

THE PLIGHT OF THE MINORITY NIGER DELTA IN NIGERIA: THE POVERTY OF PROTECTIVE LEGAL AND INSTITUTIONAL MECHANISMS*

I. Introduction

The Niger Delta region of Nigeria consists of several minority ethnic groups.¹ It is made up of six out of the thirty-six states² in the country and has a population of about seven million³. It is located in the southern most part of the country and has a very vast wetland with a fragile ecosystem acknowledged to be one of the richest in the world.⁴ Since the discovery and prominence of crude oil as the largest contributor to the national economy, the Niger Delta where this black gold is produced, has become the centre of the oil industry in the country. Ironically, it is this natural endowment that has become the major instrument of underdevelopment of the area.

Oil exploration activities which started in 1956 in Oloibiri Town in the Niger Delta has become one of the greatest causes of environmental degradation of the area. This peculiar environmental circumstance has made effective development of the area extremely difficult. Indeed, this environmental constraint was recognized even before the country's attainment of independence in 1960 with strident calls for a redress of same. When this environmental problem is added to the general marginalisation often suffered by minority groups within the Nigerian polity,⁵ then the picture becomes clearer. The continuation of such agitation for improvement eventually led to the establishment of the Willinck Commission to examine the problems of minority groups in the country.⁶

Subsequent efforts at developing the Niger Delta Region included the establishment of the Niger Delta Basin Development Board⁷, the Oil Mineral Producing Areas Development Commission,⁸ and very recently, the Niger Delta Development Commission.⁹

These legal and institutional mechanisms, commendable as they seem, have unfortunately, been unable to grapple with the enormous developmental needs of the Niger Delta which remain epic studies in under-development. Moreover, and unfortunately, the configuration of the Federal Government and its policy measures have been unable to guarantee the protection of the rights of minority groups in the country.

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¹ These include, the Ijaws, Ikwerres, Itsekiris, Ogoni's, Efiks, Urhobos, e.t.c. see Alagoa, E. J. A. *History of the Niger Delta*, Ibadan University Press, 1972.

² The states of the Niger Delta are, Akwa – Ibom, Bayelsa, Cross River, Delta, Edo, Ondo and Rivers States. However, under the Niger Delta Development Commission Act, two other oil producing states, Abia and Imo have also been added to the group thus comprising what has been described as “the political Niger Delta”, see Fubara, B. A. “The Politics of the Niger Delta” *The Niger Delta Development Commission :Towards a Development Blueprint: Proceedings of the Fourth Memorial Programme in Honour of Professor Claude Ake* Ozo-Eson, P.I. & Ukiwo, U. (eds) Centre for Advanced social science Port Harcourt, Nigeria 2002 p. 19.

³ By the 1991 population census figures. The released figures for the just concluded exercise in March, 2006 are still tentative.

⁴ Fubara, B. A. *op. cit.* p. 20.

⁵ The Nigerian federation appears to be standing on a tripod structure such that only those from the three major ethnic groups of Hausa, Yoruba and Ibo have consistently held the reins of governance at the highest level. see Nnoli, O., *Ethnic Politics in Nigeria*, Fourth Dimension Publishers, Enugu, 1978, p. 6. The failed Gideon Orkar coup in April, 1990 was ostensibly anchored on redressing this anomaly. see Tolofari, S, *Exploitation and Instability in Nigeria: The Orkar Coup in Perspective* Press Alliance Network Limited , 2004, pp. 13 –21.

⁶ Unfortunately, this report could not be implemented before the outbreak of the Nigerian Civil War in 1967.

⁷ By Act No. of 1961.

⁸ Through OMPADEC Act of 1992.

⁹ Through the Niger Delta Development Commission Act No. 6 of 2000.

This accounts for the spate of agitations and the cry against marginalisation by various groups in the country especially the Niger Delta people. What are the structural foundations of these policies and how can the existing legal and institutional mechanisms be deployed to ensure the development of the Niger Delta region in the country?

