

**EXAMINATION OF THE LEGAL AND INSTITUTIONAL  
FRAMEWORK FOR THE PROMOTION OF SUSTAINABLE  
DEVELOPMENT IN THE NIGER DELTA REGION.**

**BY**

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ABRAKA**

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## **DECLARATION**

I, SUOKIRI, Jackson Ebi declare that apart from references to other people's work which I have duly acknowledged, the entire work is a product of my personal research and that this work has neither in whole nor in part been presented for another degree elsewhere.

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**CERTIFICATION**

This is to certify that this thesis was commenced and completed by SUOKIRI, Jackson Ebi, in partial fulfilment of the requirements for the award of Doctor of Philosophy (Ph.D) degree in Law of the Delta State University.

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## **DEDICATION**

This thesis is dedicated to my beloved father - Late Chief Sondu Sunday Suokiri Igbon, an avowed traditionalist and orator highly versed in the customary/native laws of his Kolokuma/Opokuma clans in present day Kolokuma/Opokuma Local Government Area of Bayelsa State; a virtue that prompted the British colonial masters of Nigeria to appoint him as a judge of the defunct Kolokuma/Opokuma native court in 1956.

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## LIST OF ABBREVIATIONS

1. AG	Attorney General
2. AIDS	Acquired Immune Deficiency Syndrome
3. BMW	Bavarian Motor Works
4. BRACED	Acronym for Bayelsa, Rivers, Akwa-Ibom, Cross Rivers, Edo and Delta States.
5. CAC	Corporate Affairs Commission
6. CCF	Country Cooperation Framework
7. COVID	Corona Virus Disease
8. DDR	Disarmament, Decommissioning and Rehabilitation
9. ECOWAS	Economic Community of West African States
10. ED	Edited
11. EIA	Environmental Impact Assessment
12. ERA	Environmental Rights Action
13. EU	European Union
14. FRN	Federal Republic of Nigeria
15. GDP	Gross Domestic Product
16. GNP	Gross National Product
17. HIV	Human Immuno-Deficiency Syndrome
18. INC	Ijaw National Congress
19. ICESCR	International Covenant on Economic, Social and Cultural Rights
20. ICPC	Independent Corrupt Practices Commission
21. ICT	Information and Communication Technology

22. IUNCNNR	International Union of Conservation of Nature and Natural Resources
23. IYC	Ijaw Youths Council
24. JCA	Justice of the Court Appeal
25. JLCCR	Journal of Law and Conflict Resolution.
26. JMTF	Joint Military Task Force
27. JSC	Justice of the Supreme Court
28. JTF	Joint Task Force
29. LEEDS	Local Economic Employment and Development Strategies
30. LGAs	Local Government Areas
31. LTD	Limited
32. MDGs	Millennium Development Goals
33. MEND	Movement for the Emancipation of the Niger Delta
34. MKO	Moshood Kashimawo Olawole
35. MOSIEND	Movement for the Survival of the Ijaw Ethnic Nationality
36. MOSOP	Movement for the Survival of the Ogoni People
37. M.Sc.	Master of Science
38. MSEs	Micro and Small Scale Enterprises
39. MTN	Mobile Telephone Network
40. NAOC	Nigerian Agip Oil Company
41. NDBDA	Niger Delta Basin Development Authority
42. NDDB	Niger Delta Development Board
43. NDDC	Niger Delta Development Commission.

44. NDFF	Niger Delta Freedom Fighters
45. NDPVF	Niger Delta Peoples Volunteer Force
46. NDRBDA	Niger Delta River Basin Development Authority
47. NDRDMP	Niger Delta Region Development Master Plan
48. NDVF	Niger Delta Volunteer Force
49. NEEDS	National Economic Employment and Development Strategies
50. NEPA	National Environmental Policy Act
51. NESREA	National Environment Standards and Regulations Enforcement Agency
52. NGOs	Non-Governmental Organisations
53. NHF	National Housing Fund
54. NMRC	Nigerian Mortgage Refinance Company
55. NPA	Nigeria Ports Authority
56. NUPENG	National Union of Petroleum and Natural Gas Workers
57. NYCOP	National Youth Congress of Ogoni People
58. OMPADEC	Oil Mineral Producing Areas Development Commission
59. OPCs	Oil Producing Communities
60. OPEC	Organisation of Petroleum Exporting Countries
61. OPM	Oron Peoples Movement
62. Ors	Others
63. PACAC	Presidential Advisory Committee Against Corruption
64. PAP	Presidential Amnesty Programme
65. PDP	Peoples Democratic Party

66. PENGASSAN	Petroleum and Natural Gas Senior Staff Association of Nigeria
67. PEPA	Federal Environment Protection Agency
68. Ph.D	Doctor of Philosophy
69. PIB	Petroleum Industry Bill
70. PTDF	Petroleum Technology Development Fund
71. QIP	Quick Impact Projects
72. RDSP	Rural Development Service Programme
73. RNC	Royal Niger Company
74. SDGs	Sustainable Development Goals
75. SEEDS	State Economic Employment and Development Strategies
76. SERAP	Social-Economic Right and Accountability Project
77. SE4ALL	Sustainable Energy for All
78. SPDC	Shell Petroleum Development Company
79. TCND	Technical Committee on the Niger Delta
80. TSKJ	Technip Snamprogetti Kellog JGC
81. UBE	Universal Basic Education
82. UN	United Nations
83. UNCED	United Nations Conference on Environment and Development
84. UNCHD	United Nations Conference on Human Development
85. UNDP	United Nations Development Programme
86. UNEP	United Nations Environmental Programme
87. UNO	United Nations Organisation

88. USA	United States of America
89. USD	United States Dollar
90. V	Versus
91. WCED	World Commission on Environment and Development
92. WSSD	World Summit on Sustainable Development
93. WWF	World Wild Fund

