programme (UNEP) report of June 1999 provided an overview of environmental conditions, resources and conflict. It gave the proposition that a growing trend in international and intranational conflict appears to be linked to the deteriorating environmental conditions and resources.<sup>6</sup>

## **Background to the Niger Delta Conflicts**

In Nigeria, as around the world, oil has been a source of great wealth; but dependence on oil has also fostered conflict, environmental damage, gross economic injustice,

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<sup>1</sup> Suliman, M, "Resource Access: A Major Cause of Armed Conflict in the Sudan: The Case of the Nuba Mountains." A paper delivered at the International Workshop on: Community-Based Natural Resource Management (CBNRM) Washington DC, United States, May 10-14, 1998, p 2.

<sup>2</sup> *Id.*

<sup>3</sup> Interim Report on "Environment and Security in an International Context" for The Federal Ministry of Environment, Nature Conservation and Nuclear Safety, Germany. October 1996, p 8.

<sup>4</sup> "Resource Control Struggle In Perspective" *The Tide Online*, Sunday, April 9, 2006, p.2.

<sup>5</sup> *Id.*

<sup>6</sup> Onduku, A., "Environmental Conflicts: The Case of the Niger Delta," p 1. A presentation at the One World Fortnight Programme organized by The Department of Peace Studies, University of Bradford, UK, November 22, 2001.

corruption and shortsighted economic policies.<sup>7</sup> In the last two decades, oil has supplied more than 90% of Nigeria's export earnings and more than 80% of Federal Government revenues. Major international oil companies, operating in joint-venture agreements with Nigeria's national oil company, produce 99% of the crude oil. Royal Dutch Shell accounts for slightly less than half, Exxon Mobil about one fourth, and Chevron Texaco about one fifth of the total. That notwithstanding, many Nigerians, particularly those who live where the oil is produced would say that oil has been more of a curse than a blessing to the country.<sup>8</sup> Oil is concentrated in onshore and offshore deposits in the Niger Delta in the far south which is one of the world's largest wetlands<sup>9</sup> and mangrove forests.

It is the largest wetlands in Africa and the third largest in the world. It covers an area of about 70,000 square kilometers and consists of distinct ecological zones which are characteristic of a large river delta in a tropical region, coastal ridge barriers, mangroves, and freshwater swamp forests,<sup>10</sup> and lowland forests whose boundaries vary according to the patterns of seasonal flooding. The mangrove forests of this area are the most extensive in West and Central Africa. The Niger- Delta region has high bio-diversity characteristics of extensive swamp and forest areas.<sup>11</sup>

The Niger Delta people form the largest group amongst the ethnic minorities spread over the South-South geopolitical zone of Nigeria today; and this has formed the core of their agitation over the years.<sup>12</sup>

### **An Overview of the Crisis**

To understand what is happening in the Niger Delta, it is important to recognize that there are important players:

- (1) The communities within which the oil is exploited (these are minority ethnic groups, which historically have been excluded from full and effective participation in governance and resource allocation in Nigeria);
- (2) Multinational oil companies, which since the colonial period, have been exploiting environmental resources in the region; and
- (3) The Federal Government.<sup>13</sup>

### **Communities in Niger Delta and the Federal Government (Deprivation)**

The frustration the Niger Delta community is experiencing with the Federal Government is that since independence, the latter has paid little or no attention to the development needs of the region.<sup>14</sup> Basically, the oil-producing states are demanding a greater input in the control and management of the business in the country. They want the following changes so that equity can take place in the allocation of revenue and the use of oil revenue for the development of the country:

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<sup>7</sup> Booker, S. Minter, W. "The U.S. and Nigeria: Thinking Beyond Oil" *Great Decisions*, January 2003 [http://www.africaaction.org/featdocs/nig2003.pdf] accessed on 16 April 2006

<sup>8</sup> Ibid. at p.3

<sup>9</sup> Wetlands are areas that are saturated by surface and groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated oil conditions.

