

Oil of Poverty in Niger Delta

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FOREWORD

This book is as a result of the debate on the lack of transparency and accountability in the management of oil revenue on the part of government and multinational oil firms which are the root causes of conflicts, poverty and environmental degradation in the Niger Delta. The book is the result of a study on the management of oil revenue in the Niger Delta, which was carried out by the African Network for Environment and Economic Justice (ANEEJ), with support from the Heinrich Boell foundation in Berlin through the Nigeria country office.

The book contributes significantly to the on-going debates on whether oil is a curse or blessing in the Niger Delta Region of Nigeria. Hence, its publication is a welcome development.

Essentially, the book undertakes an evaluation of the impact of oil in the region against the background that it is the goose that lays Nigeria's golden egg. In practical terms, therefore, the book looks at how oil has benefited the region, granted that the region's oil contributes 40% to the nation's GDP; 95% of her total exports; and 80% of her gross revenue. Additionally, it is instructive to note that the region's oil has generated a colossal \$350 billion (at 1995 prices) for the nation, so far.

Extensive reviews of current literature on oil in Nigeria and fieldwork in the oil states as well as communities were methodologies used in collecting research data for this book. In fact, while preparing to write it, ANEEJ organized a reference workshop of oil stakeholders in Bayelsa State. It also paid a visit to Delta State to obtain first-hand information on the activities of NDDC, an interventionist agency floated by the federal government to develop the Niger Delta. All these painstaking efforts in addition to the generous use of tables containing rare data on the region ensures the book is a treasure trove of accurate, reliable and valid information on the region.

The book consists of an introduction and seven chapters. The Introduction sets the perspective of the book: to attempt an explanation on why inspite of its huge oil wealth, the Niger Delta Region is impoverished. Chapter One takes a look at the region's geographical and demographic features; the double-edged nature of oil as a resource; the development profile of the region; as well as oil revenue and government finance in the Niger Delta Region.

Chapter Two examines the controversial issue of whether oil is a curse in the region.

Chapter Three understudies the Niger Delta Development Commission (NDDC), its role as a facilitator of sustainable economic development in the region and proffers advice on how to enhance its performance. Chapter Four goes into a theoretical exploration of different development paradigms offering a critique of them. Chapter Five discusses in detail a human rights development approach to developing the region within the Nigeria context of a mature democracy and functioning, efficient social institutions. This chapter, in particular, contains an exposé on Ondo State, which is cited as a role model in the application of the principles of

good governance, transparency and public accountability in the disbursement of oil funds. Much more, this chapter has an epilogue in which ANNEJ re-affirms its perspective on the Niger Delta situation.

Chapter Six of the book outlines and undertakes a comparative legal study of the several legislations governing oil and other natural resources ownership/control in Nigeria since 1914 when the Colonial Mineral Oils Ordinance came into existence. Also, the chapter discusses the various roles of interventionist mechanisms like the Niger Delta Development Board (NDDDB), the Oil Mineral Producing Area Development Commission (OMPADEC) and the Niger Delta Development Commission (NDDC) in the Niger Delta Region. The score sheet of ANNEJ in this chapter at the end of the day shows that inspite of all interventionist measures introduced in the region so far, a lot still has to be done to turn the region's oil "curse" into a "blessing"

Finally, the book contain a set of recommendations in Chapter Seven for ensuring good governance, transparency and public accountability in the management of the oil resources in the Niger Delta Region.

Without any pretensions, the book lays the blame for the underdevelopment of Niger Delta on the laps of the government and the oil companies. Nigeria's predatory military regime shares the greater blame because it was in power for a comparatively long period and did not put in place a strong institutional framework for the transparent use of the nation's oil resources. Similarly, the civilian government of President Olusegun Obasanjo is also blamed for the plight of Niger Delta because of its inability to establish a climate of mature democracy nurtured by a good human rights record through which the dividends of oil wealth would have been spread to the oil communities of Niger Delta. At this juncture, one must not fail to observe that the book is a sort of roadmap for promoting accelerated and sustainable development in Niger Delta – a condition for, at least, minimizing youth restiveness, pipeline vandalisation, inter-ethnic strife and hostage taking common in the region.

ACKNOWLEDGEMENTS

The publication of this book, which undertakes a study of how the oil derivation fund allocated by the federal government to the states for developing the Nigeria Delta Region was used, was made possible because of the assistance rendered to ANEEJ by several persons and organizations.

To start with, we are greatly indebted to Dr Axel Harniet – Seivers, Director of Heinrich Boell Foundation, Lagos for providing the fund with which the study was carried out and the publication of the book.. Also, our appreciation go to Ms Monica Umunna, programme Director of the foundation for making sure that the project is successfully carried out

We also like to express our gratitude to the research consultants Prof Benard Aigbokhan former Head of Economic Department, Ambrose Alli University Ekpoma, and Barrister Osaro Osemwingie of Osemwingie & Co. Chamber, Benin City in Edo State for their various contributions to the writing of the book.

Mr. Gordon Abiama, Director and Convener of the Niger Delta Development Fund Initiative (NDDFI) equally deserve mention. He facilitated the Reference Workshop On Sustainable Development in Oil-producing Communities in Nigeria which took place in Yenogoa, Bayelsa State.. It is our pleasure to say here that the report benefited from the comments of Bayelsa State /Delta State community leaders from Oloibiri, Odi, Koto, Warri, Sangana, Ughelli, Nembe, Oghara, Jesse and Agbiri; Dr. Godson Omubodede, commissioner for Environment, Bayelsa State; as well as DrAxel Harniet – Server’s who all attended the workshop.

Much more, we wish to thank Leu Atakpu, Joy Evbvomwan and Kelly Umukoro – all ANEEJ Staff- for their untiring Commitment to the book project and their several trips to the Niger Delta states on field investigations in search of data for the book.

Finally, we are grateful to Mr. Mike Odigbe for his editorial support during the compilation of the book.

CHAPTER ONE

NIGER DELTA AT A GLANCE

INTRODUCTION

Nigeria is Africa's fourth largest economy, with a Gross Domestic Product (GDP) at current prices standing at \$41.5 billion in year 2001 coming behind South Africa's \$112.9 billion, Egypt's \$93.5 billion, and Algeria's \$54.6 billion. GDP growth rate was 4.0, and the country's weight in total African GDP was 7.6 percent. Aggregate real GDP and per capital real GDP growth rates are far below the 7.0 and 4.5% respectively required to achieve a significant reduction in poverty and attain international development goals by 2015 (*ADB 2002:3*).

Much of Nigeria's GDP is driven by oil production, which accounts for 40 percent of its GDP. Oil was discovered in 1958 and has since the early 1970s dominated the economy. Oil export accounts for 95 percent of the country's total exports, while oil revenue makes up over 80 percent of gross government revenue. This heavy dependence on crude oil has exposed the economy to the boom-and-burst cycles of development and a concomitant unstable revenue profile. For thirty-five years of oil production, Nigeria has earned an estimated \$350 billion at 1995 prices and some critics have observed that the level of development recorded in the country is not commensurate with the huge earnings from crude oil exports (*Gary and Karl 2003, Sala-martin & Subramanian 2003*). The enclave nature of oil production is well known. It follows therefore that it is only through a judicious utilization of oil revenues that the benefits of abundant oil resources can be spread to the population. In other words, a judicious utilization of oil revenues ensures that natural oil resources are turned into a 'blessing'. Otherwise, the negative externalities usually associated with oil production will turn it into a 'curse' to the economy.

The Niger Delta Region is the bedrock of Nigeria's crude oil production while Bayelsa, Delta and River States in the region account for 75 percent of oil production and over 50 percent of gross government revenue. Since the Nigerian civil war, ownership of crude oil resources has been vested in the federal government rather than in the state or community where it is located. It is thus only through intergovernmental financial transfers from federal to states and local governments that the 'blessings' of crude oil may be transferred to the population.

It is against this background that the peculiar profile of the Niger Delta Region is worthy of attention. This book appraises the developmental condition in the region against the backdrop of oil in the region. In doing so, it presents the geographical and demographic features of the Niger Delta; discusses the nature of oil as a double-edged sword, capable of generating both 'blessing' and 'curse'; and examines the Nigerian and Niger Delta condition in the context of the 'double-edged' hypothesis. Thereafter, the book explains how oil's

associated 'curse' can be turned into 'blessing' through the creation of local or state interventionist institutions within the context of a Human Rights approach to development.

The book relies on a critical analysis of secondary source materials. Existing literature on oil and economic development are extensively reviewed while statistical data used in the book are obtained from the Central Bank of Nigeria and the Federal Office of Statistics.

Additional non-statistical information are obtained from field interviews. A visit to OSOPADEC office in Akure in November 2003 provided qualitative information on the operations of the agency, its relationship with government and the host oil communities. Personal interviews with officials of the agency were frank and candid. Also, an attended reference workshop of stakeholders in Bayelsa State provided useful information for assessing the performance of NDDC. Much more, a visit was made to Warri, an oil city in Delta State to gauge public opinion on the performance of NDDC in Delta State and the institutional arrangements put in place for utilization of 13 percent oil derivation revenue allocated to Delta State. Information obtained from all these sources were critically analyzed and formed the basis of this book.

Geographical and Demographic Features

The Niger Delta Region is on the Atlantic coast of Nigeria where the Niger River divides into numerous tributaries. The region extends along the coast from the Benin River on the West to the Imo River on the East. Another definition extends the boundary to include the riverine areas immediately West of the Benin River and East of the Imo River.

With the emergence of oil as a major resource in the country, the correspondence of the main oil-producing areas and the Niger Delta has resulted in the delineation of the region to include all borderlands of the Delta which produce oil. Thus, Niger Delta is now defined to include Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo, and River States.

Four broad ecological zones exist in the region. Namely, they are coastal inland/coastal sandy barrier ridge zone, mangrove swamp zone, fresh water swamp zone and lowland rain forest zone. These ecological zones provide variegated opportunities for development which include outlining the pattern of farming and non-farming activities as well as the settlement pattern in the area.

The region has five linguistic and cultural groups - the Ijaws, Edos, Delta, Cross Rivers, Yoruba, and Igbo. The Ijaws, which are the largest and are said to be the oldest settlers in the region, have numerous clans each of which has linguistic and cultural distinctiveness. They occupy the whole of Bayelsa State and are found in Rivers, Delta, Edo, Ondo and Akwa Ibom States.

In spite of cultural affinities and interactions, inter-ethnic conflicts are common in the region. The competition for resources, especially land which is very scarce, has been tense and is accentuated by the emergence of oil. It has been observed that *'there is little doubt that the incidence of such conflicts may have been considerably less if there was meaningful planning'* (DPC 2001:9).

At this juncture, a look will be taken at the population of the 9 states in the region as well as the age and sex distributions of heads of households in the Niger Delta Region. For easy comprehension, the data are presented in 3 tabular forms.

TABLE 1
Population of Niger Delta States (1991-1998)

	Male 1991	Female 1991	Total 1991	Total 1998
Abia	1.126	1.213	2.339	2.843
Akwa Ibom	1.168	1.242	2.410	2.930
Bayelsa	*	*	*	*
Cross River	0.956	0.955	1.911	2.324
Delta	1.272	1.319	2.591	3.149
Edo	1.085	1.086	2.171	2.641
Imo	1.167	1.319	2.486	3.022
Ondo*	1.882	1.904	3.786	4.602
Rivers*	2.240	2.070	4.310	5.239
Nigeria	44.530	44.463	88.993	108.191

** Figures are for Ondo & Ekiti States and Rivers & Bayelsa States.*

Source: Fed. Office of Statistics, Annual Abstract of Statistics, 1999 Edition.

Table 1 shows the population of states in the region. **Table 2** gives the age distribution of heads of households in the region. From a survey of 2260 households in the region in 200/2001, it was reported that 85.5 percent of the household heads are in the 21 – 60 age group. Only 1.4 and 10.0 percent respectively are in the under 21 and over 60 age groups. Thus, the bulk of household heads are in the economically-active age groups. **Table 3** shows the distribution of household heads by sex. It reveals that 66.1 percent of the households have male headship.

TABLE 2

Age Distribution of Heads of Households in the Niger Delta

Age in Years	Number	Percent
0-20	31	1.4
21-4-	978	43.3
41-60	953	42.2
Over 60	223	9.9
Non-response	75	3.3
Total	2260	100.0

Source: Development Policy Centre 2001 (P.54)

TABLE 3

Sex Distribution of Heads of Households in the Niger Delta

	Number	Percent
Male	1991	88.1
Female	254	11.2
Non-response	15	0.7
Total	2260	100.0

Source:Development Policy Centre 2001 (P. 54)

Oil -A Double-Edged Sword

The positive blessing of oil resource derives mainly from the huge financial resources it generates for oil producing countries. It is an internationally-traded commodity that attracts foreign exchange. For most developing countries faced with capital constraint, therefore, oil is a quick source of capital accumulation or foreign direct investment. Countries without oil are thus unable to overcome capital shortage, a major developmental inhibition. Also, huge revenues are realized from the wide differential between unit production cost and economic rent, royalties, petroleum taxes, oil export, etc. Between 2000 and 2002, total oil revenues to OPEC member states grossed \$606 billion (*OPEC Revenues Fact Sheet, June 2003*). If management of these oil-related revenues is based on transparency, accountability and fairness, oil revenues will become a source of substantial benefit for the population (*Gary and Karl, 2003*).

Negative development outcomes are similarly associated with oil and, indeed, mineral production in general. One manifestation of such outcomes is the tendency for an inverse relationship between economic growth and natural resource abundance. Another outcome is the sustained poor performance on such social indicators as education and health. These oil – related negative outcomes have come to be referred to as oil resource curse which operates through a number of channels.

First, they operate through the creation of an enclave sub-sector with small high income co-existing with larger low-income sub sectors. Also, as a result of its capital-intensive production structure, oil production generates high levels of income inequalities, unemployment and other low income-related social inequalities. Second, oil revenues tend to displace more stable and sustainable revenue flows. For example, as a result of huge oil revenue flows, countries tend to de-emphasize income taxes as a source of government revenue. Invariably, tax-related economic management tends to be weakened. Taxation, because of its burden on the public, after all, is a sensitive issue which often bring politicians and the citizens on a collision course. Hence, taxation forces a confrontation or an accommodation between the taxed and the taxer, making the act of taxation easily amenable to public control using accountability mechanisms.