## ABSTRACT

In order to promote the social, economic and environmental growth and sustainability of the Niger Delta Region of Nigeria, the Federal Government enacted many Acts establishing various institutions for the achievement of that purpose, which are referred to as the legal and institutional framework of this study. The problem that gave impetus to this study is to examine why the Niger Delta Region of Nigeria remain under-developed despite the Federal Government of Nigeria's effort to ensure that the region is developed by the establishment and enactment of various legal and institutional framework that will sustain development in the region. The objective of the study is to painstakingly examine the concept of sustainable development within the context of the institutional and legal framework put in place in the Niger Delta Region by successive governments in Nigeria, to promote sustainable growth and determine whether the said institutional, legal and policy framework is effectively promoting sustainable growth in the region. To achieve this aim, the researcher adopted the doctrinal research method. This method involves the retrieval of all relevant source materials from both primary and secondary sources dealing with the subject matter under review. In the course of the research, the researcher observed that the NDDC, the Presidential Amnesty Programme for ex-Niger Delta militants and the Ministry of Niger Delta Affairs are created to pursue and indeed achieve some level of sustainable growth and better standard of living for the people in the region. However, many projects awarded by the agencies to promote sustainable development in the region are abandoned midway or not started at all. There is absence of clearly defined legal framework enabling some of the agencies and/or no guidelines for the award of contracts executed by the agencies. Based on the findings, some recommendations are made which include but not limited to the following, (i) The laws enabling the institutions pursuing sustainable development in the Niger Delta region should be amended to provide for the appointment of technocrats as board members, managers and administrators. (ii) The personnel or organs responsible for supervising and monitoring of the projects executed by the development agencies in the Niger Delta should redouble their efforts. (iii) Reports of committees or panels monitoring, auditing or probing abandoned projects or cases of mismanagement of funds by any development institutions pursuing sustainable development in the Niger Delta Region, should be made public. To the best of the researcher's knowledge, the study has contributed to knowledge in that, it has: (i) shown the need for the socio-economic provisions in Chapter Two of the Nigerian constitution to be made justiciable for the promotion of sustainable development in the Niger Delta Region; (ii) has also established the fact that through Acts of the National Assembly the provisions of Chapter Two of the Nigerian Constitution 1999, particularly section 16 (2) (d) thereof could be implemented for the general wellbeing of the people of the Niger Delta Region.



# CHAPTER ONE

## INTRODUCTION

### 1.1 Background to the Study

The research is mainly an examination of the legal and institutional framework for the promotion of sustainable development in the Niger Delta Region. Geographically speaking, the Niger Delta Region is situated at the South-South Coast line of Nigeria and judging from its extant legal definition, nine<sup>1</sup> out of the thirty-six states in the Federal Republic of Nigeria constitute the current Niger Delta Region. It has been contended that the region has an area of 70,000 square kilometers or thereabout in terms of size and has been described as the third largest wetland in the world<sup>2</sup>. Interestingly, in 1995 the General Assembly of the United Nations added 200 nautical miles to the territory of the Region<sup>3</sup>. Viewed from the angle of its terrain, the region is traversed and crisscrossed by a large number of river-lets, streams, canals and creeks comprising both mangroves and fresh water forests<sup>4</sup>.

The population of the Region is currently put at about 31 million inhabitants shared among 40 ethnic groups, speaking about 250 different dialects<sup>5</sup>. The foregoing notwithstanding, it is stressed that the geographical area called Niger Delta Region is different from the South-South geo-political zone as regards their geographical and political compositions in Nigeria. For instance, whereas the South-South geo-political zone is made up of six States to wit, Akwa Ibom, Bayelsa, Cross River, Delta, Edo and Rivers States otherwise known as the

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<sup>1</sup> Section 30, Niger Delta Development Commission (Establishment, etc) Act, 2000

<sup>2</sup> S.E. Abila, et al. 'Sustainable Development Issues in the Niger Delta' in O.F. Emiri, et al (ed) '*Law and Petroleum Industry in Nigeria: Current Challenges*', *Essays in Honour of Justice Kate Abiri* (Malthouse Press. Ltd 2009) Pp221-273.

<sup>3</sup> A. Etekpe, 'The Niger Delta Development Commission (NDDC) and Peace Building in the Niger Delta'. National Development Studies, No 1, April, 2009.

<sup>4</sup> Niger Delta Region Development Master plan: The Niger Delta Region; land and People (2006) p53: accessed 10 October, 2016 from the Internet.

<sup>5</sup> *ibid*

BRACED States<sup>6</sup>, the Niger Delta Region as currently defined in section 30 of the Niger Delta Development Commission (Establishment etc) Act, 2000, comprises nine oil producing States, namely – Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Abia, Imo, Ondo and Rivers States.

In terms of its environment, the region is endowed with many natural resources including oil and gas which are the main stay of the Nigerian economy. It emphasizes that about 2.4 million barrels of crude oil is produced daily from the region since 2004<sup>7</sup>. Paradoxically, the region suffers monumental development challenges which have continued to undermine its economic, social and environmental growth. The prevalent developmental issues confronting the region include but not limited to: (i) neglected rural settlement; (ii) absence of life sustaining infrastructure like electricity; good roads, health and educational facilities; (iii) high poverty rate; (iv) youth empowerment; (v) massive environmental degradation; (vi) non diversification of the rural economy; (vii) reckless human and environmental right abuse; (viii) lack of effective waste management scheme; (ix) rampaging flood, erosion and deforestation<sup>8</sup>, etcetera. Ayawei graphically captures the deplorable socio-economic and environmental condition in the Niger Delta Region when he writes thus:

In the year 1999, Human Right findings noted that the gross national income per capital in the Niger Delta was below the national average of \$260, while education levels were similarly below the national average---. A recent study tour of nine oil bearing communities in three states of the Niger Delta conducted by Kiikpoye and others to (B – Dere, Kpean and Bodo in Rivers State), (Oporoza,

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<sup>6</sup> D. M. J. Fubara, (Ed) 'The Green Niger Delta Environment' being a position paper compiled and submitted by the BRACED COMMISSION to the Rio 20 Submit of the Conference on Sustainable Development, March 2013, p5.

<sup>7</sup> A. Etekpe, 'Peace and Development in Nigeria: The Amnesty Experience in the Niger Delta of Nigeria'. Journal of Law and Conflict Resolution (2012) 4 (6) JLCR p12. <<http://www.academicjournals.org/JLCCR>> accessed 14 October, 2017.

<sup>8</sup> B. Okaba, 'Petroleum Law, The Nigerian State and the cases of Development in the Niger Delta Region: Trends and challenges and the Way Forward', in J. Adegoke, et al (ed) '*The Nigerian State, Oil Industry and The Niger Delta*': *Proceedings of The First International Conference on the Nigerian State, Oil Industry and the Niger Delta*, held at Yenagoa, Bayelsa, Nigeria, March 11-13, 2008 (Zelon Integrated Services Limited, 2008) Pp19-35.