<sup>10</sup> "The Price of Oil", a publication of Human Rights Watch, New York, (1999), 53 referred to in Sagay, I E, "The Niger Delta and The Case For Resource Control" *Vanguard*, Monday, June 13, 2005, 11.

<sup>11</sup> Oluwagbami, D.A. "The Niger Delta Development Commission and the Future of Petroleum Industry in Nigeria" (2001) 5(3) *Modern Practice Journal of Finance and Investment Law*, 393.

<sup>12</sup> Onduku, *supra n.6* at 9.

<sup>13</sup> Ikelegbe A, "Encounters of Insurgent Youth Associations with the state in the Oil Rich Niger Delta Region" *Journal of Third World Studies*, spring 2005, p.1

<sup>14</sup> The conflict has been complex and worsened by the goal-blocking behaviours practiced by the parties. The indigenes claim that the government continues to marginalize the people, militarizing the area, and suppressing intellectualism, e.g. the killing of Ken Saro Wiwa and nine others.

- (1) The restoration of the principle of derivation as the impetus for the allocation of oil revenue.
- (2) A demand for increase in oil revenue allocation from the current 13% to 25% or 50%
- (3) The elimination of the Petroleum Act, the Land Use Act and the National Waterways Act, and other laws which concentrate too much power in the hands of the Federal Government and contribute to the unequal distribution of revenue.
- (4) The management of the oil business by the states and not by the Federal Government.
- (5) A true national development plan that is reflective of the national character and not selective development.<sup>15</sup>

They claim that steps undertaken by the Nigerian government to address the long-standing demands of people living in the oil-producing states have been inadequate; that under the 1999 constitution, the state administration ought to have received a higher percentage of national oil revenues - up from 1.5% to 13% percent - to be used for development purpose.

However, in response to a legal challenge by the Federal Government, in 2002, the Supreme Court ruled that this provision applied to revenues from on shore oil only, slashing payments to states in some cases.<sup>16</sup>

In June 2005, delegates from oil producing States walked out of the National Political Reform Conference after the Federal Government refused to offer more than 17 per cent. In addition, many Federal Government payments owed to states, and to the Niger Delta Development Commission (NDDC) established by the government in 2000, are long overdue.<sup>17</sup>

They contend that the Delta region has a steadily growing population estimated to be over 30 million people as at 2005, accounting for more than 23% of Nigeria's total population. The population is expanding at a rapid 3% per year and the oil capital, Port Harcourt, along with other large towns are "literally exploding".<sup>18</sup> The government is considered culpable for abandoning its principal social mandates of providing basic social infrastructure such as good roads, clean water, electricity and educational and health care facilities as well as adequate security for life and property.<sup>19</sup> The Niger Delta indigenes find it very disturbing that despite the vast wealth created by Petroleum (much of which is derived from their region) the benefits have been slow to trickle down to the majority of the population, who since the 1960s have increasingly abandoned their traditional agricultural practices. The people of the Niger Delta are presently still living in the Dark Stone Age in the presence of modern day technology and have therefore felt that enough is enough by demanding control of their resources.

The Delta's marginalized peoples vigorously pursue the campaign for their rights. Yet their ability to claim their economic and social rights is impeded by continued threats to civil and political freedoms. Human rights defenders and journalists, including foreign reporters and television crews, have been harassed, detained and sometimes beaten for investigating oil spills or violations by the security forces. The inhabitants of communities suspected of obstructing oil production or harbouring criminals are sometimes targeted by security forces. The Federal Government has in many cases rejected calls for

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<sup>15</sup> Torulagha, P S, "The Case for Resource Control", 1. [<http://www.unitedijawstates.com/jodel.htm>] accessed on 25 April, 2006.

<sup>16</sup> *Attorney General of the Federation v. Governor of Abia State & 35 others* [2002] 6 NWLR (pt 763) 264.