Third, problems like environmental degradation, pollution of land and rivers tend to increase with oil production leading to loss of income-earning opportunities for the population. Fourth, dependence on oil revenues can be perilous, and because of the volatility of oil prices, oil dependence poses a constraint that hinders growth. Evidence of oil price volatility abound in the past decade. For example, annual average oil prices, which surged by nearly 30 percent in 1995/96, declined by 36 percent in 1997/98 and, more than doubled in 1999/2000. In 2001/2002, it fell by 11 percent while in 2002/2003 (*January to April 2003*) it surged by 20 percent, thanks to the Gulf War. The boom-burst cycle of oil revenues, which results from oil price volatility, therefore makes budgetary planning difficult.

Fifth, there is the problem of the ‘*Dutch disease*’ effect of mineral resource production. whereby an oil windfall pushes up the real exchange rate and hampers non-oil in the exports agricultural and manufacturing sectors. Six, oil booms tend to decrease the quality of public spending and encourage rent-seeking activities (*Gary and Karl 2003, Sala-martin and Subramanian 2003*). And, seven, oil-related conflicts have lately become a channel through which oil production impacts negatively on the economy. *Collier and Hoeffler (2002)* show that natural resources considerably increase the chances of civil conflicts in a country. *Sala-martin and Subramanian (2003)*, estimating growth equations found that oil and minerals generate negative impact because they generate rents that are easily appropriated. Conflicts over compensation/ownership claim of land/oil location and protests over loss of income-earning opportunities all result in loss of oil output. These conflicts and protests may be inter-communal or undertaken against oil-producing companies and government. Their prevalence have led to the argument that but for the presence of oil such conflicts would not

have arisen in the first place. Loss of output, lives and property associated with such conflicts constitute a ‘**curse**’ from oil.

Thus, the channels through which negative outcomes of oil production arise outnumber those of positive outcomes. It has, however, been argued that these negative outcomes are not inevitable since they can be avoided or at least minimized in an atmosphere of good governance, public accountability and transparent resource management. Inability, or the unwillingness of countries to transform oil revenues into positive development outcomes, especially in sub-Saharan Africa (SSA), has resulted in the economic syndrome called ‘*paradox of plenty*’.

Table 4 shows the degree of dependence of SSA countries on oil. Except for Cameroun, oil contributes between 40 and 86 percent of GDP and over 60 percent of government revenue. Level of dependence on export earnings is even higher, being above 80 percent in all, except Cameroun with 60 percent.

TABLE 4
Oil Dependence in African Oil Exporters (2002)

	% GDP	% Exports	% Govt. revenue
Nigeria	40	95	83
Angola	45	90	90
Congo-Brazzaville	67	94	80
Equatorial Guinea	86	90	61
Gabon	73	8	60
Cameroun	4	60	20

Source: Gary and Karl (2003) P. 12.

There is, however, both theoretical and empirical evidence to show that the so-called ‘*oil curse*’ is not inevitable because of the recognition that if financial resources generated by oil-related activities are transparently managed, the ‘*curse*’ may not arise. Also, there is empirical evidence which suggests that some natural resources appear to have strong, negative effects on economic growth by impairing institutional capacity. But when the institutions are strengthened, there is either very low negative or even high positive effect of natural resources on growth (*Sala-martin and Subramanian, 2002*).

Development Profile, Oil And Government Finance

Oil has transformed the economic and political landscape of Nigeria since the 1960s, and more dramatically, since the 1970s. Nigeria has earned an estimated \$350 billion in thirty-

five years from oil production and exports. Since the civil war, ownership of oil resources has been vested in the federal government and the revenue earned from them are pooled into a Federation Account for distribution among the constituent governments based on agreed revenue allocation formula. The current formula is: federal 43.0%, states 30.0%, local governments 20.0% and special fund 7.0%. In addition, oil-producing states are allocated an additional 13% which is shared on the basis of the volume of oil produced in each state. Delta, Rivers and Bayelsa States make up about 80% of the Niger Delta Region. Together, they produce about 75% of Nigeria's oil and over 50% of federal revenue.

Let us undertake, now, an appraisal of the socio-economic development condition in Niger Delta focusing mainly on the period 1998 – 2003. to start with, **Table 5(a)** shows statutory revenue allocation to the Niger Delta State governments from 1999 to September 2003. Gross statutory allocation for the period was N559.8 billion, having risen from N25.6 billion in 1999, to N107.3 billion in 2000 and to N136.3 billion in 2001. The decline to N122.7 billion in 2002 is remotely linked to the Nigeria's Supreme Court ruling of April 5, 2002 which put a hold on allocations to oil-producing states.

Table 5(b) shows allocation of 13 percent derivation fund to the states. The allocation was N58.1 billion in 2000, N75.8 billion in 2001, N130.8 billion in 2002 and N110 billion in October 2003 resulting in a total of N374.8 billion earned in four years. Four states dominate the allocation table- namely, Delta, Rivers, Bayelsa and Akwa Ibom, in that order.

Table 5(c) is a summary of state government expenditure in the Niger Delta Region during the period 1998-2002. Total expenditure was N642.8 billion. When compared to N613.1 billion total revenue earned during the period (1998 – 2002), the states, therefore, ran a combined fiscal deficit of N29.7 billion.

Table 6 shows per capita revenue and expenditure for Bayelsa and Delta States from 1998 - 2002. During the period, there was a steady increase in the level of statutory allocation, total revenue, recurrent expenditure, capital expenditure and total expenditure in the two states, except for a slight decrease in PCSA and PCCE for Bayelsa, and PCTR and PCCE for Delta State.

TABLE 5(a)
Statutory Revenue Allocation to Niger Delta States (1999 – 2003)
(In million)

	1999	2000	2001	2002	2003 ¹
Abia	2300.8	6012.0	7539.8	7783.7	9646.2
Akwa Ibom	3318.4	18206.8	7539.8	11973.8	9646.2
Bayelsa	2597.3	14695.5	23525.4	16865.8	25553.8
Cross River	2621.0	6154.3	6788.9	7240.1	9269.1
Delta	3593.0	22613.2	29907.9	32396.9	38982.8
Edo	2648.5	6491.8	7277.2	7216.1	8882.9
Imo	2544.5	7164.5	8836.9	8048.7	10360.1
Ondo	2665.0	9589.7	12089.3	8516.2	11080.6
Rivers	3324.1	16400.6	21,171.9	22610.5	32489.4
Total	25612.6	107,328.4	136,297.6	122,651.2	167945.9

1: Figures are for January – September 2003.

Source: Federation Account Allocation Committee Files, (Federal Revenue Account Allocation & Resource Mobilisation Committee Abuja.)

TABLE 5 (b)
Allocation of 13% Derivation Fund to Niger Delta States (2000 – 2003)
(In millions)

	2000	2001	2002	2003 ¹
Abia	813.9	1,062.3	1871.7	2,320.6
Akwa Ibom	12,808.2	16,717.1	6,469.2	16,094.9
Bayelsa	10,571.2	13,797.4	17,485.8	22,726.4
Cross River	1.2	1.6	883.3	1,768.0
Delta	17,433.7	22,754.9	30,427.5	33,672.7
Edo	337.1	439.8	673.7	1,236.0
Imo	1,464.5	1,911.3	1,885.8	2,674.0
Ondo	4,098.9	5,350.0	2,196.3	3,567.2
Rivers	10,571.2	13,797.6	23,106.6	25,854.7
Delta/Ondo	NA	NA	136.7	111.4
Total	58,099.9	75,832.0	130,800.8	110,025.9

1 : Figures are for January – October 2003.

Source: federation Account Allocation Committee Files, Abuja.

TABLE 5 (c)**Summary of State Government Expenditure (1998 – 2002)****(N million)**

	Recurrent expenditure	Capital expenditure	Extra-budgetary	Total
Abia	28238.4	16396.9	2822.7	49558.2
Akwa Ibom	41322.4	34339.4	3189.0	76851.0
Bayelsa	42280.6	25780.6	2804.3	70864.9
Cross River	25270.7	24398.9	131.9	49901.5
Delta	4232.4	84552.4	5176.5	164261.3
Edo	14063.2	10920.4	1198.8	6182.2
Imo	26342.1	24992.9	2200.8	53535.8
Ondo	32262.1	18252.6	4837.1	55351.8
Rivers	50459.8	38807.9	6957.1	96324.8
Total	334471.7	278742.0	29418.2	642831.5

Source: Central Bank of Nigeria Annual Report (various years)

TABLE 6**Per capita Revenue and Expenditure (1998-2002)**

		1998	1999	2000	2001	2002	2003
Bayelsa							
	PCSA	597	993	2271	7715	7202-	5669
	PCTR	1143	1467	2620	8129	9543	6506
	PCRE	489	1009	1048	3267	9057	NA
	PCCE	601	453	1572	3822	2727	NA
	PCTE	1094	1461	2619	8082	11784	NA
Delta							
	PCSA	691	1048	2005	10004	11059	5995
	PCTR	1742	2073	9930	15316	13403	9078
	PCRE	740	1374	5041	5892	8860	NA
	PCCE	830	841	4645	9438	9244	NA
	PCTE	1571	2214	9686	16856	18104	NA
Niger Delta							
	PCSA	618	1008	2263	5926	5417	
	PCTR	33849	1772	4029	7348	7984	
	PCRE	747	1078	2243	3572	5098	
	PCCE	656	669	1743	3688	3858	
	PCTE	1402	1750	3985	8207	9126	

PCSA - Per Capita Statutory Allocations;

PCTR - Per Capita Total Revenue;

PCRE - Per Capita Recurrent Expenditure,

PCCE - Per Capita Capital Expenditure

PCTE - Per Capita Total Expenditure

Source: Same as **Table 5(a)**.

NA - 2003 expenditure figures not yet available.

Source: **Central Bank of Nigeria data set / Appendix Table 1.**

TABLE 7
Summary of Debt Service 1999 – 2002 (\$ million)

	Amount Paid 1999-2001	Amount Due In 2002	Percentage Share of Total	Proportionat e Share In 2002 Budget
Abia	80.69	58.15	1.89	28.40
Akwa Ibom	30.03	15.82	0.52	7.73
Bayelsa	11.51	12.34	0.40	6.03
Cross River	19.49	7.91	0.26	3.86
Delta	26.23	14.42	0.47	7.04
Edo	39.22	28.55	0.93	13.94
Imo	59.07	36.90	1.20	18.02
Ondo	26.18	11.41	0.37	5.57
Rivers	17.69	16,10	0.52	7.86
Total All States	140.30	732.76	23.86	357.85
Fed. Govt.	4,428.78	2,338.78	76.14	1,142.15

Source: The Guardian newspaper (Nigeria) January 1, 2003 (P. 21)

On the face of it, there has been a dramatic increase in general expenditure since 1999, including capital expenditure, as there has been in revenue to the extent that there were deficits in government finances during the period. The question then is: Has this translated to economic development and welfare enhancement for the people of the region? This section will throw light on this question. It is necessary to also observe at this juncture that the Niger Delta states have been under heavy debt servicing burden, as shown in **Table 7**. To what extent these debts have been incurred for developmental projects is, however, open to debate, in view of the abuse to which the Irrevocable Standing Payment Order (ISPO) instrument by some of the states have been put

The foregoing, however, shows that a reasonable level of financial resources generated were enough to create a basis for translating oil resources into a blessing, if judiciously applied. In the next chapter the channels through which oil was turned into a 'curse' in the Niger Delta are explained. It should be mentioned here nevertheless that until 1999 and under the Federal

Revenue Allocation Formula, only 3 – 5% of the on-shore revenue was allocated to oil-producing states. The figure was raised to 13% in 1999, and accruals based on this new percentage since 2000 have earlier on been shown in **Table 5(b)**. But , as will be shown later on, except for Ondo State, there is no visible evidence of how the 13 percent derivation fund is utilised by the other oil states.

CHAPTER TWO

OIL - A CURSE IN NIGER DELTA?

Oil exploration introduced an entirely new element into the structure of the Nigerian state – namely, an internal predatory elite that identified the new commodity as God-send and saw itself as unaccountable to the communities that produced it. It also introduced a new dimension into government financing characterized by an accelerated de-emphasizing of internally-generated revenue. Both of these, as is argued below, have serious implications for good governance as well as accountability in public spending and is at the root of inability or unwillingness to overcome the ‘*curse*’ aspects of oil exploration in Nigeria, in general.

Today, there are about 606 oil fields in the Niger Delta, of which 360 or 60% of them are on-shore and 246 or 40% are off-shore. *Moffat and Olof (1995)* observe that despite the abundant natural resources, the region’s potentials for sustainable development remains unfulfilled while crisis there is exacerbated by environmental degradation. The situation today remains the same. Some critics would even argue that it has worsened.

Studies have shown that the environmental base of oil-producing areas has been seriously depleted as a result of oil production activities. *Anyakwe Nsirimovu (2000:97)*, for instance, notes:

For example, during exploration, drill cuttings, drilling mud and fluids are used for stimulating production. The major constituents of drill cuttings such as barytes and bentonitic clays when dumped on the ground prevent local plant growth until natural processes develop a new topsoil. In water these materials disperse and sink and may kill local bottom-living plants and animals by burying them...In addition to the pollutants introduced into the environment from exploration and exploitation operations, refinery wastes also have characteristics which constitute potential land, water and air pollutants...Further, flaring of natural gas has also been identified by several studies to damage the environment.

It is instructive to note that in 1983 the Inspectorate Division of the Nigerian National Petroleum Corporation (NNPC) accepted that environmental problems were caused by the activities of oil companies in the Niger Delta. The inspectorate, for instance, spoke of “*the slow poisoning of the waters and the destruction of vegetation and agricultural land by spills which occur during petroleum operations*”, and went on to observe that “*since the inception*

of the oil industry in Nigeria, there has been no concerted effort on the part of the government, let alone the oil operators, to control the environmental problems associated with the industry” (Adebanwu 2001),

Oil spillage has been a major source of environmental degradation in the Niger Delta. It has also resulted in loss of lives and property. For example, very recently, there was oil-spill fire in Kalabileama community in Nembe Local Government Area of Bayelsa State on September 17, 2003 on the Brass-Ogoda pipeline belonging to Agip Oil Company which resulted in the death of seven persons. The spill was huge and was about one foot thick in certain places. The fire might have been caused by a lamp carried by a fisherman at night. A similar oil-spill fire explosion had sometime in 2000 killed eight persons and damaged over one hundred hectares of mangrove forest (*Vanguard 26/9/2003: 1&2*).

Pipeline vandalisation, a consequence of youth restiveness, has been on the increase in the Niger Delta. From seven cases in 1993, it rose to 33 cases in 1996 and 57 cases in 1998. There was a dramatic increase of 497 reported cases of pipeline vandalisation in 1999 and over 600 cases in 2000 (*Okecha 2003:9*).