Benikurukuru and Okpai – Oluchi in Delta state) and (Imiringi and Gbarantoru in Bayelsa state) discovered more worrisome findings. Kpean in Ogoni land showed among other things that the affected oil bearing communities use drinking water in the same streams that also serve as lavatories with life expectancy on low side.<sup>9</sup>

The above passage, without doubt, raises serious sustainable development issues which border on the social, economic and environmental well-being of the Niger Delta people. The aptness of this assertion finds expression in the realisation that the definition of sustainable development as ‘the development that meets the need of the present without compromising the ability of future generations to meet their own needs’,<sup>10</sup> presupposes that the principles and goals enunciated under the concept are targeted primarily at ameliorating the socio-economic and environmental needs of humanity, the people of Niger Delta inclusive.

Talking about the socio-economic dimension of sustainable development, it has been explained to mean the right to adequate standard of living which include the rights to food, work, health, water, life and human dignity, housing, clean and healthy environment and economic and social development<sup>11</sup>. Without more, these are the basic needs of every human life and where they are non-existent, conflict is bound to ensue and threaten the peace and security of the people. This is the typical scenario in the Niger Delta Region for the past thirty years or thereabout, as reflected by the incessant militancy and insurgency crises in the region.

The Federal Government of Nigeria in order to enthrone peace and security with a view to effecting accelerated growth and sustainable development in the Niger Delta Region, has

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<sup>9</sup> P. Ayawei, ‘The Challenges of Sustainable Development in the Niger Delta’.  
<<https://www.linkedin.com/pulse/challenge-sustainabledevelopment-nigerdelta-prof-prosper-ayawei>>  
accessed 2 February, 2017.

<sup>10</sup> The World Commission on Environment and Development (WCED) Report (1987) otherwise tagged ‘Our Common future’ quoted in Atsegbua L. et al *Environmental Law in Nigeria: Theory and Practice* (2<sup>nd</sup> Edn, Ambik Press 2010) 73.

<sup>11</sup> *Socio-Economic Right and Accountability Project (SERAP) v Republic of Nigeria*. Suit No. ECW/CCJ/APP/08/09, delivered on 10th December, 2010.

over the years, established various interventionist agencies, including: (i) the Niger Delta Development Commission, (ii) the Presidential Amnesty Programme for Ex-Niger Delta Militants (PAP) and (iii) the Ministry of Niger Delta Affairs to address the sustainable Development needs of the Niger Delta people.

This research therefore seeks to painstakingly examine the programmes/projects pursued by the Niger Delta Development Commission, the Presidential Amnesty Programme for Ex-Niger Delta Militants and the Ministry of Niger Delta Affairs, with a view to determining how, as development institutions, they have contributed to the realization of the peoples' sustainable development aspirations in the region.

### **1.2 Statement of the Problem.**

It is without gainsaying that the Niger Delta Region in South-South Nigeria, besides its complex geographical terrain, is also in dire need of socio-economic and infrastructural development which is the basis for providing the basic necessities of life for the general well-being of the Niger Delta people. This paucity of development, no doubt, has continued to instigate violent protest and youth restiveness in the region. The Federal Government of Nigeria in responding to these crises and in order to enthrone peace and sustainable development in the region, has at different times, enacted various Acts which establish several institutions to address the problems of development in the region. This study therefore seeks to examine the legal and institutional framework of the various agencies currently pursuing the promotion of sustainable development in the region and through critical examination, determine if the institutions are delivering on their mandates or where lapses are observed make appropriate criticism for improvement.

### **1.3 Aim or Objective of the study**

The aim or objective of this study is to painstakingly examine the concept of sustainable development within the context of the institutional and legal framework put in place in the Niger Delta Region by successive governments in Nigeria, to promote sustainable growth and determine whether the said institutional, legal and policy framework is effectively promoting sustainable development in the region.

#### **1.4 Specific Objectives of the study**

The specific objectives of the research are as follows:

- i. to critically examine the concept of sustainable development and its principles/goals for the socio-economic and environmental well-being of the people in the region.
- ii. to identify and generally examine the legal and institutional framework established by the Federal Government of Nigeria for the promotion of sustainable development in the Niger Delta.
- iii. to appraise the activities of the various institutions for development established by the Federal Government in the Niger Delta and determine whether they are actually promoting sustainable development in the region.
- iv. to make recommendations on how sustainable development can promote environmental protection and enhance general development in the Niger Delta Region.

#### **1.5 Significance of the study**

The research is significant in many ways. However, the few points highlighted below appear to be more outstanding and they synchronize more perfectly with the purpose of this research.

- i. It is significant because it seeks to find solutions to the needs of human beings.
- ii. It raises critical existential issues, discusses same and suggests ways such problems could be addressed.

- iii. It brings the socio-economic and environmental challenges confronting the Niger Delta people to the front burner of public discourse.
- iv. It shows how law as instrument of social engineering can be used to effect development in society.
- v. It exposes the strength and weakness of the Niger Delta Development Commission, the Presidential Amnesty Programmes for Ex-Niger Delta Militants, and the Ministry of Niger Delta Affairs as institutions for Sustainable Development in the Niger Delta Region.
- vi. It is significant because the recommendations made in this research will help to enrich the way future interventionist agencies, are created to promote Sustainable Development in the country.

## **1.6 Materials and Methods**

To achieve the aim of this research, the researcher adopted the doctrinal research method. This method involves the retrieval of all relevant source materials from both primary and secondary sources dealing with the subject matter under review.

## **1.7 Scope and limitations of the study**

The study, as evident from the caption, seeks to examine the legal and institutional framework for the promotion of Sustainable Development in the Niger Delta Region. The scope of the study is confined to the critical examination of the enabling laws that created the Niger Delta Development Commission, the Presidential Amnesty Programme for Ex-Niger Delta Militants and the Ministry of Niger Delta Affairs. Besides, an examination of the sustainable development viability of the programmes/projects pursued by these institutions in the Niger Delta Region also form part of the scope of this research. Relating to the limitations of the study, it is noted here that the study covers the entire Niger Delta Region as defined by section 30 of the Niger Delta Development Commission (Establishment, etc) Act 2000,

maintaining however that emphasis would be placed more on the geographical area identified by the Willink Commission's Report of 1958 and gazetted by the then Governor General of Nigeria -Sir James Robertson as Legal Notice No. 192 of 1959, which definition of Niger Delta is currently occupied by Bayelsa, Delta and Rivers States in Nigeria.