<sup>17</sup> "Nigeria: Delta Oil and Human Rights", *Africa Focus Bulletin*, November 13, 2005.

<sup>18</sup> "Niger Delta Conflicts" Wikipedia, *The Free Encyclopedia* [[http://en.wikipedia.org/wiki/Niger\\_Delta.htm](http://en.wikipedia.org/wiki/Niger_Delta.htm)] accessed on 25 April, 2006.

<sup>19</sup> Ukeje C. "Youths, Violence and Collapse of Public Order in the Niger Delta of Nigeria" 2001, 1-2, (xxvi) *Africa Development* pp. 342-343.

independent and impartial inquiries into abuses by these forces, which operate under its direct control. The actions of the security forces have resulted in the death and injury of countless civilians and the razing of whole communities. In several instances, the use of force has been excessive. Leading these forces has been a Joint Task Force, an army-led unit that includes officers from the navy, military, paramilitary Mobile Police (MOPOL) and regular police force. The Joint Task Force was formed in 2003, with codename "Operation Restore Hope", to protect major oil installations as strategic national assets and to combat increasing kidnappings of oil company personnel, attack on police stations and military patrols, interruptions to oil production and oil thefts, as well as communal unrest.<sup>20</sup>

These actions have made the people of Niger Delta justify their aggression against the Federal Government. In the words of Chief Asaboro<sup>21</sup>

It is painful that under this democratic system, people are being shortchanged through the daily milking of the natural endowments of the people with the government giving nothing in return. Instead, the government is daily harassing the people. As a result of this, people are now taking their destiny into their hands. The youths who feel that their lives and future are being threatened are at the vanguard of the crusade to free themselves from the grip of poverty being visited on them by the state. This has resulted in the youths taking up arms against the state security agents as militants with sophisticated weapons at their disposal ... it is a fight that is welcome by all well meaning Niger-Deltans. I am in support of them and to the militants I say bravo.

In spite of the armed conflicts between the people of the Niger Delta communities and the Federal Government, resource control which is the bane of the problem subsists. Both parties will ultimately have to come to a compromise. This precisely is the thrust of this paper. But before the issue is addressed, it is imperative to consider at this point the contentions the people of the Niger Delta have against the multinational companies.

### **Niger-Delta Communities and Multinational Companies**

Most of the industries whose activities cause environmental degradation are owned by Transnational Corporations (TNCs). These include the Shell Petroleum, Mobil Producing, Chevron, Agip, Texaco and Elf. Of these, the Shell Petroleum Development Company (SPDC) is primarily responsible for most of the oil exploration activities which have caused the greatest environmental degradation in the Niger Delta region. All the companies engage in the exploration and production of crude oil and its by-products like petrol, gas, kerosene, diesel and so on.<sup>22</sup>

Crude oil contains thousands of different chemicals, many of them toxic and some known to be carcinogenic with no determined safe threshold for human exposure. In many villages near oil installations, even when there has been no recent spill, an oily sheen can be seen on the water, which in fresh water areas is usually the same water that the people living there use for drinking, bathing and other domestic needs

The operations of multinational companies (MNCs) show that most of the communities are crisscrossed by oil pipelines and gas flared round the clock at ground level. For instance, in most of the host communities, oil companies like Shell locations lie apart in the middle of the villages, in front and back gardens that should lay a particular responsibility on Shell to be absolutely cautious in its operations.<sup>23</sup>

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<sup>20</sup> "Nigeria: Delta Oil & Human Rights" *Africa Focus Bulletin*, *Supra* n. 16, p. 3

<sup>21</sup> Eze, J, "FG Must Be Sincere in its Dealings in the Niger-Delta" *Vanguard* (Lagos) April 16, 2006, p. 2.

<sup>22</sup> Idowu, A A, "Environmental Degradation and Human Rights Violations" (1999) 3(1) *Modern Practice Journal of Finance and Investment Law*, 126.