The central theme of this paper is to explore these questions and suggest appropriate measures to guarantee the development of this minority region which ironically, remains the economic mainstay of the country. In the first part of the paper, we examine the historical context of the problems faced by the Niger Delta, while the legal and institutional mechanisms will be appraised in the second part to show why they have been unable to effectively tackle these monumental problems. In the concluding part of the paper, suggestions will be made on how the rights of minorities in Nigeria especially the Niger Delta can be better assured in a federation that recognizes the relevance of the component units.

II. Historical Background of the Niger Delta Struggle

The quest for the protection of the interests of the Niger Delta peoples even predates the emergence of the Nigerian state.¹⁰ This is because the peculiar position of the area in the geographical configuration of the country had exposed it to the manipulative activities of other major groups both within and outside the country. Indeed, it has been said that the antecedents of the current predicament of the Niger Delta can be traced to the era of gunboat diplomacy and the Protectorate Treaties obtained through coercion or the threat of it in the mid 19th Century¹¹.

The colonial oppressors who came with their gunboats and armed patrols carried out punitive expeditions which brought death and desolation to several indigenes of the Niger Delta. As the intensity of these exploitative expeditions continued, the people became increasingly conscious of their loss of fundamental human rights, their hatred of oppression increased and their quest for freedom gained momentum. These perceptions continued throughout the period of colonial rule and there were high expectations of change with the attainment of independence. This change never came. Rather, the structural platform of the emerging country appeared to have accentuated these injustices on the Niger Delta people. It was in recognition of these factors that the Rivers Chiefs and Peoples took a number of steps to bring the plight of the region to the attention of the colonial government. It was in response to this growing consciousness and demands of the people that eventually led to the establishment of the Sir Henry Willink Commission to examine the issue of minority rights in the country. Although the Commission rejected the call for the creation of a state for the Niger Delta people, it recommended the establishment of a "Federal Board appointed to consider the problems of the area of the Niger Delta."¹²

It was based on this recommendation that the Niger Delta Development Board was set up in 1961, the assumption being that it would be able to tackle the enormous developmental needs of the Niger Delta. Ill-equipped as it was, the Board found it extremely impossible to deal with these monumental problems, and this was not helped by the subsequent transformation of its nomenclature to Niger Delta Basin Development

¹⁰ See Tamuno, T.N. The Niger Delta Question Riverside Communications, Port Harcourt, Nigeria p. 14

¹¹ op.cit., p. 14.

¹² op.cit. p. 18.

Authority in 1976.¹³ Succeeding military administrations not only ignored the plight of the Niger Delta but even exacerbated the problem by the gradual reduction or complete removal of the revenue allocation for oil producing areas. It would be recalled that before the advent of oil as the main source of revenue for the country, revenue sharing was based on a formula of 50% equality and 50% derivation.¹⁴ This was when groundnut, cocoa and palm oil from the three majority groups in the country, namely; Hausa, Yoruba and Ibo were the major source of revenue in the country.

However, symptomatic of the plight of minority groups¹⁵, when there was a reversal and crude oil became the major revenue earner, these revenue –sharing principles were jettisoned. The result was the complete abolition of the principle under General Yakubu Gowon Administration,¹⁶ its restoration but reduction to 1.3% by the Shehu Shagari administration, to 3% by the government of General Ibrahim Babangida and not less than 13% under the present 1999 Constitution¹⁷. It was under this circumstance of manifest deprivation that strident calls for redress were made leading to the eventual establishment of Oil Mineral Producing Areas Development Commission (OMPADEC)¹⁸ in 1992 by the government of General Ibrahim Babangida. Again, the philosophy behind the establishment of this apparently interventionist agency was that it would facilitate the development of oil mineral producing areas, another acronym for the Niger Delta. Unfortunately, not only was the Commission hampered in its operations by political and other interests from the centre, it became a huge pipe drain and an avenue for few individuals to enrich themselves at the expense of the large majority of the Niger Delta people.¹⁹ This eventually led to its scrapping and the establishment of the present Niger Delta Development Commission in 2000 with the advent of the present civilian dispensation.