## **1.8 Literature Review**

The phrase 'Literature Review' has generally been described as the purpose to identify available literature on a chosen topic for critical review in order to properly locate and address the research problem in its context.<sup>12</sup> Thus, given that this research topic borders primarily on man and his environment, particularly the Niger Delta environment and the various institutional, legal and policy framework successive governments in Nigeria have put in place to promote and enhance sustainable development in the region, the under-listed textbooks and journal articles related to the topic were read and reviewed by the researcher.

### **i. Ecology: Concept, Politics and Legislation**

The book<sup>13</sup> with the above title is a compendium containing about twenty four different articles bordering on the human environment. It is made up of seven hundred pages divided among twenty four Chapters. Although all the twenty four Chapters discuss different environmental issues that have the capacity to influence the sustainable development status of a society, the author's discussion of Chapter Eighteen thereof titled 'Human Right: Environment and sustainable development in Nigeria' written by Akujobi, specifically discusses how human rights can promote the Sustainable Development of an environment or region. Principally, the author argues that the right to clean environment is not only vital for

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<sup>12</sup> M. O. U. Gasiokwu, maintained that Doctrinal research is the research into law as a normative science, that is, it is a science which lays down norms and standards for human behaviour in specified situation or situations enforceable through the sanctions of the state, emphasizing that it is this normative character that distinguishes law from other related disciplines of social sciences. It is the research into law as it stands in the books. M. O. U. Gasiokwu, *Legal Research and Methodology the A – Z of Writing Theses and Dissertations in a Nutshell* (Chenglo Limited 2006) p14.

<sup>13</sup> M. O. U. Gasiokwu, et al (ed) *Ecology, Concept, Politics and Legislation* (Chenglo Limited 2015) p15

the sustainable management of the natural resources, but also necessary for the effective promotion of Sustainable Development in an environment.

Contending further, she opines that environmental issues such as lack of control of river pollution, irresponsible construction of dams and barricades, lack of access to drinking water free from toxins or other contaminants, increased use of agro-chemical/pesticides, storage and transportation of dangerous goods, degradation of marine and coastal resources (heavy mental contamination by industrial affluent), loss of coastal habit and deforestation, land degradation, hazardous waste, waste disposal and air pollution, domestic refuse etcetera, are some of the environmental problems that have continued to impede the attainment of the right to clean environment in Nigeria. Adumbrating on the link between the right to clean environment and the right to life, the author says that the right to life implies that there should be an absence of pollution and natural hazards in the environment, adding that the afore-listed factors have the capacity of breaching the right to clean environment and undermine the sustainable management of natural resources conducive for the promotion of Sustainable Development.

Fundamentally, this work is defective in the sense that it did not discuss how the right to clean environment could be made justiciable and enforced as a fundamental right in Nigeria. It is also noted that with respect to the human right and sustainable development argument in Nigeria which borders on the justiciability and non-justiciability question of Chapter Four and Chapter Two of the Constitution of the Federal Republic of Nigeria 1999, dealing with the fundamental human rights and the socio-economic rights, the author failed to effectively resolve this crisis notwithstanding the fact that the courts have settled same in the case of *Gbemre v Shell Petroleum Development Company & the Nigerian Petroleum*



*Corporation*<sup>14</sup>. The author of the article also failed to effectively capture the despicable human right abuses in the region, which result primarily from the indigenous Niger Delta people's agitation for greater environmental rights.

## **ii. Environmental Law and Policy of Petroleum Development: Strategies and Mechanisms for Sustainable Management in Africa.**

This book authored by Worika contains eight chapters and extensively discusses environmental issues which have the potential of impacting negatively on the promotion of sustainable environment in a region or country. It is made up of three hundred and eighty three pages which include the main discussion and bibliography. Salient environmental issues like oil exploration, exploitation and pollution form the bulk of discussion in this book. However, Worika in Chapter Six of his book<sup>15</sup> captioned "sustainable strategies and mechanisms for environmental development" discussed the issue of implementation, compliance and the enforcement of environmental law and policy of petroleum development in Africa. It is nonetheless observed that the author only adopted a general approach in his treatment of the environmental issues discussed in this book, citing examples from the United Kingdom, Algeria, Angola, Libya, and Nigeria and other countries to illustrate his points. Apparently, the author left out and did not consider the deplorable environmental conditions in the Niger Delta and how the same affects the Sustainable Development and environmental growth in the region. More importantly, it is glaring that this work failed to acknowledge the absence of a single legislation comprehensively dealing with oil pollution in Nigeria especially as it borders on the payment of compensation. He failed to realize and as evident in the work, the principles for payment of compensation are in most cases based on the English common law,

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<sup>14</sup> *Gbemre v Shell Petroleum Development Company & the Nigerian Petroleum Corporation (2005) AHRLR (151)NgHC2005*

<sup>15</sup>Worika, I. L, 'Environmental Law & Policy of Petroleum: Strategies and Mechanism for Sustainable Management in Africa,.' (Gift – Prints Associates, 2003) Pp217 – 278.

which are technical and often frustrate good claims. These facts apparently defeat the promotion of sustainable development in an environment and the case of Niger Delta is no exemption.

**iii. Law and Petroleum Industry in Nigeria: Current Challenges (Essays in Honour of Justice Kate Abiri)**

The book with the above caption contains twenty articles written by various scholars. The book<sup>16</sup> is divided into three parts namely parts one, two and three. Whereas part one contains articles bordering on the National Environmental Standards and Regulations Enforcement Agency Act, 2007 (frame work and challenges); part two comprises of articles touching on Environmental degradation and compensation; while part three deals with Human Rights and environmental protection. In all, the entire book has twenty chapters spreading over three hundred and eighty seven pages. Interestingly, Chapter Thirteen of the book elaborately discussed sustainable development issues in the Niger Delta, being an article written by the duo of Abila and Derri. In the article, the authors effectively discussed the complex geographical landscape and fragile ecology of the Niger Delta Region, pointing out that because of oil exploration and exploitation activities of multinational companies coupled with the many rivers, creeks, lakes, large mangrove forest, the Niger Delta Region is an environmental disaster. They then discussed various schemes the Federal Government has put in place in the region to promote sustainable development. But rather unfortunately, the authors failed to capture the presidential Amnesty Programme for the Rehabilitation of Niger Delta ex-militants, the efforts made by UBE and MDGs Programmes, the creation of the Niger Delta Ministry in their discussion of various interventionist schemes the Federal Government has put in place to enhance sustainable development in the Niger Delta Region.