<sup>23</sup> Onduku, *Supra* n. 6 at p.15

When communities object to specific projects, or ask for more compensation, the companies create divisions within the communities by supporting one, usually the chief and groups/gangs associated with the chief, who then forcibly secure the compliance of other community factions who may be opposed to the project.

Stakeholders refer to this as “divide and rule.” Over the last 40 years of operation, oil companies have left large areas of Niger Delta Unusable for farming, due to frequent oil spills, leakages, and the effect of gas flaring or other accidents.<sup>24</sup>

In many instances, the grievances turned into outright antagonism leading to frequent instances of abduction of company officials, sabotage of company property, and violent targeting of companies.<sup>25</sup> The companies have turned to state security forces which in some cases have used force, often arbitrarily and disproportionately, against individuals. The easy availability of small arms in the region has made the situation more serious. While no firm statistics are available, NGOs estimate that there were nearly 1,000 violent deaths in the Niger Delta alone in 2003, some of which were intra-communal or inter-communal, also the result of excessive use of force by security forces or the police force.<sup>26</sup> Security analysts and conflict experts have asserted that the conflict in the Niger Delta, in certain respects, has become one of the most intense in the world.<sup>27</sup>

It suffices to say at this point that with respect to the conflict between the Niger Delta communities and the MNCs, that sometimes the local communities make unrealistic demands on oil companies. Despite the abundant local natural resources, exemplified by land which contains resources of commercial value and those resources being pumped out through the pipelines, local communities receive few benefits from the state, leading to expectations that the oil companies will fulfill the role that the state should play. One community activist in Port Harcourt told Amnesty International:

The public debate does not usually mention the fact that state Governments should be giving money to the local communities, but rather that the transnational companies (TNCs) do not give money.<sup>28</sup>

### **Achieving Sustainable Development in Niger Delta Wetlands**

The conflicts in the Niger Delta attest to the depth of social frustration and anger harboured by the oil producing communities. The anger is directed against the Federal Government (whom they consider to have sold out communal heritage), as well as against oil companies whose years of exploration and production have so far yielded little positive development. They consider them to be putting greater premium on what they accumulate than caring about the proverbial goose that lays the golden egg.<sup>29</sup> With a view to achieving sustainable development in the Niger Delta Wetlands, the three parties have their parts to play.

#### *(a) The Federal Government*

When a government ignores the environment, it makes it harder, costlier or even impossible to do the other things it is committed to doing: providing peace and security

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<sup>24</sup> However in *Gbemire & ors v. SPDC* (Suit No. FHC/B/CS/53/2005) the Federal High Court ordered companies to stop gas flaring in the Niger Delta, as it violates guaranteed constitutional rights to life and dignity.

<sup>25</sup> It is claimed that in 1993 the operations and activities of Shell were disrupted by about a hundred communal disturbances leading to a loss of some 12 million barrels of crude oil worth about N369b.

<sup>26</sup> “Nigeria: Are Human Rights in the Pipeline?”, p 8 [<http://www.amnestyusa.org/news/htm>] accessed 26 April 2006.

<sup>27</sup> *Id* at p.3

<sup>28</sup> *Id* at p.4

<sup>29</sup> Dernbach, J. C. “Achieving Sustainable Development: the Centrality and Multiple Facets of Integrated Decision-making. (Globalization and Governance: The Prospects for Democracy)” *Indiana Journal of Global Legal Studies* [serial online], January 1, 2003. Available at [[www.Highbeam.com](http://www.Highbeam.com)].

for other citizens as well as fostering economic development. To the extent that legitimacy is based on outcomes, in the broad sense, then it is increasingly true that governments cannot afford to ignore the environment, either in the short run or in the long run.

The Federal Government should consider more seriously increasing the revenue allocated to the people of the Niger Delta as well as allowing them control over their resources. Mere increase in revenue without resource control is shortsighted, and it condemns the people of the Niger Delta to a present without a future.