It is also significant to mention that it was a reaction to the injustices meted to the people that led to the establishment of several protest groups in the area.

In this connection reference may be made to the Niger Delta Volunteer Service led by late Major Isaac Adaka Boro in February – March, 1966, the Movement for the Survival of the Ogoni People (MOSOP)²⁰ which released its Ogoni Bill of Rights in August 1990, the Ijaw National Congress leading to the adoption of the Kaiama Declaration of 11th December, 1998, the Ijaw Youth Congress, Movement for the Emancipation of Niger

¹³ This was accompanied by the establishment of eleven other River Basin Development Authorities throughout the country.

¹⁴ See Alamiyeseigha, D. Thoughts on Federalism, South-South and Resource Control Treasure Communications Resource Limited, Yehagoa, Nigeria, 2005, p. 73.

¹⁵ See Tolofari, S. op.cit., pp. 13 – 21; Darah, G. G. "The Socio-Economic and Political Challenges of the Niger Delta" Challenges of the Niger Delta: Proceedings of a Seminar on the Niger Delta, Ozo-Eson, P.I. and Ukiwo, U. (eds.) Center for Advanced Social Science, Port Harcourt, 2001, p. 19 at 28 – 33.

¹⁶ Between 1967 and 1975. This could have been justified initially as some of the imperatives of the civil war, but it was continued even after the conclusion of the war in January, 1970.

¹⁷ See S 162 (2) of the 1999 Constitution, the proviso of which is couched as follows: "Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources". The last National Political Reforms Conference recommended an increase of this percentage to 15% while the Joint Committee of the National Assembly proposed an increase to 18% in the Constitutional Amendment Bill. The Bill was, however, jettisoned because of the inclusion of the controversial tenure elongation clause, see The Guardian, Thursday, May 18, 2006, Vol. 22, No. 10, 037, p.1.

¹⁸ This was definitely a bold initiative by the Federal Government and it was in recognition of the peculiar environmental condition of the oil producing areas.

¹⁹ See Tamuno, T. N. op.cit., p. 23

²⁰ Led by the environmental activist late Ken Saro-Wiwa who was executed along with eight other Ogoni Leaders, by the Nigerian Government under the leadership of late General Sani Abacha.

Delta (MEND), and the recent Niger Delta Peoples Volunteer Force (NDPVF) led by Alhaji Mujaheed Asari Dokubo now facing treason charges.²¹

Notwithstanding these explosions of reaction against orchestrated oppression and deprivation, the marginalisation of the Niger Delta within the Nigerian state continues. Very recently, the tactics of the fighters have changed to that of hostage taking of oil company workers especially foreigners as a way of drawing attention to the plight of the Niger Delta people. In all these developments what role has law been called upon to play and have the institutional frameworks established for dealing with the Niger Delta problem been able to respond positively to these challenges?. It is intended to examine more closely the role of institutional mechanisms for dealing with the Niger Delta question, and for this purpose our focus will be on the present Niger Delta Development Commission while references would be made to the earlier boards for purposes of comparative analysis.

²¹ See The Guardian Friday, October 7, 2005, pp.1,2 & 4 .

III. Niger Delta Development Commission

The Commission which was established under S.1(1) of the Niger Delta Development Commission Act²² replaced the previous Oil Mineral Producing Areas Development Commission (OMPADEC) established in 1992.