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<sup>16</sup> S. E. Abila, et al 'Sustainable Development Issues in the Niger Delta' in Emiri O. F. et al (Ed) *Law and Petroleum in Nigeria: Current Challenges (Essays in Honour of Justice Kate Abiri)*. (Lagos Malt House Press Ltd 2009) Pp229 – 274

#### **iv. Environmental Impact Assessment for Sustainable Development: The Nigerian Perspective**

Without doubt, this is one of the most authoritative books on the treatment of Environmental Impact Assessment and its relationship with Sustainable Development in Nigeria. Essentially, the book<sup>17</sup> contains six hundred and fifty eight pages divided among seventeen chapters, name and subject index. The entire book discusses various aspects of environmental Impact Assessment. The author specifically devoted Chapter Twelve of the book to discuss the synergy between environmental Impact Assessment and Sustainable Development, stressing that 'EIA in its generic meaning includes impact assessment work such as public participation or involvement, screening, scoping, impact identification, prediction, monitoring and evaluation of any project proposed to be constructed in a community, maintaining that it owes its origin from the National Environmental Policy Act (NEPA) of 1969 in the USA'<sup>18</sup>. Furthering, the author said whereas, the core principles of Sustainable Development are directed at promoting and improving the general quality of life through development; Environmental Impact Assessment (EIA) insists on the need to carry out a survey at the initial stage of the developmental project so as to identify and where possible, curtail the environmental hazards that might befall the community following the construction of the project<sup>19</sup>. Notwithstanding the foregoing, it is observed that the author over concentrated on foreign countries in his discourse of the impact of EIA on sustainable development. Fundamentally, nothing is said about the Niger Delta with respect to the need for the observance of environmental Impact Assessment ideals, given the very complex terrain and the high volume of construction work going on in the region.

#### **v. Law of Environmental Protection**

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<sup>17</sup> J.C. Nwafor, '*Environmental Impact Assessment for Sustainable Development: The Nigerian Prospective*' (El Demak Publishers 2006).

<sup>18</sup> *ibid* Pp395 – 401

<sup>19</sup> *ibid* Pp403 – 412

This book<sup>20</sup> contains nine hundred and eighty eight pages and subdivided into seven chapters and a lengthy appendix. This book is an elaborate commentary on different environmental issues, to wit; national policy on environment, land resources protection, federal environmental protection agency, air resources protection, water resources protection agency, and the control of hazard waste. This comprehensive environmental work relates to the topic under research, but however, defective in many ways. First, it did not discuss the concept of sustainable development and the despicable Niger Delta Region environment. Perhaps the only area this book appears to be related to this research topic is the author's discussion of the right to clean environment and environmental protection in the country.

Unfortunately, even this argument is not backed up by any constitutional provision or case law. This is because this book was written earlier than the promulgation of the Constitution of the Federal Republic of Nigeria 1999 and when section 20 came into existence as a constitutional provision. Besides, even the legal authorities she cited to illustrate the importance of having the right to clean environment and healthy human life are taken from international law and treaties on human life. Besides, her discussion of right to clean environment as a derivative from the right to life as contained in Chapter Four of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is poor and lacks in-depth analysis. This is because the right to clean environment is not expressly guaranteed among the fundamental rights in the Constitution of the Federal Republic of Nigeria 1999, a development that has attracted severe criticism from many writers and commentators in the country. It would have therefore been proper if she had made her argument for the right to clean environment, health and well-being of the citizens in the country as discussed under the caption "National policy on environment" in her book more concrete and less elusive.

## **vi. The Impact of Oil on a Developing Country: A Case of Nigeria**

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<sup>20</sup> M. T. Okorodudu – Fubara, *‘Law of Environmental Protection’* (Kenbion Press Ltd, 1998) Pp208 – 216.

This book<sup>21</sup> discusses the exploration and exploitation of crude oil and its impact on developing countries in Africa like Algeria, Angola, Benin, Cameroon, Congo, Egypt, Libya, Nigeria etc. It has two hundred and ninety six pages that are shared among eight chapters, tables of petroleum production per country, bibliography and index. Although, this book discusses various environmental issues in Nigeria, Chapter One thereof titled ‘the problems confronting oil producing areas in Nigeria’ appears to be the most relevant to this research. It deals with the partnership between the oil producing companies and the government on the one hand, and how that partnership has impacted on the population of the oil producing areas as regards their growth and development in terms of education, health, housing, power, roads, water and population on the other hand. Admitted that, the foregoing are some of the important variables that affect the promotion of Sustainable Development of an environment, it is however noted that his discussion of oil-induced socio-infrastructure development in the Niger Delta is too scanty and over generalized; as he failed to discuss the practical and precise developmental issues in the Niger Delta Region like the establishment of the various interventionist schemes to boost environmental protection and sustainable development in the region. Importantly, the book is due for review to bring its content at par with the current oil—instigated developmental-realities in the Niger Delta and Nigeria in general; given that it was written since 1990 and as a consequence, so many current environmental developments in the Niger Delta and elsewhere in Nigeria to promote sustainable development are not contained in it.

## **vii. The Law of Oil Pollution and Environmental Restoration, A Comparative Review**

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<sup>21</sup> A. A. Ikien, *‘The Impact of Oil on a Developing Country’: A case of Nigeria* (Samadex Printing Work 1991) Pp 44 – 51

This book<sup>22</sup> focuses on environmental pollution caused by oil exploration activities and spill. Besides that, this book also discusses the law relating to the restoration of an environment whenever oil pollution or spill occurs. Basically, the book comprises eleven chapters running from pages one to five hundred and twenty three, while pages five hundred and twenty four to five hundred and thirty three thereof contain annexure and indices. Appraising the impact of oil pollution and spill in the Niger Delta, the author contends that the combined impact of oil pollution and spill has resulted to human health hazards and the general destruction of biodiversity in their natural habitats. To this end, he lamented that failed policies on the part of government and stakeholders to frontally tackle and curb the frequent cases of oil pollution has resulted to the absence of basic developmental infrastructure in the region such as good road network, electricity, portable drinking water, health services, quality educational facilities etc. It is however noted that the author only elaborately discussed the legal aspect of environmental restoration but did not acknowledge the efforts made by government, oil companies and international agencies to enhance the physical development of polluted areas in the Niger Delta by cleaning such polluted environment as currently done in the Ogoni clean-up programme.