Some consequences of pipeline vandalizations are deforestation, destruction of vegetation, pollution, and loss of revenue. Nigeria lost an estimated N4.4billion in 400 pipeline damages in oil-producing states between January and August 2000. Loss of lives has also been a tragic consequence of pipeline vandalizations. In 1998, about 1000 lives were lost in Jesse village and in 1999 over 12 persons died in Ekakpamre in Ughelli Local Government Area, both in Delta State. In 2000, over 50 persons were also reported killed at Nngiji and Umuegbede in Abia State, 60 persons in Atlas Cove Jetty in Lagos and 300 persons in Egborode village in Okpe Local Government Area of Delta State (*Okecha 2003:8*).

Inter-ethnic and inter-clan conflicts have also increased with oil exploration in recent years. From the early 1990s there has been a cycle of protests and conflicts in the Niger Delta, notably in Bayelsa, Delta and Rivers States. Youth restiveness was for most part the major factor in these protests (*Okecha 2003, Okojie and Ailemen 2003*). Some estimates suggest that these protests have cut onshore production by a third in 2001/03. A new dimension was introduced recently with the protest and occupation of Chevron-Texaco oil terminal at Escravos by Itsekiri women from Ugborodo community in Delta State from July 8-18 2002. The occupation ended when the company acceded to some of the demands by the women which included hiring of youths, building of schools and provision of electricity and water supply in the community.

According to *Human Rights Watch (HRW 2002)*, the presence of oil companies in the Niger Delta exacerbates communal tensions of the type seen across Nigeria. The weakness of conflict resolution structures means that many disputes in Nigeria, and the Niger Delta in particular, are settled violently instead of through peaceful means. In Nigeria, generally, the level of state corruption means that government positions are highly sought. In the Niger

Delta, the stakes are higher, including even at the local government levels, because of the amount of money that flows to the region from both the federal government and oil companies. For example, allocations to oil-producing states have increased markedly since 1999, rising from 12 percent to 25 percent of the amount paid out to states from the Federation Account in 2001 from the second half of 1999.

Neighbouring communities clash over claim of ownership of areas where oil drilling takes place. For example, the Kalabari/Bille conflict in Rivers State in late 2000 and early 2001, among the Ijaws but who belong to different clans, was a dispute over two shell flow stations.

Governance and the political process seem to have also been weakened by the presence of oil resources. *Eifert et al (2003)*, drawing on analytical tools from political science, identified five political groupings to which oil-exporting countries may be classified. These are: mature democracies, fractional democracies, paternalistic autocracies, predatory autocracies, and reformist autocracies. These groupings reflect qualitative distinctions in the stability of political frameworks, the legitimation of authority, and the role of state institutions in distributing or utilizing oil revenues fairly.

The grouping most conducive to stable institutions and which allows for a fair distribution and utilization of oil revenues is that of mature democracies. This grouping is characterized by political stability and institutional accountability which encourage policy-makers to think in the long term as economic performance becomes central to competition for political power. Bureaucracies are competent and existing relatively insulated professional judicial systems foster depersonalized functions of markets and stability of rules. Policy decisions are generally based on transparent information while property rights are clearly defined. These features give citizens the opportunity to provide a critical counterbalance to the influence of interests benefiting from government policies. Norway, Alaska State in USA and Alberta Province in Canada are examples of countries in this grouping. For example, *Barnett and Osowski (2003)* have equally noted Norway has a prudent financial position, a very high government saving rates, a rising foreign assets base (*to spread benefits of oil over time*) and is resisting potential damage to the non-oil tradable sector from Dutch disease. It is important, however, to note that these institutions were operational before oil revenues became large.

Under fractional democracies, political parties are weak and are formed around charismatic leaders. Electoral institutions are fragile. Political support derives from systems of patronage. The short-horizon politics of competition for power and state-allocated resources give rise to unstable policy regimes and non-transparent mechanisms for allocating oil earnings. Economic returns to state investments are often low because political strategies allow for the provision of goods to narrow interests. Bureaucracies, political elites and the military often succeed in earmarking state spending for their use.

Income distribution is consequently unequal. Social consensus and cohesion are elusive. Ecuador, Colombia and Venezuela are examples of such fractional democracies.

Paternalistic autocracies and reformist autocracies are regime types which, though lack a broad democratic base of power, have been developmental in outlook. Development programmes implemented over the past three decades have recorded some considerable successes in terms of being welfare-enhancing. Examples of countries in these categories are Saudi Arabia, Kuwait, Small Gulf States; and Indonesia, respectively.

Predatory autocracies are not based on broad democratic or public support. Military power and the support of a narrow-minded elite are the basis for authority. State power faces few constraints or counterbalance influence. The exploitation of public and private resources for the gain of the elite is embedded in institutionalized practices. Such regimes are non-transparent and corrupt. Under such a scenario, oil wealth delivers little benefits to the population at large. Nigeria under successive military rulers since 1966 has been cited as an example of this regime type.

On the basis of their analysis, *Eifert et al (2003)* conclude that a system of government, which generates long-horizon ability to reach consensus and allows for transparency, is capable of delivering on benefits of oil wealth. Mature democratic, reformist and paternalistic regimes are cited as having such tendencies.

That Nigeria has been a predatory state has been noted by *Ohiorhemuan (1980)* and *Adebanwu (2001)*. This may, therefore, explain the lack of development in the country in general and in Niger Delta in particular despite over thirty-five years of oil wealth. It is further argued in this book that Nigeria since 1999 has become a fractional democracy, and this explains why in almost five years of democratic governance, little evidence has been recorded of efforts to deliver benefits of oil wealth to people of Niger Delta. This exacerbated the situation in which institutions of development in the Nigeria state were not shaped well before oil revenues became substantial. That Nigerian democracy is still fractional is captured by *Attahiru Jega (2003)* in these words:

*In the contemporary Nigerian scenario...The **bad** is characterized by the wasted opportunities of the past four years which combined to obstruct the delivery of the substantive dividends of democracy to the majority of Nigerians, plus the creeping streaks of civilian authoritarian tendencies associated with what our journalists have called the 'imperial presidency' of the Obasanjo government. The **ugly** is, especially, illustrated by the mode of governance and reckless misrule, by those entrusted with public trust, at all levels of governance, as manifested by irresponsible conduct, crass lack of responsiveness to popular demands and aspirations of the people, plus the resurgence of 'executive lawlessness', as illustrated by*

running government and incurring expenditure without a legally sanctioned appropriation act... The Obasanjo government commenced its first term in 1999 with the promise to make example by punishing corrupt public officials. We are yet to see that example...would this, nay, should this be another wasted opportunity?

Indeed, Nigeria's weak political institutions are at the roots of development failure in the Niger Delta.

Oil revenues have weakened governance in one notable respect. Because of their sheer volume, rents generated by oil has overwhelmed all other revenue sources, and thus created a concentration in revenue pattern. *Adams (1991)* notes, for instance, that throughout history governments have had to exercise caution in imposing tax realizing that subjects who cannot tolerate it beyond a certain point revolt. In other words, one virtue of taxation is that it creates good, responsive governance.

In the case of Niger Delta states, internally -generated revenue accounts for less than 15 percent of state revenue. (*See Appendix Table 2*). A consequence of this over-dependence on the federation account allocations is that state and local governments do not feel accountable to their citizens because they do not spend "tax payers" money. This has reduced their ability or the necessity to mobilize the stakeholders for any development projects. If tax-driven spending has been commonplace, this would have suggestively made public spending more developmental.

Another respect in which oil has weakened political institutions in the Niger Delta is that it has created a predatory state which abhors counterpressure. In a bid to resist or prevent counter pressure, political repression has arisen and become a feature in Niger Delta since the days of Isaac Adaka Boro- a feature which later climaxed in the hanging of Ken Saro-Wiwa in 1995. It has also been a feature of Nigeria's fractional democracy, as exemplified in the Odi town massacre in November 1999. The absence of counterpressure to cancel out rent-seeking behaviour has resulted in the emergence of non-democratically accountable executives, inefficient tax and legal authorities as well as a non-independent judiciary.

Given the existence of the non-developmental regime types and weak institutional features in Nigeria in general and Niger Delta in particular, it is little surprising that *Human Rights Watch (2003)* notes:

Little of the money paid by the federal government to state and local governments from the oil revenue is actually spent on genuine development projects; there appears to be virtually no control or proper audit over spending by local and state governments.

An outcome of this is a catalogue of indicators of development failure. (See Table 8) In Table 9 it can be observed that unemployment rates are higher in core Niger Delta states (*Delta, Bayelsa and Rivers*) than the national average. In Bayelsa and Rivers States the situation is much worse in the rural areas where the bulk of their populations live in riverine areas. Table 10 shows a peculiar nature of the unemployment problem in Nigeria - namely, that of youth unemployment. Unemployment rate is highest among the 15-24 age group and secondary school leavers. This explains why youth restiveness is quite pronounced in the Niger Delta Region.

TABLE 8

Ranking Of Major Environmental Problems, Social Issues And Priorities In The Niger Delta

Problem Type	Problem Subset	Priority Ranking
Natural Environment	Coaster/River bank erosion Flooding Sedimentation/Silt Substance Exotic (<i>water hyacinth</i>)	Moderate High Moderate Low Low
Development Related	Land degradation / Soil fertility loss Agricultural decline/Shortened fallow Delta forest loss (<i>mangrove</i>) Biodiversity depletion Fisheries decline Oil spillage Gas flaring Sewage and waste water Other chemical	High High High High High Moderate Moderate High Moderate
Social Economic problems	Poverty Unemployment Community – oil company conflict Intercommunity conflict Intracommunity conflict Conflict over land Inadequate compensation Displacement Decay in societal values Poor transportation / High cost of fuel Housing pressure /Infrastructure Decay / Crime.	High High High High Moderate High High Moderate High High High

Source: Okoh, R.N. and Egbon. P.C. (1999). *Fiscal Federalism and Revenue Allocation. The Poverty of the Niger Delta in Aigbokhan.* B.E. (ed): Fiscal Federalism and Nigeria's Economic Development Selected Papers of the 1999 Annual Conference of the Nigerian Economic Society. NES, Ibadan

TABLE 9

Unemployment Rates by State in the Niger Delta,

	Composite	Urban	Rural
Abia	10.6	8.7	10.8
Akwa Ibom	36.9	29.8	37.1
Bayelsa	23.6	20.7	24.1
Cross River	16.6	7.3	18.3
Delta	23.3	23.5	19.0
Edo	14.3	24.0	11.8
Imo	22.3	23.8	32.8
Ondo	17.0	14.0	19.8
Rivers	34.2	27.5	35.2
All Nigeria	18.1	14.2	19.8

Source: Federal Office of Statistics Statistical News No. 327, August 2001, P.5.

TABLE 10
Unemployment Rates by Educational Level and Age Group in
Nigeria, December 2000.

	Composite	Urban	Rural
No schooling	16.5	12.9	18.0
Primary	17.8	13.8	19.5
Secondary	21.9	17.6	23.8
Above Secondary	15.8	10.1	18.3
Age Group			
15 – 24	39.7	42.1	38.7
25 – 44	15.6	10.4	17.8
45 – 59	10.9	8.1	12.1
60 – 64	13/6	9.0	15.6
65 – 70	17.6	21.3	16.0

Source: Same as Table 9.

[Three photographs on pp. 20-21 not included in this PDF file]

CHAPTER THREE

NDDC And Development Of Niger Delta.

The peculiar development challenges of the Niger Delta was recognized well before political independence of Nigeria with the setting up of the *Wilkins' Commission* in 1958 to recommend how the area should be developed. Based on its recommendations, the *Niger Delta Board* was set up in 1961. However, not much was achieved before the outbreak of political crisis in the Western Region in 1962, of which the then Delta Province was a part until 1963. Then came the Nigerian civil war of 1967-70. Another effort, thereafter, was made to develop the Niger Delta with the establishment of the *Niger Delta Basin and Rural Development Authority* in 1976. Later, a Presidential Task Force was set up in the face of youth restiveness in the region while 1.5 percent of the Federation Account was allocated to it for the development of the region. This again failed to make an impact. Then in 1992 the *Oil and Mineral Producing Areas Development Commission (OMPADEC)* was set up for the same purpose. OMPADEC could not make any noticeable impact until it was scrapped in 1998.

To address the renewed and heightened wave of youth restiveness in the region, following years of neglect and underdevelopment in the midst of oil wealth, the Federal Government in December 2000 set up the *Niger Delta Development Commission (NDDC)*. Its mandate is “to conceive, plan and implement...projects and programmes for the sustainable development of the Niger Delta area” and to undertake infrastructural development in the region. The NDDC began operations in early 2001.

NDDC is currently funded by both the Federal Government and the oil companies. The Federal Government gives it 15 percent of the 13 percent oil revenue allocations allocated to the nine states while the oil companies contribute 3 percent of their annual budget to the NDDC fund. Finally, 50 percent of funds due to the member states from the ecological fund is also allocated to the NDDC.

The commission has developed a formula whereby 60 percent of its funds are spent in proportion to the amount of oil produced in each state. Although its governing board has government – nominated representatives from each of the nine states, members of civil society (*a source of counter pressure*) from the region are conspicuously absent from the board. The commission’s budget for 2001 and 2002 was respectively ₦10 billion and ₦14 billion. However, the National Assembly only allocated ₦15 million of its 2002 budget.

Apart from delays in the release of approved allocations, due in part to prolonged face-offs between the Executive and National Assembly which delays passage of Appropriation Bills,

there is evidence that the commission does not receive even the approved allocations. By March 2002, only N17 billion had been approved by the National Assembly, for instance. A report in February 2002 of a Federal government – appointed committee (*Special Security Committee*) on oil-producing states notes that the states were only being paid 7.8 percent derivation fund instead of 13 percent (**HRW 2002:23**). The case of NDDC which does not have any political clout can be better imagined.

The *House of Representatives' NDDC Oversight Committee* was inaugurated by the Speaker in August 2003. On the occasion, the committee observed:

We (do) note that some oil companies are not complying with the provision of the NDDC Act. We have also noted that even the Federal Government is not fully complying with the provision of the Act. For example, an oil company, which year 2002 budget was \$2.235 billion, made a deduction of \$ 627 million from its budget before making its 3% deduction from the remainder. Another company budgeted \$1.203 billion for 2002 but deducted \$504 million before the 3% was worked out. These deductions are referred to as first charges. As in June 2003 what the oil companies have contributed to NDDC is \$25 billion, Federal Government's contribution is N20 billion and is paying 10% instead of fifteen percent.