The Act provides for the establishment of a governing Board which consists of a Chairman and one representative each from the oil producing states of Abia, Akwa Ibom, Bayelsa, Cross Rivers, Delta, Edo, Imo, Ondo and Rivers States. It also includes three other persons to represent non-oil mineral producing states, one representative of oil producing companies operating in the Niger Delta, a representative each from the Federal Ministry of Finance, and the Federal Ministry of Environment, the Managing Director of the Commission and two executive directors.²³

It is significant that the Chairman and other members of the Board who are to be appointed by the President subject to the confirmation of the Senate, in consultation with the House of Representatives, shall be persons of proven integrity and ability.²⁴ One provision that recognizes the role of the oil producing states in the economic destiny of the country is the provision that the Chairmanship of the Board shall rotate among the various oil producing states in an alphabetical order²⁵. The Commission is empowered under S. 7 (1) of the Act to;

- (a) formulate policies and guidelines for the development of the Niger Delta area;*
- (b) 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 ;*
- (c) cause the Niger-Delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and socio-economic development.*
- (d) 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;*
- (e) Implement all the measures approved for the development of the Niger-Delta area by the Federal Government and the member States of the Commission;*
- (f) 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;*
- (g) 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 organizations and ensure that funds released for such projects are properly utilized;*

²² No. 6 of 2000.

²³ S. 2 (1) of the Act.

²⁴ S. 2 (2).

²⁵ S. 4.

- (h) *tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger-Delta and advise the Federal Government and the member states on the prevention and control of oil spillages, gas flaring and environmental pollution.*
- (i) *liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control; and*
- (j) *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 people.*²⁶

It is clear from the above provisions that the Commission is given enormous powers to ensure the sustainable development of the Niger Delta area. How are they to carry out these assignments?. This brings us to the issue of adequate funding for the Commission. Thus, S. 14 of the Act provides that;

- (a) *from the Federal Government, the equivalent of 15 percent of the total monthly statutory allocations due to member States of the Commission from Federation Account; this being the contribution of the Federal Government to the Commission.*
 - (b) *3 percent of the total annual budget of any oil producing company operating onshore and offshore, in the Niger-Delta area; including gas processing companies.*
 - (c) *50 percent of monies due to member States of the Commission from the Ecological Fund.*
 - (d) *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.*
 - (e) *all moneys raised for the purposes of the Commission by way of gifts, loan, grants-in-aid, testamentary disposition or otherwise; and*
 - (f) *proceeds from all other assets that may, from time to time, accrue to the Commission.*
- (3) *The fund shall be managed in accordance with the rules made by the Board, and without prejudice to the generality of the power to make rules under this subsection, the rule shall in particular contain provisions:-*
- (a) *specifying the manner in which the assets or the fund of the Commission are to be held, and regulating the making of payments into and out of the fund; and*
 - (b) *requiring the keeping of proper accounts and records for the purpose of the fund in such form as may be specified in the rules.*²⁷

IV Appraisal of the Impact of Institutional Mechanisms

It has been demonstrated that the institutional mechanisms established to tackle the problems of the Niger Delta have woefully failed to perform this function, with the result that the Niger Delta region is yet to witness any noticeable improvement either in the

²⁶ These provisions are similar to those contained in the OMPADEC Decree.

²⁷ This statutory provision is commendable, although there has always been the problem of non-release of the appropriate sums as and when due.

physical conditions of the area or in the standard of living of the indigenes²⁸. One major factor that has led to this state of affairs is the lack of the requisite political will and commitment to see to the actual development of this region. The federal government which had since independence been controlled by one major ethnic group or the other had not shown sufficient interest in addressing the plight of the minority Niger Delta.

The Niger Delta Development Board which was established in 1961 was not given the required attention in terms of provision of financial resources and political leadership. The situation worsened when in 1976 it was transformed to Niger Delta Basin Development Authority and several other Development Authorities established across the country in the fashion of national cake sharing. This meant that the money that should have been applied for the Niger Delta development now had to be shared among the twelve Rivers Basin Development Authorities, thus adversely affecting the development of the area.

Even the Oil Mineral Producing Areas Development Commission (OMPADEC) which succeeded the NDBDB did not fare better in terms of funding and performance. It has been shown that of the sum of **N64 Billion Naira** that ought to have been paid to OMPADEC in 1998 only **N23 Billion** was actually released to the Commission²⁹.