#### **viii. Environmental Protection Law**

In terms of content, this book<sup>23</sup> has 21 mini chapters and an index which spread through 261 pages. It raises various environmental issues which include: the meaning of environment, power to legislate on environmental protection in Nigeria, pollution, biodiversity. Endangered animal species and the law, legal regulation of wastes, gas flaring, town planning, environmental impact assessment, the Niger Delta Development Commission and environmental concerns etc. Though the concept of sustainable development is not expressly

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<sup>22</sup> O. Fagbohun, *'The Law of Pollution and Environmental Restoration, A Comparative Review'* (Odade Publishers, 2010) Pp171 – 175

<sup>23</sup> I. Ehighelua, *'Environmental Protection Law'* (New Pages Publishing Co. 2007). Pp63 – 66

discussed in this book, the Niger Delta Development Commission, being one of the interventionist schemes the Federal Government has established to promote Sustainable Development in the Niger Delta is discussed in chapter 21 of the book. Expatriating, the author highlighted the environmental problems in the Niger Delta to include: (a) pollution of the air and water in the Niger Delta by oil exploration and exploitation activities, (b) the indiscriminate harvesting of timbers which has caused deforestation, noise pollution, greenhouse effect, unsanitary living, over population and poverty in the Niger Delta and (c) floods, erosion, siltation, swampy terrain and water hyacinth etc. in the region. The aforesaid notwithstanding, it is clear that besides not discussing the environmental issues in detail, the author's discussion of the NDDC Commission appears too sketchy and peripheral. It only talked about the functions, powers and sources of finance for the commission. The achievements and challenges of the commission are not discussed. That apart, other important interventionist schemes the Federal Government and International Organizations have embarked upon to promote and enhance Sustainable Development in the region like the OMPADEC BOARD. The NDBDA the Niger Delta Ministry etcetera are not also captured in the book.

#### **ix. Environmental Impact Assessment-Law and Practice**

The central issue discussed in this book<sup>24</sup> is Environmental Impact Assessment and its practice in Europe, particularly in the United Kingdom. Essentially, this book contains 547 pages comprising 9 chapters, appendices and index. Giving a general overview of the subject matter of the book, the author argued that the European courts now not only see Environmental Impact Assessment as a technical means of assisting decision making on environmental management, but also see it as an important guarantee of the domestic right of the public to be informed about the potential environmental consequences of decisions which

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<sup>24</sup> S. Thomans, et al 'Environmental Impact Assessment Law and Practice' (Lexis Mexis Uk, 2003). Pp25 – 27

may affect them or their surroundings, to understand the implications of those effects and how they may be avoided or mitigated; and to participate in the process by expressing their own views. In all, granted that the various environmental issues discussed in the book are important for enhancing the sustainable development of an environment, the concept of Sustainable Development is not categorically discussed in this book. Further that, it is noted that this book is based exclusively on the environmental Impact Assessment practice in Europe and therefore does not contain anything concerning the Nigerian environment, talk less of the Niger Delta Region.

#### **x. Politics of International Environmental Relations**

This book<sup>25</sup> comprises five chapters and unarguably one of the most authoritative commentaries on environmental issues in Nigeria. It contains one hundred and seventy four pages and discusses issues such as environment, population and poverty, environmental degradation, protection and control etcetera. Adumbrating on the notion of environmental degradation in Chapter Two of the book, it is pointed out that pollution has caused tremendous negative impact on the human environment which has resulted to its degradation, maintaining that it has equally caused the following hazards for man: (i) health hazards (ii) global warming, (iii) deforestation (iv) water pollution, (v) desertification and (vi) erosion. Laudable as the content of this book may appear, it is pointedly acknowledged that neither the concept of Sustainable Development nor the Niger Delta Region nor any of the interventionist schemes established in the region in pursuit of Sustainable Development is discussed. It is rather a general commentary on the world environment and a review of general environmental principles.

#### **xi. Environmental Law in Nigeria, Theory and Practice**

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<sup>25</sup> O. P. Dokun Oyeshola, *'Politics of International Environment Regulations'* (Daily Graphics (Nig) Ltd. 1998) Pp88 – 91



This is an environmental law textbook<sup>26</sup> written by Atsegbua and others. It is a comprehensive commentary on the Nigerian environment consisting of eleven chapters, five hundred and fifty five pages and an index. The principal environmental issues raised in this book include the concept of environmental law, pollution control and management, waste management, environmental rights, etcetera. The author devotes Chapter Four of the book ‘Sustainable Development and Environmental Law’, while a sub-heading in Chapter Nine thereof is titled ‘Niger Delta Environment and the oil Companies’. In a similar vein, under Chapter Two which is captioned ‘Renewable Energy Development in Nigeria’, a sub-heading titled ‘Millennium Development Goals (MDGs) which also contributed immensely to the promotion of sustainable development in the Niger Delta Region is also discussed. The author specifically discussed environmental law as it relates to sustainable development in Nigeria in page 84 of his book, citing four Acts as the basis of environmental sustainable laws in the country. According to him, the Environmental Impact Assessment Act 1992, the National Environmental Standards and Regulations (Enforcement) Agency Act 2007, the Mineral Oil (Safety) Regulation Act 1963 and the Harmful Waste Criminal Provisions Act, No. 42 of 1988 are the real environmental laws that can promote sustainable development in Nigeria. It is nonetheless respectfully noted that the laws cited by the author as the basis of sustainable development in the country are grossly inadequate and scanty. Similarly, his discussion on Millennium Development Goals Scheme (MDGs) as the only interventionist scheme designed to promote sustainable development in the Niger Delta, to say the least, does not reflect the true position of government’s effort on ground in that respect in the region.