Yet the federal government has proposed an amendment to the NDDC Act which will reduce the Federal Government's contribution to 13 percent and that of oil companies' to 2 percent and increase that of states in the region to 10 percent. There is already lack of agreement among some states-notably, Delta and Edo States-on the justification for state contributions.

In the two and half years of its existence, NDDC has recorded some progress in infrastructural development. Three hundred and fifty-eight projects have been completed across the region. These include forty major roads, forty-one landing jetties and ninety-three water schemes. (*See Appendix Table 2 (a) and (b)*). Also, eighty-one electricity projects and one hundred and ninety building construction works for schools and health centers have been completed. The breakdown of completed projects by state is : Abia 40, Akwa Ibom 53, Bayelsa 47, Cross River 4, Delta 97, Edo 38, Imo 31, Ondo 31 and Rivers 17. A total of 714 infrastructural projects have been awarded, so far.

Reports on these projects have, however, not been all complimentary. In the case of Akwa Ibom State, NDDC projects are handled by contractors nominated by the state government, hence, they may be subjected to abuse of political patronage. Also, there is "*massive project abandonment*" in the state (**Akpe 2003**).

Reports on NDDC activities in Bayelsa and Delta States have generally been totally without blemish. For example, a report by *the Isoko Progress Front* states that Isoko North and South have got a sizable number of meaningful projects dotted in some of the major towns and villages in Isoko land. Over 90 percent of these projects have been commissioned and the contractors have been paid. Out of the three free medical health programmes for Delta State, one was located in Oleh General Hospital while the others are in Sapele and Patani local government areas respectively. More than one thousand sick persons are reported to have been treated freely. The commission has also supplied desks and teachers' tables to schools. Some Isoko primary and secondary schools were provided with 120 dual desks/benches, 7 teachers' tables and nine chairs each. The commission has also made provision for training youths in the region in computer literacy. Delta State was allocated about 580 places out of which Isoko was given 86 slots in the programme

In the case of Bayelsa State, Oloibiri, the legendary small community which hosted the first oil well in Nigeria, for a long time was lacking basic infrastructure. In fact, it was often cited by resource control agitators as a symbol of neglect. However, early in 2003, NDDC constructed and commissioned a 100,000-gallon water project in the community (*with a twin 50,000-gallon capacity water tanks*) and a landing jetty. These brought much relief to the community. In reaction to this development, the paramount ruler of the community, King J.C. Egba states:

My council of chiefs and I as well as the entire people of my kingdom want to use this medium to say a big thank you to the NDDC for making us to enjoy the benefits of oil exploration in our community for the first time. The NDDC has provided our community with a 100,000-gallon capacity water works and the largest jetty in Bayelsa state...NDDC has been able to partly wipe out the tears of our people occasioned by over 46 years of neglect by both the oil companies and successive intervention agencies set up to bring development to the Niger Delta Region....

In Kiagbodo in Burutu Local Government Area, a borehole and a cottage hospital built by the NDDC are functioning.

On the other hand, however, the Eastern bye-pass which the NDDC celebrates as one of its most laudable projects has been described by critics as only a few kilometres of dual carriageway with poor finishing and which currently terminates few poles to the Trans-Amadi/UTC Junction (**Obibi and Ebiri 2003**). By the way, road projects account for 46% of NDDC budget.

Members of civil society also accord NDDC some pass mark. For example, Joseph Kariboro, Assistant National Secretary of South-South Peoples Conference and Secretary of the Rivers State Chapter says:

So far I would say that the NDDC as an interventionist agency has through its activities succeeded in penetrating the subconsciousness of the people. There are some areas where you see jetties being constructed, hospitals and schools being built and water schemes too.

Similarly, Austin Opara, Deputy Speaker House of Representatives submits:

There are things on ground to show in Port Harcourt Local Government Area, my constituency in particular. I have two NDDC projects which are going on.

This notwithstanding, youth restiveness persists so some critics feel NDDC should do more. For example, the popular view at a recent *Reference Workshop of Stakeholders* on oil-producing communities in Bayelsa State was that the NDDC has not had much impact on the development of the region. The commission is accused of not carrying the communities along in planning development projects, and thus there is a lack of project ownership. It is also accused of operating independently ignoring inputs from state governments by way of ideas. A case in point was that the State Ministry of Health was not informed about a medical programme at a local hospital for people with eye problems carried out by the commission with some experts. One finds that the NDDC, thus, faces criticisms from both the civil society and government for its lack of transparency and collaboration with stakeholders in its operations.

The NDDC maintains that it does not have the resources to do much and that less than three years of existence with logistics difficulties is too short a time to have much impact. Fortunately, it seems to find an ally in Deputy Speaker of the House of Representatives Austin Opara, who states:

But we need to be patient a little more. The area is devastated but let us be a little patient so that we can achieve development.

This defense does not however address the criticism of lack of transparency and collaboration.

It seems, however, that the scale of developmental needs in the region is beyond what NDDC alone can handle, even if all its budget are released to it regularly. The South-South Peoples Conference makes this suggestion, saying further that empowerment of the youths is important and needs to be given maximum attention. For instance, Joseph Kariboro emphasizes:

The youths who are seen as the primary agents of restiveness must be given opportunity for training and retraining. You have to train them to understand the environment and what they can do to have gainful employment or be self employed. They (government) have to open up the economy in such a manner that would aid every one of us to have access to the opportunities provided.

It is perhaps in the light of this observation that a more effective institutional framework should be created in the oil-producing states which would more transparently utilise accruals from oil derivation allocations. So far the states have not been seen to utilise this allocation visibly in the oil-producing communities and NDDC has also not been seen to perform any better. It is in this respect that the experiment in Ondo State may be worth examining (*See Box*).

It must also be emphasized that the issue of sustainability of NDDC projects may not have received adequate attention so far. In an attempt to make its presence felt throughout the region, NDDC may have spread its budget too thinly without paying attention to sustainability. Unless this issue of sustainable development is addressed, there may be a repeat of the Oloibiri experience across the region. According to the paramount ruler of Oloibiri community for instance, potable water was provided for his community over 25 years ago but the facility went bad and nobody refurbished it.

It is hoped that the issue of sustainability would, therefore, be addressed in the master plan for the development of the Niger Delta currently being prepared by the NDDC with the help of the *World Bank Institute* and the *German GTZ Group* through a consultation process involving various relevant stakeholders.

CHAPTER FOUR

Turning Oil - Associated ‘Curse’ Into ‘Blessing’

The search for strategies that would enable turning oil-associated ‘curse’ into “blessing” in Nigeria, in general and Niger Delta in particular is a daunting exercise. Three strategies, however, have so far been employed. First, there is the direct utilization by the state of oil revenues. This strategy has not been effective and this has been due to the predatory and fractional democratic nature of the state since the period of oil exploration. The second strategy, of creating interventionist agencies by the federal government and the state to utilize part of oil revenues to develop the oil – producing areas has had limited effectiveness. This is due; partly to the sheer scale of development failure because of limited resources at the disposal of these agencies for addressing the regional problems. It has also been due, largely, to the predatory and fractional nature of the state which does not allow for timely and transparent allocations of funds to the agencies as well as the absence of counter pressure which ensures that project conception and policymaking in general are people-driven.

A third strategy that has been employed in recent years is institutionalizing corporate social responsibilities in oil companies operating in the region. Oil companies have been confronted with protests and the occupation of their oil production facilities by Niger Delta citizens. These protests have reportedly been costing oil companies at least 20 per cent of their production. With 60 percent of Nigeria’s oil production currently sourced from on-shore wells the economic cost of such protests can be imagined.

In response to such protests and occupations, oil companies now have extensive programmes for community development/empowerment in host communities; make sizable payments to local and state governments; and hire youths for surveillance contracts to satisfy the demand for employment. In 2001 Shell Petroleum Development Company (SPDC) spent approximately \$52 million on community development in Niger Delta and paid out \$2.1 million as compensation in respect of third-party claims resulting from oil spills and construction damages. Mobil Oil Company, on its part, contributed \$12 million to development projects in 2001 in the region (*HRW 2002: 31 & 33*).

This strategy has also not been effective in reducing youth restiveness or making a noticeable development impact in the region. For example, according to an evaluation of Shell’s development projects undertaken in 2001 by independent consultants paid for by Shell, less than one-third of 408 projects were considered fully successful (*HRW 2002:31*) It has also

been noted that since the NDDC was established, some oil companies have reduced their corporate obligations to the region. For example, in Akwa Ibom State, Mobil Oil Company has decided to reduce its commitment in the area of road construction and has instead ploughed the withdrawn resources into areas like education and health. These areas are considered by the oil company as those where government's impact is hardly felt and where the company can make sustainable impact on the people (*Akpe 2003*). But then educational and health projects are, of course, less costly than road construction projects.

The *European Union (EU)* recently introduced a strategy anchored on micro-projects finance. The programme tagged MPP3 was first introduced in Bayelsa, Delta and Rivers States. A sister project MPP6 was newly introduced in Abia, Cross River, Imo, Akwa Ibom, Edo and Ondo States. A thorough analysis of the project may be a bit premature as it is in its gestation period. Nevertheless, the programme critics say will impact positively on its immediate neighbourhoods to some extent.

One radical strategy that was recently proposed is to remove direct utilization of oil revenues from the hands of government. *Sala-martin and Subramanian (2003)* propose that oil resources should be transferred directly to citizens. Government expenditures would then depend entirely on taxes. The rationale is that since it is more difficult to mismanage tax revenues, this would engender institutional quality in accountability and transparency. Under the proposal, each adult would have equal share of oil proceeds which is estimated to be \$760. With revenue earnings from natural gas exploitation added, the figure would rise to \$1330 in parity terms.

Specifically, the authors propose the *Niger Delta Fund Initiative*. This is a trust fund that would provide, in addition to a smaller cash dividend, funds for low-interest loans for sustainable development projects located particularly in the rural areas. Also, a smaller percentage of the fund would be earmarked for funding conflict resolution and conservation programmes.

Attractive as this approach may be, it faces formidable implementation hurdles. First, a tax-paying culture has been largely abandoned in Nigeria since Nigeria began to earn massive oil revenues. The re-introduction of a tax-paying culture would, therefore, involve a long process, which for a start, requires the establishment of functioning government institutions which themselves have been weakened by a culture of relying on oil rents. Financing government programmes through tax revenue under this proposal may, therefore, mean that only few programmes may be executed. Second, one of the greatest obstacles to effective planning in Nigeria is lack of reliable, accurate population data. Population figures have become a political tool in Nigeria; so, they are manipulated by states. Hence, there has not been reliable national population census in the country since independence. Since the 1991 census, government has shifted planned census dates thrice. Presently, the next one is slated for 2005. This means that there is no current reliable population data for implementing Sala-martin's and Subramanian's proposal. Third, judicious utilization of public funds requires the existence of responsible and accountable policy-making. Unless there exists such an

institutional facility, creating a trust fund will not guarantee judicious utilization of oil fund. Already, it is common knowledge that such a facility is lacking under the prevailing predatory and fractional democratic state in Nigeria. Fourth, since the existence of conflicts itself is a manifestation of institutional breakdown, earmarking fund for conflict resolution without first re-establishing functioning institutions amounts to placing the cart before the horse. Thus, turning oil-associated '*curse*' into '*blessing*' requires establishing a mature democracy and quality institutions.

Some have argued that to redress development failure in the Niger Delta, states in the region should be given full control of their oil resources and then be required to pay taxes from the resources to the federal government like what obtains in the states of Alaska and Texas in USA. But, as one has already shown, a necessary condition for this is the existence of a mature democracy and quality institutions. Given the multiple institutional failures in the Niger Delta, there is no guarantee therefore that states will judiciously utilize oil revenues.

CHAPTER FIVE

Overcoming The Paradox Of Poverty In Midst Of Plenty In Niger Delta

Gary and Karl (2003) argue that “*overcoming the paradox of poverty in the midst of plenty depends, to a large part, on the ability of engaged, informed and capable civil society groups using political space to hold their own governments and other actors accountable*”. This condition can be met, however, only under a condition of a mature democracy and institutional quality. This chapter of the book now suggests how these can be realized in Nigeria.

The suggestion is anchored on the belief that Nigeria’s oil resources is enough to satisfy the ‘*needs*’ but not the ‘*greed*’ of every Nigerian. Since basic needs are central to the removal of poverty in the midst of plenty, what is required is a development approach that integrates the “*needs*” of Nigerians. Hence, one is proposing a Human Rights Approach to development in the Niger Delta.

Kofi Annan, in his annual report on the work of the United Nations in 1998, observes that “*the rights-based approach to development describes situations not simply in terms of human needs or of developmental requirements but in terms of society’s obligation to respond to the inalienable rights of individuals*”. Among the most immediate benefits of a human rights approach to development is to help overcome discriminatory policies on gender or ethnic grounds. Another is its potential to shift priorities to the political economy of resource allocation. Within such a framework, the conditions needed to achieve a decent standard of living are treated as basic human rights.

The UN Declaration on the Rights to Development of 1986 recognizes that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development. Thus, the human rights approach to development promotes participatory development in policy-making, project conception and implementation. Therefore, it guarantees accountable and transparent policy-making which is the bedrock of institutional efficiency.

Nigeria is a signatory to the declaration. Almost two decades after assenting to it however, the Nigerian government has not embraced it as an approach to development. Yet, this approach holds a promise for promoting sustainable economic development and guaranteeing the turning of the oil ‘*curse*’ into a ‘*blessing*’ in the Niger Delta.

It is within this context one will appraise the emergence and seeming success story of *the Ondo State experience*. Here, the power of the citizens and the response by government to

such power are at play and have resulted in the adoption of a human rights approach to development in the state.

Following protracted communal clashes between the Ijaws and Ilajes in Ondo State, the government attempted to embark on rehabilitation programmes in the devastated areas which also happen to be the riverine and oil-producing areas of the state. The areas had, indeed, suffered a long neglect and environmental degradation accompanied by sustained agitation and restiveness, as in other parts of the riverine areas of the Niger Delta Region. Following resource control and oil derivation agitations in the region, some concerned Ondo citizens went to court to prevent the government from spending the oil derivation revenue until an institutional framework was established for its utilisation. The outcome is the *Ondo State Oil-Mineral Producing Areas Development Commission* (OSOPADEC).