Symptomatic of the Nigerian phenomenon, even the sums released were used in the award of bogus and largely cosmetic projects which had little or no relevance to the enormous problems of the area. This was worsened by the fact that directives were constantly coming from the centre for the award of certain contracts to specified individuals even where these were not known to be contractors at all or performing ones³⁰. Under this scenario, it was not surprising that OMPADEC failed woefully in the performance of its assigned duties. On its part, the present NDDC which ought to have benefited from the inadequacies of its predecessors has been enmeshed in leadership struggles and allegations of corrupt practices in the award of key contracts³¹. Within its short period of existence, it has had three Managing Directors and two Chairmen; changes usually necessitated either by an allegation of wrong doing or refusal to take particular directives from the centre. The result of such frequent changes, no doubt, is instability as each new helmsman has to begin afresh to appraise the problems before formulating his own policies. Transportation is still a major problem in several areas of the Niger Delta.³²

Rural poverty, lack of basic amenities like portable water, light, roads still stare the people in the face. No sustainable scheme has also been devised to generate the required skilled manpower for the oil and gas companies operating in the area in the face of unprecedented unemployment in the region, oil spillages, pollution and their devastating effect on the environment.

²⁸ See Ekuerhare, B. "Sustainable Development Models for the Niger Delta Region", The Niger Delta Development Commission: Towards a Development Blueprint, Ozo-Eson, P.I. & Ukiwo, U. (eds.) p. 36 at 38. On the interface between poverty and environmental degradation in the Niger Delta, see Muzan, A. O. "Poverty, Environmental Degradation, and Sustainability" Environmental and Planning Law Review (2005) Vol. 2, No. 1, p. 68.

²⁹ See Fubara, B. A. op. cit. at p. 26

³⁰ Such directives could hardly be disobeyed as the survival instinct impels the uncritical compliance with them especially when such officers are constantly reminded of the fact that they were appointed by those at the centre. see Kukah, M. H. Democracy and Civil Society in Nigeria Spectrum Books Limited, Ibadan, 1999, p.223.

³¹ This has led to the change in the leadership of the Commission both at the political leadership level and at the administrative level.

³² See Udo, R. K. "Environmental Challenges and Transport Development in the Niger Delta", The Niger Delta Development Commission: Towards a Development Blueprint Ozo-Eson, P.I. and Ukiwo, U. (eds.) p.7.

This is in spite of the clear and express provisions of the law empowering the Commission to act as a veritable agency for the sustainable development of the Niger Delta. From this scenario, it seems obvious that only a proactive and single-minded commitment can chart the way forward for the development of the Niger Delta.

V. Conclusion: The Way Forward

There is no doubt that the minority groups of the Niger Delta region of Nigeria constitute an important bloc in the economic equation in the country because of their enormous contribution to the nation's economy. This contribution and significance arising from the volume of oil production in the region is likely to continue rather than diminish in the years ahead.

Equally axiomatic is the fact that the region has not received commensurate attention from the Nigerian government in the provision of infrastructural facilities and appropriate response to the environmental hazards imposed on the area by oil exploration and exploitation activities.

Although the government had over the years initiated legal and institutional mechanisms to tackle these peculiar environmental problems, they have not achieved the desired impact largely due to the manifest absence of sufficient interest and commitment on the part of the government in developing this minority region in the country. To make the region have a sense of belonging and minimize the spate of conflicts and agitations from the area, it is imperative for the federal government to take proactive measures along the following lines to strengthen the existing institutional mechanism.

There is need to ensure scrupulous compliance with the provisions of the NDDC Act³³ relating to the presentation of quarterly reports on the activities of the Commission to the President and Annual Reports to the National Assembly by the Commission. This would ensure a more robust and critical appraisal of the operations of the Commission. It is sad that since its establishment in 2000, there has not been any presentation of such reports to the National Assembly.