The main objectives of resource control therefore are

(1) restoration of the environment, (lands, waters, forest, air, etc) to a clean natural and productive state and condition; and

(2) to establish an economy based on renewable resources and industries that will sustain the people of the Niger Delta, after the exhaustion of petroleum resources.<sup>30</sup>

The Government should embark on integrated decision making; The Rio Declaration and *Agenda 21* are emphatic on this. The Rio Declaration<sup>31</sup> states that “environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.” *Agenda 21*<sup>32</sup> adds that the first and most important thing national governments need to do is “integrate environment and development decision making processes. *Agenda 21*<sup>33</sup> goes on to describe the “overall objective” as “the integration of environment and development policies through appropriate legal and regulations policies, instruments, and enforcement mechanism.” In *principles 24 and 26* of the Rio Declaration, the fact that peace and security are required for sustainable development is emphasized. Though the principles refer to disputes between states, they are less applicable within the states themselves.

Thus unless adequate safeguards are put in place, companies acting voluntarily could cause more harm than good as the Federal Government has not been vigorous in enforcing its obligation to protect human rights. If corporate activities have adverse consequences, companies end up operating in an environment without an adequate accountability framework, making it harder for the victims of environmental degradation to seek redress.<sup>34</sup> No matter how comprehensive the anti-pollution laws and regulations appear to be, their effective application and enforcement are necessary to bring about the desired objective.<sup>35</sup>

Again the Federal Government should ensure that all state governments in the Niger Delta allow their budgeting processes, executing and monitoring have communal inputs. This is in line with *Principle 10* of the Rio Declaration<sup>1992</sup> which provides *inter alia*: “states shall facilitate and encourage public awareness and participation by making information widely available...”

Nigerian Federal and State legislatures need to incorporate international principles on human rights and the environment into domestic legal systems, because environmental human rights use global human rights norms to state a universal standard of minimum environmental protection that applies equally to every country. In this way, environmental harm is cast in terms of its toll in human suffering which leverages human rights standards to universalize our understanding of unacceptable environmental harm.<sup>36</sup>

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<sup>30</sup> Sagay, I E, “The Niger Delta and the Case for Resource Control” *Vanguard*, June 13, 2005.

<sup>31</sup> *Paragraph 8.4*

<sup>32</sup> *Principle 4*

<sup>33</sup> *Paragraph 8.6*

<sup>34</sup> “Nigeria: Are Human Rights in the Pipeline?” *supra* n. 26 at p 8.

<sup>35</sup> Idowu, A A, *supra* n. 22 at p 140.

<sup>36</sup> O’Hara, K. “Niger Delta: Peace and Co-Operation through Sustainable Development” (2001) 31(6) *Environmental Policy and Law*, 307.

In order to develop energy policies to achieve Sustainable Development, the Federal Government is invited to combine renewable energy, efficient use, advanced technologies, including advanced fossil fuel ones, and sustainable use of traditional energy resources. Also the use of most cost - effective, socially acceptable and environmentally friendly technologies.

*(b) Multi-National Companies*

In some instances, companies have not performed the environmental or social obligations required under Nigeria law, or helped to ensure that environmental impact assessment documents have been made adequately available;<sup>37</sup> in several cases, these reports have often failed to reveal all relevant information to the community, which is a precondition for prior informed consent.

As we have noted above, armed conflicts and hostilities are mutually exclusive to Sustainable Development. Thus in order for the multinational companies to conduct business in the Niger Delta Region in a sustainable way, they are urged to take the following steps:

- They must ensure that consultation with the community is effective, and cooperate fully with authorities inquiring into causes of oil spills and ensure rapid cleanup after oil spills; and take a further step to provide prompt, adequate and appropriate compensation to the victims of oil spills.
- They should undertake preventive actions for the future to minimize the risk of oil spills, such as investing in new pipelines, and undertaking regular and adequate maintenance.
- The TNCs should also be committed to the United Nations *Norms for Business*<sup>38</sup> According to *Article 14* of the UN Norms, TNCs and other business enterprises are responsible for the environmental and human health impact of their activities. The third commentary to *Article 14* provides: "On a periodic basis (preferably annually or biannually), transnational corporations and other business enterprises shall assess the impact of their activities on the environment and human health including impacts from...the generation, storage, transport and disposal of hazardous and toxic substances...."