Like the NDDC, most of OSOPADEC's interventions are in the infrastructural development of roads, water supply, jetties and school classrooms while its board has representatives from oil-producing areas. But its board of representatives drawn from both the government and oil communities are far more effective than those of the NDDC. For example, the law establishing OSOPADEC clearly states how its funds should be allocated and the share of each stakeholder, be it the federal, state and local governments or the oil communities. The enabling law thus makes it easier for OSOPADEC to be held accountable by citizens of the state in line with the human rights approach to good governance, transparency and accountability.

The commission has executed a number of projects since its inauguration in November 2001, (*See Box*). As a way of minimising the incidence of abandoned projects, bank guarantees are obtained from prospective contractors handling them. Monies, especially mobilisation fees, paid are therefore recoverable from the banks should the contractors default. With this, the banks also set up their own monitoring team to ensure project performance by contractors.

Although OSOPADEC has not existed long enough to enable one undertake a full appraisal of its performance, it appears that the novel experiment, specifically its emphasis on the utilization of a proportion of the 13 percent oil derivation fund for oil-producing areas of the state, is worthy of emulation by other states in the Niger Delta. This is because the approach brings visible benefits of oil money to oil-producing areas.

It should be noted, however, that an institution like OSOPADEC is not fully immuned from government or political influences. For instance, the law establishing it provides for the state governor to be its chairman and for the state commissioners for agriculture, solid minerals, environment and finance as well as the attorney -general and state secretary to government to be members of the board. The Ondo governor who came to office in May 2003 repealed the law and constituted a new board in October 2003 demonstrating that, indeed, OSOPADEC may be subject to the influence of leaders at the helm of political authority. Also, the commission at times suffers from non – release of funds even when the 13 percent allocation has been released to the state. For instance, no fund has been released

to it since May 2003. This, notwithstanding, the enabling law establishing OSOPADEC embodies a human rights instrument which civil society can use to promote good governance, accountability and transparency in the utilisation of oil revenues.

EPILOGUE

The attempt in this book at evaluating the extent to which oil resources have impacted on the lives of citizens of the Niger Delta shows that oil has brought associated negative impact or curse on the region. These negative impact would, however, have been ameliorated, and oil turned into a blessing, if only two fundamental elements of sustainable development-namely, mature democracy and quality institutions-existed. One of such institutions is a local or state-based interventionist agency, as currently represented by OSOPADEC. According to officials of OSOPADEC, one or two other states in the Niger Delta have visited its office to seek advice on their plans to set up a similar institution in their respective states.

To translate oil ‘*curse*’ into” *blessing*”, a human rights approach to development is hereby proposed – an approach which requires active participation of all stakeholders in the oil-producing areas. The creation of local or state interventionist agencies with appropriate enabling laws is indeed a major step in the direction of ensuring good governance, transparency and accountability in the management of oil resources accruing to communities in the Niger Delta, in the final analysis.

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CHAPTER SIX

LEGAL FRAMEWORK FOR OWNERSHIP AND CONTROL OF OIL REVENUE IN THE NIGER DELTA REGION

Brief political/legal history of Nigeria

Until the advent of British colonial rule in what is now known as the Federal Republic of Nigeria (Nigeria, for short), there existed at various times several sovereign states known as emirates, kingdoms and empires made up of the ethnic groups in Nigeria. Each was independent of the other while its mode of government was indigenous to it. At one time or another, these sovereign states were either fighting wars with one another or making alliances on equal terms. This state of affairs existed throughout Nigeria. In the Niger Delta area, for instance, there were the Okrikas, Ijaws, Kalabaris, Efiks, Ibibios, Urhobos, Isekiris etc. Indeed, some of these communities (Calabar, included) asserted exclusive rights over the narrow waters in their area. And because of the terrain of their area, they made use of the rivers and the sea for their economic advancement in fishing and trade and also made war tools. The rivers and the sea were their only means of transportation. Trade then took place not only among themselves but with foreign nations, particularly, the European nations who sailed to their shores for palm oil/kernel and slaves.

The area now known as Lagos was an amalgam of several communities, like Aworis and Eguns, to mention a few. All the coastal communities took advantage of the sea and the network of rivers and lagoons, using them as means of transportation to travel far and wide along the coastline on trading expeditions to fish and to wage wars.

The British colonial rule commenced with the cession of Lagos to the British monarch in 1861 after the Treaty Cession entered into on 6th August 1861. King Dosumu (*otherwise spelt Docemo*) of Lagos and his chiefs ceded to the British crown the port and island of Lagos. For the full text of the treaty see **The Attorney-General V. John Holt & Co, & Ors.** And **The Attorney-General V. W. B. McIver & Co & Ors.** 2NLR 1 at Pages 4-5.

At about the same time some British firms had established trading ports around the Niger and subsequently extended their operations from the middle of the Niger valley into what is now known as Northern Nigeria. The companies later merged and formed a company known as Royal Niger Company which was granted a charter by the British monarch not only to trade but also to administer the area from the middle of the Niger valley to present-day Northern Nigeria. On the revocation of the charter of the Royal Niger Company on 31 December 1899, the area under its sphere of administration was renamed Protectorate of Northern Nigeria.

With effect from 1st January 1900, also, the remaining part of the present-day Nigeria that did not form part of the Protectorate of Northern Nigeria was added to the Niger Coast Protectorate, which had earlier been established for the communities of the Niger Delta, to

form the Protectorate of Southern Nigeria. At the time the British colonial rule provided the central authority that bound together all the erstwhile separate states, empires and kingdoms that were dotted all over the land mass now known as Nigeria.

The case of the **Attorney-General S. John Holt & Co & Ors.** (Supra) shows that the political history of Lagos was much more chequered. By commission under the Great Seal dated 13th March 1862, the ceded territories were formed into a separate government with a legislative and executive council under the title of the Settlement of Lagos. This arrangement lasted for only a short time, because following another commission dated 19th of February 1866, Lagos became part of the government of the West African Settlements with a separate legislative council that was under the Governor General-in-Chief in Sierra Leone. By 24th July 1874, the Gold Coast and Lagos were separated from the other settlements and constituted into one colony known as the Gold Coast Colony. On 13th January 1886, by virtue of Letters Patent, Lagos became a separate colony. Twenty years later, following another Letter Patent dated 28th February 1906, the colony of Lagos, on 1st May 1906, was merged with the Protectorate of Southern Nigeria to form The Colony and Protectorate of Southern Nigeria.

Then on 1st January, 1914, the Protectorate of Northern Nigeria was merged with The Colony and Protectorate of Southern Nigeria to form The Colony and Protectorate of Nigeria. Thus, emerged the country called Nigeria which gained independence from British colonial rule on 1st October, 1960. Today, it is known as the Federal Republic of Nigeria having become a republic in 1963¹.

Ownership and control of oil mineral resources of Niger Delta Region

The laws governing the ownership and control of oil mineral resources of the Niger Delta Region is the same with the laws governing ownership and control of oil mineral resources or natural resources in Nigeria.

Nigeria inherited a colonial system in which ownership of mineral resources was vested in the crown in England. When constitutional development led to the transfer of power to Nigerians, the crown in Britain was replaced by the state (that is, the Federal Government of Nigeria) which now assumed sovereignty over the mineral oil resources previously vested in the crown. The various legislations, since the first unsuccessful attempt at oil drilling in Ajebandele near Okitupupa, South East of Lagos in 1908, have reflected this trend. The first of these legislations was the **Colonial Mineral Oils Ordinance of 1914** which was amended in 1925 and 1950. Under its terms the entire property in and control of all minerals and mineral oil was vested in the then colony².

Also, during the colonial era in Nigeria, the Minerals Act, 1946, Cap 121 Laws of the Federation of Nigeria and Lagos 1958 was enacted to amend and consolidate the laws relating to mines and minerals. Section 3(1) of the act provides:

“The entire property in and control of all minerals in, under or upon any land in Nigeria, and of rivers, streams and water that coursed throughout Nigeria, is and shall be vested in the crown”.

This act is now enacted as Minerals Act, Cap 226, Laws of Federation of Nigeria, 1990. It came into effect in Nigeria on 25th February 1946. Shell Petroleum Development Company Limited (SPDC) – one of the major oil - prospecting companies in Nigeria - started its operations as far back as 1938 as Shell D’arcy, then. However, the discovery of oil was first made at Oloibiri in the Niger-Delta in 1956 while Nigeria began to export oil in 1958³.

At the advent of independence on 1st October, 1960, Section 69 and Item 25 Part 1 of the schedule of the 1960 Constitution of Nigeria vested in the Federal Parliament exclusive powers to legislate on, among others, mines, minerals including oil fields, oil mining, geological surveys and natural gas. **The 1963 Republican Constitution** also retained the above position but both constitutions provided for fifty percent of derivation fund to be paid to any mineral - producing region. The controversy over ownership and control of all petroleum resources and its revenue was laid to rest with the promulgation of the **Petroleum Decree of 1969** now enacted as **Petroleum Act, Cap. 350 Laws of Federation, 1990**. The recital provides:

An act to provide for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all onshore and offshore revenue from petroleum resources derivable there from in the federal government and/or all other matter incidental thereto.

Section 1 of the act also provides that:

- (1) *The entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the state (that is, the Federal Government of Nigeria).*
- (2) *This section applies to all lands (including land covered by water), which:*
 - (a) *Is in Nigeria; or*

- (b) *Is under the territorial water of Nigeria; or*
 - (c) *Forms part of the continental shelf.*
- (3) *In this section, references to territorial waters are references to the expression as defined in the **Territorial Waters Act**.*

The purpose of the above provisions of the Petroleum Act is to make the Federal Government of Nigeria the exclusive owner of petroleum resources extracted from any where in Nigeria including the Niger Delta Region and also the exclusive owner of the petroleum revenue obtained therefrom subject only to the provision of Section 162 (2) of the 1999 Constitution.

The combined effect of the **Petroleum Act; Territorial Waters Act, Cap. 428, Laws of the Federation, 1990 as amended by Act No. 1 of 1998; and The Exclusive Economic Zone Act Cap 116 Laws of the Federation 1990** as amended by **Act No. 42 of 1998**, vests ownership and right of exploitation of minerals and natural resources in the territorial waters and exclusive economic zone of Nigeria in the Federal Government of Nigeria. Another landmark legislation that appropriates the petroleum resources of Niger Delta Region in favour of the Nigerian Federation is the **Land Use Act, Cap 202 Laws of the Federation, 1990**.

Taking a look at the act, a Senior Advocate of Nigeria (SAN), Professor Itse Sagay⁴ states inter alia:

The main problem that the various communities in Niger Delta have with the Land Use Act is that the decree only recognized what we call 'surface right'. You are denied the planting of some agricultural products on this land. So, compensation is based on that. It does not recognize the rights of those communities below the surface. In other words, where there are minerals and other resources underneath the ground, these are not recognized. So, the communities, the people of the Niger Delta, the whole of the Southern States of Nigeria are calling for the total repeal of that Act.

The **Land Use Act** has since been incorporated into the 1979 and 1999 constitutions and can now only be repealed or amended through a cumbersome constitutional amendment procedure in accordance with Section 9 of the 1999 Constitution. Another important legislation that makes the oil mineral the sole property of the Federal Government of Nigeria is Section 40 (3) of the 1979 Constitution which has been re-enacted verbatim as Section 44(3) of the 1999 Constitution. Section 44(3) provides, in part:

Notwithstanding the foregoing provisions of this section the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and Exclusive Economic Zone of Nigeria shall vest in the government of the federation and shall be managed in such manner as may be prescribed by the National Assembly”.

These constitutional provisions finally laid to rest the issue of who owns the oil in the Niger Delta Region or any part thereof of Nigeria. The Federal Government of Nigeria in order to consolidate its ownership of oil in Niger Delta and to control same enacted the **Nigerian National Petroleum Corporation Act Cap 320, Laws of Federation 1990**. The act dissolves the Nigerian National Oil Corporation set up by Decree No. 18 of 1971 and to establish the Nigerian National Petroleum Corporation to engage in all commercial activities relating to the petroleum industry and to enforce all regulatory measures relating to the general control of the petroleum sector through its petroleum inspectorate department.

We shall now, by way of comparison, take a look at the ownership and control of oil mineral resources in some selected countries like Britain, USSR, Venezuela, Libya, Indonesia and the USA.

Comparative analysis of petroleum law, and the ownership/control of mineral resources between Nigeria and selected countries.

Professor M.A. Ajomo⁵ provides a comparative view of mineral resources ownership laws as follows: -

Perhaps it might not be out of place as a preliminary to make a brief survey of ownership of mineral oil resources in some selected countries. From what follows here it will be obvious that ownership of mineral resources (including oil) like that of land varies from country to country. It all depends upon a country's legislation and in some cases upon generally - accepted practice. For instance, oil resources could be owned exclusively by the state or in some cases by individuals or private enterprise. It could also be owned jointly by the state and the private sector.

In Great Britain, an attempt to vest ownership of petroleum in situ in the crown by a bill of 1917 was foiled by protests. The question of ownership of land, which supports the mineral,

was not in dispute as all. Land belongs to the crown. Because of these protests, all that the Petroleum (Production) Act of the following year (1918) could do was to focus on competitive drilling problems by forbidding any searching or drilling for oil otherwise than by persons acting on behalf of the government. It was the national government of the early thirties which settled the problem of ownership when the Petroleum (Production) Act of 1934 vested in the crown the property in all petroleum in situ in Great Britain, together with the exclusive right of searching and drilling for it. So the law has remained since then.

In socialist countries, it is usual to declare all minerals, both solid or otherwise, to be state property. For example, under the Soviet Constitution the land, its minerals, waters, forests, mills, factories and mines are state property. In addition, the state itself undertakes the development and extraction of mineral resources as a state monopoly. The nature of political and social set-up in socialist states demand this approach.

In developing countries, there is the general reluctance to place mineral oil resources at the disposal of individuals. This is understandable. To do so, it is believed, would breed a class of wealthy moguls in countries where, because of pervading poverty, government programmes should aim at even development and an increased standard of living for all. What is more, the capital and technical know-how for the exploitation of mineral is lacking in developing countries. Legislation is, therefore, geared towards investing ownership in the state which may then contract out mineral resources exploitation to foreign enterprises for a fixed term and under specific conditions which are normally concluded under concession agreements. **The Venezuelan Mining Law of December 29, 1944, as amended**, declares all mines, seams, beds or mineral deposits to be public utility and under that country's constitution they are only to be exploited under a concession granted by national executive power.

The Libyan Petroleum Law is even more categorical. It declares all petroleum in its natural state in strata to be the property of the state and no person may explore, mine or produce petroleum without a permit or concession.