## **xii. The Politics and Conflicts over Oil and Gas in the Niger Delta Region: The Bayelsa State Experience**

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<sup>26</sup> L. Atsegbua, et al. ‘*Environmental Law in Nigeria, Theory and Practice*’. Pp114 – 125

This book<sup>27</sup> borders on the politics and conflicts over the exploration and exploitation of oil and gas in the Niger Delta Region. It contains two hundred and seventy pages divided among seven chapters, list of tables, appendixes, bibliography and index. Though it deals mainly with various socio-political issues arising from oil and gas exploration and management in the Niger Delta Region, several other issues relating to oil and gas that are vital to the promotion of sustainable Niger Delta Region environment are equally discussed. Among the key issues discussed are: the evolution of oil and gas industry, the environmental devastation occasioned by oil spillage and gas flaring, the oil Producing Areas Development Commission, recommended elements for development in the Niger Delta Region etc. In chapter one the author expansively discussed the geographical area called 'the Niger Delta Region' stating that it encompasses the present Rivers, Bayelsa, Delta, Akwa Ibom and Cross River States. Adding, he said in 1995 the then Head of State Babangida expanded the Niger Delta Region to include Edo State. Further that in 2000 President Obasanjo in the NDDC bill included Ondo, Abia and Imo States as part of the Niger Delta Region. It is the author's opinion that the term Niger Delta Region is synonymous with South-South geo-political zone. It is however disagreed that there is a difference between the term 'Niger Delta' and "South-South geo-political zone". Whereas Niger Delta today is defined by oil producing states, South-South is purely a geo-political zone. Ondo State is in Niger Delta being an oil producing state but politically, it is in the South-West geo-political zone. The same is applicable to Imo and Abia States, which though within the context of oil producing states are in the Niger Delta, but politically they are in the South-East geo-political zone. Further that, the author only briefly discussed NDDC amongst the many interventionist schemes the federal government has put in place to address Niger Delta Region's development challenges. Even that appraisal is also grossly inadequate and fiercely disputed by the researcher.

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<sup>27</sup> A. Etekpe, *'The Politics and Conflicts over Oil and Gas in the Niger Delta Region, the Bayelsa State Experience'* (Tower Gate Resources 2012) Pp1 – 52

### **xiii. Environmental Law in Nigeria Including Compensation**

This book<sup>28</sup> contains seventeen well-researched articles written by various contributors. It is made up of three hundred and thirty six pages shared among the seventeen chapters in the book, each dealing sufficiently with an aspect of the environment. For example, environmental issues like corporate social responsibility towards the environment and the limits of law; the problems of environmental regulation in the Nigerian federation, the statutory regulation in the environment, the Trans Boundary Movements of Hazardous Waste in International law, quantum of oil compensation etc. are some of the articles that form this book. Essentially, this book does not contain any article that directly discusses any aspect of the topic under research but few articles like the one captioned ‘Quality of life and Environmental Pollution’ in Chapter Twelve, pages one hundred and seventy one to one hundred and ninety written by Mowoe and ‘The Quantum of compensation for oil pollution’ in Chapters Seventeen, pages two hundred and eighty five to three hundred and six written by Omotola respectively are remotely connected to the topic. In their articles the contributors show how oil pollution directly affects the environment by contaminating it in various ways, thus affecting the lives of the people. The fundamental point to note in all is that their treatment of the quality of life in a polluted environment and the quantum of compensation payable to those affected by oil pollution in Nigeria and the Niger Delta Region in particular, is not elaborate enough. Above all, the discussions are directed more at the world in general than a specific country or region.

### **xiv. Climate Change and the Risk of Violent Conflict in Post-Amnesty Niger Delta.**

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<sup>28</sup> J. A. Omotola, (ed). ‘*Environmental Law in Nigeria including Compensation*’ (Faculty of Law University of Lagos, 1990). Pp52 – 102

This book<sup>29</sup> is a monograph written by Ibaba Samuel Ibaba of the centre for Niger Delta Studies of the Niger Delta University, Wilberforce Island, Bayelsa State and it contains sixty four pages. Briefly it appraised the geographical entity called ‘Niger Delta’ and contended that the Niger Delta Region is located in the Southern part of Nigerian, maintaining that 9 out of the 36 states in the Federal Republic of Nigeria, to wit, Abia, Bayelsa, Cross River, Edo, Delta, Imo, Ondo and Rivers States constitute the present day Niger Delta Region.

He acknowledged that the region has very serious environmental challenges which have consequently caused deep poverty, large scale migration, sharpened social divisions and weakened institutions in the area; lamenting that it is this degenerating condition in the midst of monumental oil and gas production that have continued to instigate conflict and violence in the region under different names such as resource control advocates, self-determination movement, Niger Delta freedom fighters, the Egbesu warriors etc. Other negative environmental impacts he identified that the people of Niger Delta suffer from are unchecked oil-induced pollution include flood, sea level surge, water supply reduction, rise in temperature etc.; adding that in order to address these problems the federal government has taken some steps which include the granting of Amnesty to the Niger Delta militants. The key point worth noting is that the Presidential Amnesty Programme for Niger Delta Ex-militants is an illegality and has no basis in law because it is not backed with an enabling law. This was the position the Lagos High Court presided over by Justice Dolapo Akinsanya (rtd) reached in the case<sup>30</sup> filed by MKO Abiola against the Shonekan led Interim Government of Nigeria.

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<sup>29</sup> S. I. Ibaba, ‘*Climate Change and Risk of Violent Conflict in Post Amnesty Niger Delta*’ (Harey Publications Coy 2012). Pp27 – 43

<sup>30</sup> ***M.K.O. Abiola & Ors v National Electoral Commission & Ors***, (unreported) Suit No. M/5/373/93: The facts are that the President elect of the country then M.K.O Abiola returned from his self-exile and together with his Vice Presidential candidate- Babagana Kingibe filed a suit in a Lagos High Court Challenging the annulment of the June 12, 1993 Presidential election in the Country and the subsequently constituted Interim Government headed by Chief Shonekan. In a monumental Judgment delivered on 10th November, 1993, Justice Mrs. Dolapo Akinsanya ruled and declared Decree No 61, 1993, the basis upon which the Shonekan led Interim Government stood as null and void, by reason that the said decree was signed into law by Babangida when he no longer had the legislative authority to do so. In consequence the ING was declared a nullity because there was no law

## **xv. Practicing Ecology: Chances and Choices**

This book<sup>31</sup> contains sixteen chapters, all dealing with issues that touch on ecology and the human environment. Vital environmental issues discussed in this book include ecosystem services and ecological practice, plant a flower, maintain a green, waste disposal and management, environmental safety, ecology, culture and beliefs. Granted that this book did not emphatically discuss sustainable development or the Niger Delta Region. Chapter Two thereof discussed the issue of gas flaring extensively. According to the author, colossal waste both in form of resources and waste is generated by Petro-chemical industry in gas which impact negatively and further threaten the fragile sustainable capacity of the atmosphere and the earth environment generally; maintaining that available statistics show that Nigeria ranks among countries that flare natural gas. Concluding, he added that gas flaring and other related factors combine to affect the environmental sustainability of an area.