TNCs can also consult regularly with the Nigerian Government and, where appropriate, NGOs and communities, concerning the impact of the companies' security arrangements on the human rights of members of communities living in the area.

*(c) The Communities*

The recommendations are not imperative for the Federal Government and the companies alone; the communities have their part to play in moving towards achieving a sustainable Niger Delta.

In order to curb the divide and rule system encouraged by the traditional rulers of the communities, the communities ought to liaise with the MNCs to publicly declare that cash payments will stop, unless they are for legitimate business purposes and ensure that this decision is enforced.

The communities should insist on planned and controlled production to ensure the progressive replacement of the non-renewable resources, by a renewable product that is free of pollution and other environmental hazards.

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<sup>37</sup> For instance not placing copies of these documents in or at a reasonable and accessible distance from the actual communities, these acts inversely lead to hostilities by the communities. Not placing copies of these documents in or at a reasonable and accessible distance from the actual communities can lead to hostilities by the communities.

<sup>38</sup> Adopted in a report by the UN Commission on human rights in April 2004 to set out the scope and legal status of existing initiatives and standards on business responsibilities with respect to human rights.

Resource-related disputes are good candidates for Alternative Dispute Resolution (ADR). This is partly because they often involve parties who will have to deal with each other long after the case is settled. Where litigation can destroy long-term relationships, mediation can build a basis for collaboration.<sup>39</sup> NGOs have a role to play as well, especially in the area of reporting activities of degradation by the MNCs and putting pressure on them to implement the rules that regulate their activities in the Niger Delta region; they can also encourage the disputing parties to resort to ADR. It is not also out of place for NGOs to provide basic amenities.<sup>40</sup>

## Conclusion

The situation in the Niger Delta involves a struggle of relevance and survival by the various actors within the nation state. As long as the people are forced to endure governments that take them political and economic hostage, as long as they are deprived of their cultural rights, or subjected to iniquitous and obnoxious laws, as long as they are not provided with a context propitious for free enterprise, "development" will remain an empty word to the people of the Niger Delta.<sup>41</sup>

Although the sustainable development agenda should not be duplicated by the investigation of environment-security linkages, both issues are certainly closely related. In considering the role of environmental problems as threats to security as a matter of priority might serve environmental as well as security purposes. Furthermore, reaching security in the military sense is one major precondition for the successes of any strategy aiming at reaching sustainability, since serious conflict and the destruction resulting from it necessarily counteract efforts to realize sustainable development. By the same token, sustainable development can be seen as a major precondition of security, and its realization will alleviate any environmental threats to security, since environmental causes of serious conflict will be avoided by following sustainable development paths.<sup>42</sup>

Genuine peace effort in the Niger Delta can be achieved by participation, equitable distribution of resources, appropriate development, conscientisation and environmental sustainability.

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<sup>39</sup> Taylor, D A, "Global Resources: Abuse, Scarcity, and Insecurity," (2004) 112 (3) *Environmental Health Perspectives*, 8.

<sup>40</sup> For example, CARE International, an NGO, is responding to the ongoing crisis in Afghanistan by promoting small enterprise loans, funding water and sanitation projects, and awarding grants for education and building of schools. Other groups in Afghanistan have conducted a national assessment of health care facilities and helped rebuild local clinics with provisions for potable water and wells.

<sup>41</sup> Onduku, *Supra* n.6, p.6

<sup>42</sup> Interim Report on "Environment and Security in an International Context" presented to the Federal Ministry of Environment, Nature Conservation and Nuclear Safety, Federal Republic of Germany, October 1996, p 2.