The Zambian Mines and Minerals Acts No. 32 of 1976 and the **Mines and Mineral Act of Botswana** vests the property in all minerals in the state for the common benefit of the people notwithstanding any right of ownership or otherwise which any person may possess in and to the oil or under which minerals are found or situated.

In Indonesia, the government enacted two major laws in 1999 – namely **the Law of Regional Autonomy** and the **Law on Inter-Governmental Fiscal Relations**. The first law grants extensive authority to 26 provinces in all matters including small-scale mining except defense, foreign, judicial, monetary and religious affairs. The second law, to be enforced by the Ministry of Finance, provides a specific share of revenues from oil, gas and mining development to mineral resource-rich provinces.

The Supreme Court of the United States in the case of **United States Vs. Louisiana** decided in May 1960 that coastal states can have joint ownership of oil with the Federal Government. The facts of the case are as follows:

“The court considered whether Louisiana and the other coastal states in the Union of America have ownership rights to exploit the oil and natural resources of off-shore submerged lands. The court interpreted the Submerged lands Acts of 1953 wherein the United States relinquished to the coastal states all of its rights in the canals beneath navigable waters within a three mile limit and, in excess of that limit, within state boundaries as they existed at the time a state became a member of the Union, or as theretofore approve by congress. The United States, invoking the original jurisdiction of the Supreme Court of the United States brought the present suit against Louisiana, Texas, Mississippi, Alabama and Florida seeking, among other reliefs, a declaration that it was entitled to exclusive possession over the lands, minerals, etc under the waters of the Gulf of Mexico more than three geographic miles seaward from the coast of each state. The defendant states claimed a right to the submerged lands within three leagues of their coasts; Alabama filing a cross bill to establish such a right.

The Supreme Court decided, inter alia, that for the purpose of the **Submerged Lands Act of 1953**, Texas maritime boundary was established at three leagues from its coast. It was further decided that none of the states was entitled to submerged rights to a distance greater than three geographical miles from its lines, the court expressing no opinion on the location of the coast of each state.

The right of private ownership of mineral resources in the United States of America has also been canvassed by Jan G. Laitos, a Professor of Law in the University of Denver College of Law.⁶ His words:

The private property interest is what is owned by the would-be developer and user of the resource. In the United States, mineral, energy, and water resources may be privately owned ... Libertarians regarded natural resources exploitation as a desirable consequence of individual freedom and creativity. Legislature were to be “Laissez faire”, and adopt a hands of approach to resource exploitation. Laws was to facilitate

individual to “express freedom, because freedom is defined as free choices of the person. With free choices, private owners of natural resources would inevitably extract or develop the resources.

We shall now look at the principle of derivation which is one of the measure introduced by successive Nigerian constitutions and legislations to compensate mineral - producing regions or states for the minerals exploited from the said region or state.

Principle of derivation under the 1960 and 1963 constitution of Nigeria

The 1960 and 1963 Constitutions state that fifty percent of proceeds of any mineral extracted from any region be paid to the said region. **Section 134 of 1960 Constitution** specifically provides:

- (1) *There shall be paid by the federation to each region a sum equal to fifty percent of*
 - (a) *The proceeds of any royalty received by the federation in respect of any minerals extracted in that region land*
 - (b) *Any mining rents derived by the federation during that year from within any region.*
- (2) *The federation shall credit to the Distributable Pool Account a sum equal to thirty percent of -*
 - (a) *The proceeds of any royalty received by the federation in respect of minerals extracted in any region; and*
 - (b) *Any mining rents derived by the federation from within any region.*
- (3) *For the purposes of this section the proceeds of a royalty shall be the amount remaining from the receipts of that royalty after any refunds or other repayments relating to these receipts have been deducted there from or allowed for.*
- (4) *Parliament may prescribe the periods in relation to which the proceeds of any royalty or mining rents shall be calculated for the purposes of this section.*
- (5) *In this section “minerals” includes oil.*

- (6) *For the purpose of this section the “continental shelf of a region” shall be deemed to be part of that region.*

The above provisions were re-enacted verbatim in **Section 140 of 1963 Constitution**. The derivation principle in both the 1960 and 1963 Constitutions accounted for rapid development and healthy competition among the regions from 1960 to 1966. The Northern Region produced cotton, hides and skins as well as groundnuts that were arranged into famous groundnut pyramids. The Eastern Region on its part produced palm oil and petroleum while the Western and Midwest Regions produced cocoa, rubber, timber, palm oil and petroleum.

It should be noted here that **1960 and 1963 Constitutions** were the only constitution in Nigeria that were freely negotiated by the Nigerian people who elected their representatives to various constitutional conferences which took place before Nigeria’s independence. In contrast, the **1979 and 1999 Constitutions** were midwived by military dictatorships and actually promulgated by military decrees. Akpo Mudiaga Odje⁷ argues in support of this by quoting Mr. David Edevbie thus:

The 1960 Independence Constitution was negotiated to respect the internal autonomy of the regions and thus guaranteed rapid development in the Western and Eastern regions as they retained control over their resources and revenues and the ensuring healthy competition brought out the best in the leadership of the regions. This was the political federalism that our founding fathers bequeathed to us”.

Nigerian former external affairs minister and respected scholar, Professor Bolaji Akinyemi⁸ also throws his weight in support of the 1960 and 1963 Constitutions. He advises:

If we are all agreed that the golden years of Nigerian federalism was the immediate pre-independence and post-independence period of 1954 – 1960, then let us re-visit that period and vividly remind ourselves of what we did then that we are not doing now.

Principle of derivation between 1966 and 1979

The military toppled the 1963 Constitution and the inaugurated democratically-elected government of Alhaji Tafawa Balewa, Prime Minister of Nigeria on 15th January, 1966. The federal military government thereafter promulgated the **Constitution (Suspension and Modification) Decree No. 1 of 1966** that suspended and modified certain provisions of the 1963 Constitution which included areas dealing with the legislature and the elected executive

government. The military also suspended the supremacy of the constitution, subjecting it to arbitrary military decrees.

The federal military government of Nigeria equally repealed **Section 140 (6) of the 1963 Constitution** dealing with payment of derivation oil proceeds from the continental shelf to the regions by promulgating **Decree No 9 of 1971**. This decree greatly reduced the derivation fund or compensation paid to the oil-producing states by the federal government of Nigeria from the proceeds of sale of petroleum products. This singular legislation removed twenty percent from the fifty percent derivation fund guaranteed under the 1963 Constitution. The said **Offshore Oil Revenues Decree No 9 of 1971** vested all offshore oil revenues and the ownership of the territorial waters and the continental shelf on the federal military government.

The **Territorial Waters Act, Cap 438, Laws of The Federation, 1990 as amended by Act No 1 of 1998 and Exclusive Economic Zone Act, Cap 110, laws of The Federation of Nigeria 1990** gave ownership and control of oil revenue in the territorial waters and exclusive economic zone to the federal government of Nigeria.

The compensation paid to the Niger Delta Region from oil revenue was thereafter determined by arbitrary military decrees from 1966 until the 1979 Constitution came into effect.

Principle of derivation under the 1979 Constitution

The 1979 Constitution ushered in the Second Republican Constitution of Nigeria. Throughout the constitution there was no express reference to the principles of derivation in relation to mineral oil or natural resources of the Niger Delta or any region. The principle of derivation or compensation for oil-bearing states was governed by existing laws by virtue of **Section 274 of the 1979 Constitution**.

After the 1979 Constitution came into operation, the federal government enacted the **Revenue Allocation Act of 1981** that deprived oil-bearing states of derivation funds without recourse to the proper procedure of law making. This was successfully challenged at the supreme court in the case of **Attorney-General of Bendel State Vs. Attorney-General of the Federation & Ors**,⁹ Idigbe J. S. C in this suit states:

Now, there is no doubt that until a new system of revenue allocation for the country has been lawfully introduced by the National Assembly, the plaintiff state, by virtue of the provisions for the system of revenue allocation based on Section 141 of the 1963 Constitution (Act No. 20 of 1963) and Section 272 of the 1979 Constitution and in particular the system of revenue allocation in existence for the

financial year beginning 1st April 1978 and ending 31st March, 1979, (hereinafter referred to as The old Revenue Allocation Law has a vested legal right to a specific share of the “Federation Account” under Section 149 of the current constitution; but also known as the “Distributable Pool Account” under Section 136 of the 1963 Constitution”.

Chief Justice Marchall of the United States Supreme Court in the case of MARBURY VS. MADISON¹⁰ also answered the question whether an act repugnant to the constitution can become the law of the land, when he posits inter alia:

Certainly, all those who have framed written constitution contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the legislature repugnant to the constitution is void”.

The voiding of the Revenue Allocation Act of 1981 led to the enactment of a new Revenue Allocation Act¹¹ that came into effect in Nigeria (including the Niger Delta Region) on 22nd January 1982. This act made provisions for compensation of the oil-producing states in Section 1, 2(2) and 2(4). Section 1 of the act stresses:

The amount standing to the credit of the Federation Account (as specified in Subsection (1) of Section 149 of the Constitution of the Federal Republic of Nigeria) shall be distributed by the Federal Government among the various governments in Nigeria and the funds concerned on the following basis, that is to say-

- (a) *The Federal Government ----- 55 percent*
- (b) *The State Government -----32.5 percent*
- (c) *The Local Government Councils -----10 percent*
- (d) *The fund for the amelioration of ecological problems – 1 percent*
- (e) *The fund for development of mineral - producing areas of Nigeria ----- 1.5 percent of the revenue accruing to the Federation Account derived from minerals*

Section 2(2) orders:

The 32.5 percent specified in Section 1(b) of this act shall be subdivided and allocated as follows, that is to say –

- (a) A sum equivalent to 2 percent of the revenue derived from minerals extracted from the mineral-producing areas of Nigeria shall be paid directly to the mineral-producing states in direct proportion to the value of minerals extracted from the area of each such states; and*
- (b) An amount equivalent to 32.5 percent of the Federation Account aforesaid less the sum specified in Paragraph (a) of this Subsection shall be paid to all the states in accordance with the provisions of Subsection (6) of this Section.*

Section 2(4) declares:

An amount equivalent to 1.5 percent of the revenue accruing to the Federation Account derived from minerals extracted from the mineral-producing areas of Nigeria shall be paid into a fund to be administered by the federal government for the development of the said mineral-producing areas, which fund shall be managed in accordance with such directions as may be issued in that behalf from time to time by the President having due regard to the value of minerals extracted from the particular areas concerned.

The above shows that the principle of derivation applies to mineral-producing state and also provides for a special fund for the development of mineral-producing areas.

After President Shehu Shagari's government was overthrown by the military on 31st December 1983, the military under Major-General Muhammadu Buhari promulgated the **Constitution (Suspension and Modification) Decree No 1 of 1984**. This decree suspended and modified the areas in the above constitution that recognized principles of democracy.

Then, General Babangida's military government promulgated **Decree No. 23 of 1992** which provided that three percent of oil revenue should be paid as compensation to oil-producing states and set-up a special commission¹² to manage the fund for the development of oil-producing areas. The decree also abolished the existing dichotomy between on-shore and offshore oil mineral for the purpose of revenue sharing and the administration of the fund for the development of oil-producing areas. Later, the **Allocation of Revenue (Federation Account) (Amendment) Act No 106 of 1992** sustained the abolition of the onshore and offshore dichotomy. Following the amendment, one percent of the revenue accruing to the

federation account derived from minerals was to be shared among the mineral-producing states in proportion to the amount of mineral produced from each state. The amendment also in Section 4A(2) guaranteed that 3 percent of the federation account derived from mineral revenue shall be paid into a fund to be administered by the Oil Mineral Producing Areas Development Commission (OMPADEC) established by Decree No 23 of 1992. Briefly, this was the state of the Nigerian laws for the compensation and development of oil-producing Niger Delta Region before the 1999 Constitution that made significant improvement on the derivation fund for the regions.

Principle Of derivation under the 1999 Constitution

The 1999 Constitution made significant improvements on the derivation or compensation fund that should be paid to the oil-producing states or regions of Nigeria. Though Section 162(2) of 1999 Constitution specifically deals with the principle of derivation, Sections 162(1), (2) and (3) are relevant to understanding the legal framework of ownership and control of oil mineral resources and revenue of the Niger Delta Region.

Section 162 (1) (2) (3) provides:

Subsection (1) *The federation shall maintain a special account to be called The Federation Account into which shall be paid all revenues collected by the government of the federation, except the proceeds from the personal income tax of the personnel of the armed forces of the federation, the Nigeria Police Force, the ministry or department of government charged with responsibility for foreign affairs and the residents of the Federal Capital Territory, Abuja.*

Subsection (2) *The President, upon the receipt of advice from the Revenue Mobilization, Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of **population, equality of states, internal revenue generation, land mass, terrain as well as population density** provided that the principles of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from any natural resources.*

Subsection (3) *Any amount standing to the credit of the Federation Account shall be distributed among the federal and state governments and the local government councils*

in each state on such terms and in such manner as may be prescribed by the National Assembly.

Section 162(2) of 1999 Constitution guarantees that 13 percent be paid as derivation to oil-producing states from the Federation Account. The above right was upheld by the Supreme Court in the landmark case of **A.G. FEDERATION VS. A. G. ABIA STATE (2000) 96 LRCN Page 559 at Pages 595 –597**. It was, also, judicially established in the above case that the 13 percent derivation does not include revenue derived from mining operations in the continental shelf of Nigeria.

Given the 1960 and 1963 Constitutions which provide for fifty percent derivation and the act of divesting the Niger Delta people of their natural land and oil resources by successive military decrees, the present thirteen percent derivation is considered inadequate compensation for the natural owners of oil, the Niger Delta people. A writer, Charles Ikedikwa Soeze, captures this situation in this way:

*There is no doubt that the Nigerian oil industry has affected the country in a variety of ways at the same time. On one hand, it has fashioned a remarkable economic landscape for the country. On the negative side, petroleum exploration and production also have adverse effects on fishing and farming which are the traditional means of livelihood of the people of the oil-producing communities in the Niger Delta Region of Nigeria. From the political angle, it is no exaggeration to say that the Niger Delta people more than any other group have suffered undue political manipulation, intimidation, degradation, victimization, oppression, neglect and injustice without due regard to their loyalty, support and contribution to the Nigerian nation. The multinational oil companies made huge investments in the oil sector which was quite technological and capital intensive. New laws were made which include the **Petroleum Act of 1969** and the **Land Use Decree/Act of 1978**. The legislations regulated community access to communal land and they were primarily promulgated to restrict access to such land while at the same time making it possible for multinational investors to have unrestricted access to explore for oil unchallenged even on sacred land. These have led to a series of social conflicts between host communities and multinational companies.*

The role of the oil companies in the development of oil-producing communities of Niger Delta is not encouraging. This is because their sole objective is maximizing profit without taking corporate social responsibility (CSR) into consideration.