Allied to the above is the imperative of strengthening the internal monitoring mechanism provided for under the Act to ensure that the Commission continues to work in tandem with its mandate under the NDDC Act. In this respect, the establishment of the Monitoring Committee under S. 21 of the Act is commendable and gives hope that the operations of the Commission will be adequately scrutinized. However, the fact that members of the Committee are required to be public or civil servants diminishes greatly, the effectiveness of the Committee. This is because public servants hardly exhibit the level of independence and objectivity in the handling of official assignments that can constitute a veritable check on the activities of the Commission. It is suggested that the Monitoring Committee should be composed of seasoned and independent-minded technocrats, civil society groups and community representatives from oil-bearing communities to enhance credibility and acceptability of such report.

The Commission should also carry out appropriate assessment of the actual needs of the oil producing communities with the view of executing only projects that are of priority to these communities. It hardly needs to be stressed that the fact that the Niger Delta

³³ Cap N86 Laws of the Federation of Nigeria, 2004.

environment is essentially the same does not imply that the priorities of the component communities in terms of desired projects are necessarily the same. This calls for the adoption of a bottom-top approach³⁴ which entails the involvement and input of host communities in the selection of priority projects. The inability of OMPADEC to adopt this approach was one of its greatest undoing as non-priority projects were sited in several communities of the Niger Delta.

There is equally a compelling need for the Commission to focus sufficient attention on capacity – building of indigenes of the Niger Delta to enable them respond effectively to the demands of their harsh environment³⁵. One way of doing this is to enhance the recently introduced skills acquisition programme to make a large proportion of the youths employable by the oil companies. This would go a long way in reducing the spate of recurring conflicts in the region which is already affecting the production of crude oil in the country.³⁶

Furthermore, to enhance the revenue base of the NDDC as well as those of oil bearing states, the present revenue sharing formula should be revisited and made more equitable through significant increase of the derivation fund from the present 13% to at least 30%. This is one sure way of making the people of the area have a sense of belonging and satisfaction that their enormous contributions to the national economy is appreciated.

Above all, the Federal Government must demonstrate the requisite political will and commitment to the development of the region rather than the hortative declarations³⁷ of such determination by successive administrations. This entails taking and ensuring the sustenance of development strategies and plans to enhance the living standards of the people and making their devastated and hostile environment more habitable. It is only when the Niger Delta problem is approached from this holistic perspective that the lingering crisis in the region can be abated and the existing legal and institutional mechanisms become effective instruments for the actual development of the Niger Delta in the overall interest of the entire country.

³⁴ See Lale, N.E.S. "Relation Between Host Communities and Companies: The Way Forward" being a paper presented at a Workshop on Sustainable Environmental Practices in Rivers State organized by the Rivers State Ministry of Environment, in Port Harcourt, Nigeria, March 23 –24, 2004, p. 7.

³⁵ See Wokocho, R.A. "Youths and the Challenges of Social Development in the Niger Delta" Development Rights Issues in the Niger Delta Wokocho, R. A. (ed.) Jite Books, Port Harcourt , Nigeria, 2002, p. 74, Alamiyeseigha, D. op.cit., pp. 91 – 92.

³⁶ The Federal Government recently admitted the economic effect of this crisis on the country through the Governor of the Central Bank of Nigeria, Professor Charles Soludo. See The Guardian Wednesday, June 14, 2006, Vol. 22, No.10, 064, pp. 1 –2.

³⁷ Such declarations are often made in response to crisis situations in the area and they hardly see the light of day. Recently, the Federal Government announced a number of restorative measures to tackle the enormous problems of the region in response to increasing instances of hostage taking of oil company workers by the Movement for the Emancipation of the Niger Delta (MEND), The Guardian Wednesday, April 19, 2006, , Vol. 22, No. 10, 008, pp. 1-2. These measures are yet to bear positive fruits.