Professor Jadesola Akande,¹³ a respected scholar on Nigerian constitutional laws has also expressed her opinion on the 13 percent derivation issues. Her view:

The proviso, now entrenched, is that the principle of derivation is important such that not less than 13 percent of revenue accruing must be shared on the basis of derivation. This is definitely an improvement on the previous 3 percent even though some still believe that not less than 40 percent should be on derivation”.

The 13 per cent derivation that is considered inadequate compensation for Niger Delta Region has not guaranteed development and alleviation of mass poverty. Instead pollution, violence, war and squalor have become common sights in the Niger Delta Region. Yet, it produces oil that accounts for over 90 per cent of Nigeria’s annual revenue. The said 13% derivation is not paid for only oil under Section 162 (2) of the 1999 Constitution but for any natural resources. **Section 162(2) of 1999** Constitution shows that oil revenue is allocated in Nigeria on the principles of **population, equality of states, internal revenue generation, land mass, terrain** as well as **population density**. Sharing oil revenue to states because the bare unproductive land in the state is large (like the Case of the big unproductive desert land of the Northern States) is inequitable. It is against natural justice, equity and common sense for the big unproductive desert land in the Northern States to get more revenue allocated to them from the federation account than the not-too-large oil land and waters of Niger Delta States.

Section 162(3) of the 1999 Constitution states that the revenue of the federation should be shared among the federal government, state governments and local government councils in Nigeria. The states and local government councils were created by military decrees without fair democratic principles. The northern state of Kano, for example, has forty-four local government councils while a major oil-producing state like Delta has twenty-five local government councils. From the constitutional provision, Kano state will therefore get more revenue than Delta State, even when Kano State does not produce oil.

It is also worthy of note that there is no legislation in the oil-producing state regulating the spending of the 13 percent derivation from the federation account on special projects to develop the oil-producing communities. The various houses of assembly of oil-producing states appropriate the 13 percent oil money with other monies without special laws providing that the oil money are special funds for undertaking projects in the oil-producing communities. In fact, the governors of the oil-producing states spend the 13 percent derivation fund arbitrarily because the houses of assembly of Niger Delta States have failed to act as checks and balances on the excesses of their executive governors.

Legal framework introduced for the development of Niger Delta Region

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 described Niger Delta as

.....poor, backward and neglected, the whole of Nigeria is concerned (about the region), we suggest that there should be a Federal Board appointed to consider the problems of the Niger Delta.....

The Commission recommended, among others, the following: -

- 1. That the development of a special areas should be placed on the concurrent list (Chapter 14, Paragraph 29)*
- 2. That a special area be created in the Niger Delta to cover the Rivers Province except Ahoada and Port Harcourt, and including the Western Ijaw Division. (Chapter 14, Paragraph 27)*
- 3. That a board with a federal chairman should be created for the Special Area to which the Federal, Western and Eastern Region should contribute funds and staff for the purpose of a survey of the special problems of the Special Area, and which would draw up plans for its development. (Chapter 14, Paragraph 28)*
- 4. That the board should initiate schemes to supplement the normal development of the special area which should be carried out by the government concerned, the federal government contribution being one-third of the capital cost and one-third of the recurrent cost for periods which may extend to ten years (Chapter 14, Paragraph 28-30)*
- 5. That a report regarding the plans made by the board and the progress made in carrying them out should be laid annually on the tables of the Federal House of Representatives and the Western and Eastern Houses of Assembly. (Chapter 14, Paragraph 29)*
- 6. That the existence of any Special Area should be under continual review and that as soon as the need for its*

continued existence appears to have been reduced, consideration should be given to its termination or to the desirability of it becoming a minority area. (Chapter 14 paragraph 26.)

Subsequently and following the above recommendations the **Niger Delta Development Board** was created by the 1960 Constitution.

1. ***Niger Delta Development Board***

Section 14 of the 1960 Constitution established the Niger Delta Development Board to provide physical development for the Niger Delta Region. The section enjoins.

- (1) There shall be for the Niger Delta, a Board which shall be styled the Niger Delta Development Board.*
- (2) The members of the Niger Delta Development Board shall be -*
 - (a) A person appointed by the Governor-General of the Federation of Nigeria who shall be chairman;*
 - (b) A person appointed by the Governor of Western Nigeria;*
 - (c) A person appointed by the Governor of Eastern Nigeria; and*
 - (d) Such other persons as may be appointed in such manner as may be prescribed by the parliament of the Federation of Nigeria to represent the inhabitants of the Niger Delta.*
- (3) A member of the Niger Delta Development Board shall vacate his office in such circumstance as may be prescribed by the Parliament of the Federation of Nigeria.*
- (4) The Niger Delta Development Board 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, and in order to discharge that responsibility the Board shall -*

- (a) *Cause the Niger Delta to be surveyed in order to ascertain what measures are required to promote its physical development;*
 - (b) *Prepare schemes designed to promote the physical development of the Niger Delta together with estimates of the costs of putting such schemes into effects;*
 - (c) *Submit to the government of the Federation and the government of Western Nigeria and Eastern Nigeria an initial report describing the survey of the Niger Delta and the measures that appear to the board to be desirable in order to promote the physical development thereof, having regard to the information derived from the survey, and subsequent annual reports describing the work of the board and the measures taken in pursuance of its advice.*
- (5) *The Parliament of the Federation of Nigeria may make such provision as may appear to be necessary or desirable for enabling the Niger Delta Development Board to discharge its functions under this section*
- (6) *In this section “the Niger Delta” means such parts of Nigeria as on the thirtieth day of September, 1960 were comprised in the Niger Delta as defined for the purposes of Section 234 of the Nigeria (Constitution) Order-in-Council, 1954(a), as set out in Section 29 of the Nigeria (Constitution) (Amendment No.2) Order-in-Council, 1959(b).*
- (7) *This section shall cease to have effect on the first day of July 1969, or such later date as may be prescribed by the Parliament of the federation of Nigeria.*

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 then and which was dominated by the Hausa and Yoruba ethnic groups after the 1966 coup deliberately introduced policies that destroyed true federalism. Later, the military junta nationalized every aspect of the national economy and political life in Nigeria. The autonomy of the regions were consequently taken

away by military decrees. For example, Decree No 9 of 1971 repealed Section 140(6) of the 1963 Constitution which ceded oil revenue from the continental shelf to the regions.

(2) ***Oil Mineral Producing Areas Development Commission (OMPADEC)***

The Federal Military Government of General Ibrahim Babangida promulgated the **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:

(1) ***The objectives of the commission shall be –***

- (a) *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*
 - (i) *For the rehabilitation and development of all mineral, areas,*
 - (ii) *For tackling ecological problems that have arisen from the exploration of oil minerals*
- (b) *To determine and identify, through the commission and the respective oil mineral producing states, the actual oil mineral- producing areas and embark on the development of projects properly agreed upon with the local communities of the oil mineral-producing areas;*
- (c) *To consult with the relevant federal and state government authorities on the control and effective methods of tackling the problems of oil pollution and spillages;*
- (d) *To liaise with the various oil companies on matters of pollution control;*
- (e) *To obtain from the Nigerian National Petroleum Corporation the proper formula for actual oil mineral production of each state, local government area and distribution of projects, services and employment of personnel in accordance with recognized percentage production;*
- (f) *To consult with the federal government through the presidency, the state, local governments and oil mineral -*

producing communities regarding projects, services and all other requirements relating to the special fund;

- (g) *To render annual returns to the President, Commander-in-chief of the Armed Forces and copy the state and local governments on all matters relating to the special fund;*
 - (h) *To advise the federal, state and local governments on all matters relating to the special fund;*
 - (i) *To liaise with the oil-producing companies regarding the proper number, location and other relevant data regarding oil mineral - producing areas; and*
 - (j) *To execute other works and perform such other functions which in the opinion of the commission is geared towards the development of the oil mineral -producing areas.*
- (2) ***The sums received by the commission under Subsection (1) (a) of this section shall -***
- (a) *Be used for the rehabilitation and development of the oil mineral- producing areas on the basis of the ratio of the oil produced in the particular areas and not on the basis of dichotomy of on-shore or off-shore oil production.*

Section 4a(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, Akpo Mudiaga Odje opined that the implementation of the decree was stalled and defeated by large-scale fraud, corruption and fund diversions by some of the chairmen 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.

Given all these, OMPADEC was scrapped in 2000 by President Olusegun Obasanjo and he replaced it with the Niger Delta Development Commission (NDDC).

3. *Niger Delta Development Commission (NDDC)*

President Olusegun Obasanjo in 2000 submitted to the National Assembly a bill for an act to provide for the repeal of the Oil Mineral Producing Areas Development Commission Decree 1992. Among other things, Obasanjo's goal was to establish a new commission with a re-organized management and administrative structure for more effective use of the sums received from the federation account for tackling ecological and other related problems which arise from the exploration of oil minerals in the Niger Delta area. The Niger Delta Development Commission (NDDC) Act was subsequently passed into law in 2000 and it established the Niger Delta Development Commission (NDDC). Section 7 of the act explains:

The commission shall -

- (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 sustainable transportation including roads, jetties and waterways, health, education, employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunication;*
- (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 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.*
- (g) *Assess and report on any project being funded for 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.

- (h) Tackle ecological and environmental problems that arise from exploration of oil mineral in the Niger Delta area and advise the Federal Government and 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;*
 - (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; and*
- (2) *In exercising its functions and powers under this section, the commission shall-***

Have regard to the varied and specific contributions of each member-states of the commission to the total national production of oil and gas.

- (3) *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.”

Section 14 of the act which provides for the funding of NDDC posits:

- (1) *The commission shall-***

Establish and maintain a fund from which shall be defrayed all expenditure incurred by the commission

- (2) *There shall-***

Be paid and credited to the fund established pursuant to Subsection (1) of this Section –

- (a) *From the Federal Government, the equivalent of 15 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;*
- (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 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 monies raised for the purposes of the commission by way of gifts, loans, 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 board, and without prejudice to the generality of the power to make rules under this subsection; the rules 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 or 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.*

There is little or no difference between the present NDDC and Niger Delta Development Board of 1960 – 1961. Bad politics, corruption and poor implementation of policies associated with the board and OMPADEC set up to develop the Niger Delta area are already crippling the NDDC. The problem of poor funding is also rendering the NDDC incapable of fulfilling its mandate under the Niger Delta Development Commission Act, 2000. Also, the issue of siting projects that are not considered to be of priority to the benefiting communities is equally bedeviling the NDDC. The speaker of the House of Representatives, Hon. Aminu

Masari had cause to speak on the need for compliance with the existing NDDC Act while proposing a new amendment to it. For instance, he once said:

.....We also note that some oil companies are not complying with the provision of the (NDDC) act. We have also noted that even the federal government is not fully complying with provision of the act...Because of the ruling of the supreme court on the issue of resource control, it has equally necessitated that we have another look at the act, particularly to funding and this we promise we are going to do objectively and in favour of Niger Delta. The other stakeholders, the oil companies, must understand that their responsibility is to the oil-producing communities. The type of amendment which ought to have been pursued by the federal government should have been one which would compel the oil companies to contribute more to the commission because of the serious level of degradation of the environment which their exploration activities had caused for the long suffering of the people of the Niger Delta region....

On his part, Raymos Gruanah¹⁴ also supports proper funding of NDDC and proposes amendment to the act establishing it. In his contribution, he argues.

...The Federal Government has been contributing only 10 percent instead of 15 percent while some oil companies are accused of making some deduction from their annual budget before making its 3 percent deduction from the remainder. Mr. President wants a reduction from the 15 percent stipulated in the NDDC Act -If while the present act puts the Federal Government contribution at 15 percent, the Federal Government pays only 10 percent it follows that by the time its contribution is reduced to 10 percent, the Federal Government will be paying 5 percent.

Time will tell whether NDDC will succeed in its task of providing physical development for the Niger Delta Region or become moribund like its predecessors, the Niger Delta Development Board and OMPADEC.

CONCLUSION

The constitutional/legal framework that will guarantee that the Niger Delta Region has access to its oil and revenue accruing from it lies in the ability of the Nigerian nation to operate a true federal system of government that will guarantee regional autonomy and adequate oil derivation in the short term. In the final analysis and in the long run the Niger Delta Region must regain control of their land and mineral resources taken away from it through military decrees in the interest of justice, equity and lasting peace.

CHAPTER SEVEN

Recommendations On Mineral Laws For Nigeria

In order to improve and fill gaps in the oil mineral laws so as to benefit the oil-bearing Niger Delta Region and the Nigerian nation, we recommend that: -

Federal Government/National Assembly

1. *Section 44(3) and 162(2) of 1999 Constitution dealing with federal government ownership of oil and prescribing 13 percent derivation (compensation) for oil-producing states should be amended and Section 134 and 140 of the 1960 and 1963 constitutions re-adopted in the interest of natural justice, equity and development of the oil-producing Niger Delta Region and other states that may produce other minerals, apart from oil, in future.*
2. *The national assembly should enact a law making it compulsory that oil companies recruit 40 percent of their employees from qualified Niger Delta people. This will guarantee them a stake in their oil and ultimately lead to peace and human development in the Niger Delta Region.*
3. *The Minerals Act, Petroleum Act, Land Use (Decree) Act, Territorial Water Act, Exclusive Economic Zone Act, etc should be amended to give oil-producing states, communities and individuals that owns the land where oil is exploited, a stake in the ownership of such oil that entitles them to adequate compensation for minerals beneath their land.*
4. *The constitutional principles of revenue allocation should discount **land mass, terrain and numbers of local government councils in favour of productivity, contribution to the federation account, population and equality of states** as the guiding principles for revenue allocation. Section 162 of the 1999 Constitution should be amended to reflect this proposal.*
5. *The federal government should check gas flaring and pollution of the Niger Delta Region by oil companies*
6. *There should be a constitutional framework to enable oil-producing communities, community development associations, town unions, youth associations, traditional rulers, non-governmental organizations (NGOs) and individual beneficiaries of derivation fund to the states to hold the governors of oil-producing states accountable for such derivation funds and all expenditures arising from them.*

State Government/House of Assembly

7. *The oil-producing state houses of assembly should legislate to set up Oil Derivation Fund Management Committees (ODFMC) which should include all persons and organizations outlined in Paragraph (6) above, a state government representative and citizens that have international integrity. They should determine projects to be executed as well as award and execute contracts.*
8. *The house of assembly in oil-producing states should make laws that will compel state governors to publish monthly how much money they get as 13 percent derivation fund from the federation account and authorize them to hand over such fund to Oil Derivation Fund Management Committee (ODFMC) that will be set up as recommended in Paragraph (7) above.*
9. *All the state governments in the Niger Delta Region should establish the Niger Delta Development Fund Initiative (NDDFI).*
10. *State governments in the Niger Delta Region should publish what they receive as oil revenue, how they spend them and the project on which they spend them.*
11. *State governments in the region should establish a website in which they should post all information on oil revenue and expenditure so that the general public can have easy access to such information on how oil revenue is managed in Nigeria and in the Niger Delta Region .*
12. *Independent auditors should be engaged by the various state governments whose responsibility it will be to carry out the proper auditing of all the states' oil revenue and expenditure. The auditors' reports should thereafter be published in the states' websites and the local media .*
13. *State houses of assembly should enact a law to guarantee free access to oil revenue and expenditure information. This will enable citizens to obtain them with ease and be informed about how their oil resources are being managed.*
14. *State governments should establish a development commission for their oil-producing areas, modeled after the Ondo State Oil Producing Area Development Commission (OSOPADEC), so as to enable citizens of the areas contribute their inputs into the disbursement of all oil revenue.*

Federal Government/Oil Companies

1. *The federal government and oil companies should release funds as at when due to NDDC and check corruption in NDDC.*
2. *The federal government and oil-producing states should implement oil laws strictly and eliminate corruption and bureaucracy in the implementation of such laws and developmental programmes.*

Civil Society?Community-based Organisation/Donor Agencies/Stakeholders

1. *The civil society community-based organisations should develop their capacities so that they can play their expected oversight role of monitoring oil revenue flows to the state; as well as undertake oil contract watch.*
2. *Donor agencies, Niger Delta Region's developments institutions and the state governments should always Co-ordinate their activities, relying always on multi-lateral stakeholders consultation and co-operation, so as to avoid duplications and wastages in policy/project outputs.*
3. *All stakeholders in the Niger Delta should work towards the establishment of a credible oil think tank which will be involved in carrying out incisive researches and the production of reports on the Niger Delta Region.*
4. *The civil society organizations working in the Niger Delta region should strengthen their collaboration and co-ordination, so as to ensure coherence in their intervention*

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Proposed Amendment To ND DC Act: An Amendment In Need Of Fumigation (Vanguard newspaper. 22nd August, 2003.)

Appendix Table 1: Population of Niger Delta States. (1998 – 2002)

	1998	1999	2000	2001	2002
Abia	2.843	2.914	2.987	3.062	3.139
Akwa Ibom	2.930	3.00	3.075	3.152	3.231
Bayelsa	2.619	2.685	2.752	2.821	2.892
Cross River	2.324	2.382	2.442	2.503	2.566
Delta	3.149	3.228	3.309	3.392	3.477
Edo	2.649	2.707	2.775	2.844	2.915
Imo	3.022	3.098	3.175	3.254	3.335
Ondo	2.302	2.359	2.418	2.478	2.539
Rivers	2.620	2.685	2.752	2.821	2.892
Total	24.450	2.685	25.685	26.327	26.986

The estimates here were based on 2.5% annual growth rate for each of the states from 1998 figures reported in Table 1. Figures for defunct Ondo and Rivers states were simply divided by 2 to obtain estimates for Bayelsa, Rivers, Ondo (and Ekiti) States.

Appendix Table 2. State Government Finances in the Niger Delta, (1998-2002).

	Gross Statuary Alloc.	VAT	Internal revenue	Grants	Total Rev.	Recurr. Exp.	Capital exp.	Extra-budgetary exp.	Total expenditure
Abia	27,910.8	4727.2	4883.9	7370.7	45158.6	28238.41	16396.9	2922.7	49558.2
Akwa Ibom	54626.4	4013.6	6562.0	6296.0	71601.2	41322.4	34339.4	3189.0	76851.0
Bayelsa	53072.6	3470.4	1863.7	6212.9	64671.8	42280.6	25780.6	2804.3	70864.9
Cross River	30895.6	3660.9	4118.0	7845.3	47470.8	25270.7	24398.9	131.9	49901.5
Delta	81579.5	5859.2	21630.8	30391.4	143587.5	74232.4	84852.4	5176.5	164261.3
Edo	25596.0	2532.1	2545.3	1295.2	24752.6	14063.2	10920.4	1198.8	6182.2
Imo	33785.4	3808.3	3948.2	14175.1	55717.0	26342.1	24992.9	2200.8	53535.8
Ondo	33569.5	3864.3	4318.4	7842.8	49609.0	32262.1	18252.6	4837.1	55351.8
Rivers	63866.2	6990.1	28078.7	2800.6	103348.9	50459.8	38807.9	6957.1	96324.8
Total	404902.0	38,926.1	77949.0	84230.0	605917.4	334471.7	2787420	29418.2	642,831.5
Total Per capita	14,737		2,885		22,453	12,394	10,329		23,821

Source: Central Bank of Nigeria Annual Report (1998 – 2002.)

Appendix: 3 (a) NDDC Road projects

1. Construction of bridge Okon, Ikot. Abasi LGA, Akwa Ibom State.
2. Gully erosion control Ukpa-Ndom Utim, Etinan L.G.A. Akwa Ibom State.
3. Road rehabilitation project Nung Oku Ikot Udo Essay Qua Iboe River, Onna L.G.A Akwa Ibom State.
4. Construction of Akpatek-Ikwe Odio Road, Akpateki-Ikwe/Odio Onna LGA, Akwa Ibom State.
5. Kalama-Sabagriea-Polaku Road Kalama-Sabagriea-Polaku, Sagbiana L.G.A. Bayelsa State.
6. Tungbo-Bulo Orua-Auglabiri Road Tungbo, Sagbama L.G.A. Bayelsa State.
7. Otuake Onuebum Road Otuake Onuebiem, Ogbia LGA Bayelsa State, Cross River State
8. Construction of new airport /Abitu Street Ibesikpo. Calabar South
9. Oiri-Olomu junction to Egodor Road with bridge and spur link to Bikorogha Burutu LGA Delta State.
10. Ibrede Iguku Road Ibrede Igbuku, Ndokwa East LGA Delta State.
11. Uti Rad Effurun, Uiwie, Delta State.
12. Oleh junction I Olomomu Road Oleh/Olomoro, Isoko South LGA Delta State.
13. Ejenesa Irhodo Ugbonaja, Ethiope West L.G.A. Delta State.
14. Road network at Delta State University Abraka, Ethiope West L.G.A. Delta State.
15. Construction of Oki Street & Drainage Warri, Warri South L.G.A, Delta State.
16. Aloba Bikorogha Egodor Ogbodobiri Road/Bridges Ughelli North/South, Burutu L.G.A. Delta State
17. Iselegu Utagbo Uno Obiaruku Road various, Ndokwa East L.G.A. Delta State.
18. Edherie Abe Road Edherie Ase, Ndokwa East L.G.A.. Delta State.
19. Aja-Etie Akpoaloka various, Warri North L.G.A. Delta State.
20. Ugbelli-Ogumene-Okpe Olomu-Ovwodokpokpo Road various, Delta State.
21. 21 construction of Ewu-Orere Road various, Ughelli South L.G.A. Delta State.
22. Mosopar/Akpobome Township Road Mosogar, Ethiope West L.G.A., Delta State.
23. Unenurhie Evwreni Radial Road Unenurhie Evwreni, Ughelli North L.G.A. Delta State.
24. Rehabilitation of East/West Ewu Road Ughelli South L.G.A., Delta State.
25. Grading of Obozogbe, Sakponba Abeighomokhua Obozogbe, various L.G.A Edo State.
26. Okwuosa-Aueshi Road Project Oguta L.G.A., Imo State.
27. Construction of Ring Road and Drainage Mmahu, Ohaji/Egbema LGA, Imo State.
28. Rumuolumeni Ogbogoro Road Rumudumeni, Obio/Akpor L.G.A. Rivers State.
29. Construction of Obite-Ede Bye-Pass Obite, Onelga L.G.A. Rivers State.
30. Construction of Eleme Ring Road Eleme, Eleme L.G.A. Rivers State.
31. Eastern Bye-pass Road Port Harcourt, Rivers State.
32. Ogingba Woje Elelenwo Road Elenlenwo, Obio-Akpo LGA, Rivers State.

33. Completion of Elele – Rumuokpe – Ogbele Road Elele, Ikwerre L.G.A., Rivers State.
34. Bridge/Drainage /baa, Emoha L.G.A, Rivers State.
35. Okogbe Ogbologbo Ochida Road Ahoada West LGA, Rivers State.
36. Construction of Ikom/National Street Mile 3 Port Harcourt, Obiaakpo LGA, Rivers State.
37. Elenlewo Akpajo Road Elenlenwo, Obio-Akpo L.G.A. Rivers State.
38. UST Abuja GRA Phase 3 Port Harcourt, Rivers State.
39. Construction of Ula-Ehuda-Odioku-Odiereke Road Odioku-Odirake, Ahoada West L.G.A, Rivers State
40. Construction of Rural and Estate Road using Zenith Road Zynie Port – Harcourt Obio-Akpo LGA. Rivers State

Appendix Table 3(b) NDDC Landing Jetty Projects

1. Rehabilitation of old landing Jetty, Twon Brass, Bayelsa State
2. Remedial works at Igbedi-Jetty, Igbedi, Kolo/Opokuma Bayelsa State.
3. Completion of Osalama Jetty, Ossiama, Southern Ijaw, Bayelsa State.
4. Yenagoa Ramp/Jetty, Yenagoa, Yenagoa, Bayelsa State
5. Jetty Project, Ukparatubu, southern Ijaw Bayelsa State.
6. Jetty Project, Ologi, Ogbia, Bayelsa State.
7. Okoloba Jetty, Okoloba, Kolo/Opokuma, Bayelsa State.
8. Construction of concrete jetty. Aleibiri, Ekoremor Bayelsa State.
9. REMEDIAL works at Kabeama Jetty, Kabeama, Sagbama, Bayelsa State.
10. Opokuma jetty, Opokuma, Kolo/Opokuma, Bayelsa State.
11. Jetty Project, Egbabele, Brass, Bayelsa State
12. Construction of Jetty, Oboibiri, Ogbia Bayelsa State.
13. Concrete landing jetty, Ikang waterfront, Akpobuyo, Akpabuyo LGA, CRS.
14. Concrete landing jetty, Ikang waterfront, Akpabuyo, Akpabuyo L.G.A., CRS.
15. Concrete landing jetty Creek Town, Odukpani L.G.A. Cross Rivers.
16. Kenghagbene Jetty, Kenghagbene. Warri South West, Delta State
17. Oboro Jetty, Oboro Burutu, Delta State.
18. Ugbogbodu jetty, Ugbogodu, Warri North, Delta State.
19. Okerenkoko jetty, Okerenkoko, Warri South West Delta State.
20. Ojobo Jetty, Ojobo, Bomadi, Delta State.
21. Ogoritseduwa jetty, Ogoritsediwa, Warri North Delta State
22. Azama Jetty, Azama, Warri South West, Delta State.
23. Ijasa Jetty, Ijasa, Warri South West, Delta State.
24. Ode Itsekiri Jetty, Ode Itsekiri, Warri South Delta State
25. Ogbobagbene Jetty, Dale Keta, Warri North, Delta State.
26. Ekeremon Zion Jetty, Ekeremor Zion Warri South West, Delta State.
27. Deleketa Jetty, Daleketa, Warri North, Delta State
28. Ogbe Ijaw water jetty, Ogbe Ijaw, Warri south Delta State.
29. Forcados Hospital jetty, Forcados, Burutu, Delta State.
30. Obaghoru Jetty, Obaghoru, Warri North, Delta State
31. Koko Jetty, Koko, Warri North, Delta State
32. Agoloma Jetty, Agoloma, Bomadi, Delta State
33. Ajoki Jetty, Ajoki Warri North, Delta State
34. Completion of concrete Jetty, Agerige, Ilaje, LGA Ondo State.
35. Concrete landing jetty Ugbonia Ilaje LGA Ondo State.
36. Completion of concrete jetty Aiyetoro, Ilaje L.G.A. Ondo State.
37. Wooden foot Bridge Ajejunie, Ilaje L.G.A. Ondo State.
38. Concrete landing jetty Arogbo Ese-Odo L.G.A. Ondo State.
39. Concrete Jetty Ori-Oke/Iwamimo Ilaje L.G.A. Ondo State.
40. Concrete landing jetty Ode-Ugbo, Ilaje L.G.A. Ondo State.
41. Completion of concrete jetty Igbokoda, Ilaje L.G.A. Ondo State.

Source: "NDDC in Action: Roads, Jetties and Water Schemes" The Guardian (Lagos) June 25, P.47.

- *Award of contracts for the construction of 42 schools.*
- *Award of contracts for the construction of health centres at Zion-Pepe, Obe Rebiminu and Orioke-Iwamimo (only one or two health centres existed in the oil - producing areas prior to OSOPADEC)*
- *Award of contracts for construction of jetties at Odun – Igo and Awoye.*
- *Replacement of damaged wooden electric poles at Ugbonla with 180 concrete poles and electric cables.*
- *Award of contract for the construction of Governor’s Office Annex at Molutehin.*
- *Construction of 17 – room OSOPADEC Office Complex at Akure.*
- *Construction of OSOPADEC Guest House at Akure.*
- *Acquisition and rehabilitation of OSOPADEC Area Office at Igbokoda.*
- *Purchase of two project boats.*
- *Construction of township roads at Igbokoda and Makun – Atijere – Aboto Road.*
- *Sand filling of Ugbo, Ugbonla and Mahin.*
- *Approval of the sum of N 20million for disbursement on skill acquisition / empowerment schemes.*
- *Approval of staff housing and vehicle loans schemes.*
- *Provision of additional 500 housing units in 2003 and 4 water supply schemes at Molutehin, Obe Rewoye, Abetobo and Ogogoro.*

Source: (i) Text of address presented by the Executive Secretary of OSOPADEC, Mr. Ajose Kudehinbu, in a press conference at Akure, December 9, 2002.
(ii) Brief on the activities of OSOPADEC.