Although the author acknowledged that Nigeria flares 76% of gas in Africa, he did not pinpointedly mention the areas impacted by gas flaring in the Niger Delta environment, given that the bulk of gas flared in the country is in the Niger Delta. Above all, the statutory role of the Gas-re-injection Act in this country which is designed to promote the sustainability of the Niger delta environment but obeyed more in default is equally not discussed in this book.

## **xvi. Non-Governmental Organization, The Law and Environmental Protection in Nigeria**

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backing it. The only difference between these two incidents (the Interim Government and the Amnesty Programme) is that whereas the ING had an enabling law which was subsequently declared a nullity, the Amnesty Programme is an illegality ab initio because right from the outset it has no enabling law and has remained thus till date

<sup>31</sup> E. T. Tyokumbur, '*Practicing Ecology; Chances and Choices*' (John Archers Publishers Ltd 2010) Pp132 – 149.

This book<sup>32</sup> contains three hundred and thirteen pages and divided into eight chapters, bibliography, appendix and general index. It identified the environmental problems facing Nigeria to include industrialization, unplanned urbanization, waste management, desertification, unbridled population growth and undue pressure of the population on existing facilities, the ozone depletion and greenhouse effect of dangerous substances etc.; maintaining that the synergy between non-governmental organizations and the government is essentially aimed at addressing the above environmental problems.

The glaring short-fall observed in this book is that although in the preface it is recorded that ‘the world has come to accept fully the necessity of ensuring a healthy and sustainable environment if human survival is to be secured’; the concept of Sustainable Development is not discussed distinctly in this book. Aside that, the Niger Delta Region and its complex environmental challenges or any of the interventionist schemes embarked upon by the Federal Government and Non-Governmental agencies to promote development in the Region are also not discussed. Above all, the statutory requirement that NGOs must first register with C.A.C before they can operate in the country, to say the least, clearly restricts the role of NGOs in the fight against environmental degradation which the author did not effectively discuss.

#### **xvii. Disturbance and Injurious Affliction in the Nigerian Petroleum Industry.**

Oil spillage in Nigeria and the quest for compensation by the people whose environmental rights have been infringed upon by oil pollution constitute the crux of this book<sup>33</sup>. The book has four chapters but the author cited the dictum of Ovie-Whiskey J. in the case of *San Kpede*

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<sup>32</sup> D. Ogun, ‘Non-Governmental Organizations. The Law and Environmental Protection in Nigeria’ (Green World Publishing Co. Ltd. 2002) Pp153 – 205

<sup>33</sup> F. J. Fekumo, ‘Disturbance and Injurious Affliction in the Nigerian Petroleum Industry’ (Springfield Publishers Pp 1 – 30

*v Shell - BP Petroleum Development Company of Nigeria Limited*<sup>34</sup> in Chapter Two and acknowledges that ‘it is common knowledge that crude oil causes great havoc to fishes and crops if allowed to escape from pipe in which it is being carried’, hinting that between May 1980 and May 1990 approximately 433, 076 barrels of crude oil (or similar substances) were released into the Niger Delta environment from the Eastern operations alone of oil companies; emphasizing that out of the figure, about 407, 588 barrels were completely lost to the environment. He further contended that oil spill has affected third party rights in form of property, farmlands, economic and profitable trees, swamps, creeks, streams, rivers, wells and homes are damaged. Concluding, he said that the courts have rendered the concept of fair and adequate compensation as provided in the statutes in the country illusory.

The foregoing notwithstanding, it is noted that the author's discussion of remedies for oil spillage and pollution is too scanty. Furthermore, his discussion of environmental issues did not touch on the Niger Delta environment. Similarly, he overlooked the issue of infrastructural development as a form of remedy for pollution in the Niger Delta, but rather only concentrated on the payment of compensation as provided in the various laws regulating the oil industry in the country. Even in his discussion of the laws regulating the payment of compensation in the country, he failed to acknowledge and address the fundamental issue of the absence of a single and uniform legislation dealing with oil pollution in the country as it relates to the payment of compensation. Importantly, this book is due for review given that recent developments in the oil industry like the on-going debate for the enthronement of a new Petroleum Industry Bill (PIB) in the National Assembly are not contained in it. It is nonetheless stated that measures to remedy these shortfalls in the payment of compensation

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<sup>34</sup> *San Kpede v Shell - BP Petroleum Development Company of Nigeria Limited* (1973) M.W.S.J (i.e. Selected Judgments of the High Court of Mid-Western State) p88

to the people of Niger Delta whenever pollution occurs in the region, are discussed and recommended in subsequent chapters of this thesis.

### **xviii Policy Option and Adaptation: A Comparative Study of the Niger Delta and Other Deltas of the World**

This book<sup>35</sup> contains eighty five pages and examines the peculiar environmental features and challenges in the deltaic regions all over the world. Specifically, this book acknowledged that every deltaic region in the world, for instance, the Mekong delta in China, the Mississippi delta in the United States of America, the Nile Delta in Egypt, the Yangtz Delta in china, the Okarango Delta in Angola, etcetera. are all faced with similar structural, institutional, legal framework, human capacity and infrastructural development, human (social) rights, resource control and management challenges which have made these deltaic regions fragile and volatile,

Flowing from the above and using the Niger Delta Region as case a study, the author says that the Niger Delta Region although rich in natural resources, extensive forest, good agricultural land and abundant fish resources; its potentials for Sustainable Development have remain unfulfilled and it is threatened by environmental degradation and hostile conditions which are not addressed by the present policies and actions; pointing out that the gloomy picture painted in the foregoing has led to restiveness and unabated militancy in the region. It is however observed that the author's generalization that all present environmental policies and actions in the country do not address the problem of environmental degradation in the Niger Delta Region is not correct. The truth is that the policies and actions for the promotion of sustainable environment in the Niger Delta may not have adequately addressed the environmental question in the region, but to say that all policies and actions did not

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<sup>35</sup> A. Etekepe, '*Policy Option And Adaptation: A Comparative study of the Niger Delta and other Deltas of the World*' (Talent World Publishing 2009) Pp15 – 57



address the Niger Delta environmental problem is an over statement. Similarly, his treatment of interventionist schemes in the Niger Delta Region like the NDDC, OMPADEC, NDRBDA, MDGs is grossly abridged and not detailed enough. He merely listed the development paradigms in the region without discussing them in details.

### **xix The Environment: Law and Management in Nigeria**

This book<sup>36</sup> is made up of three hundred and fifteen pages and contains seven chapters, appendix and an index. It discusses different environmental issues which include environmental protection and the legislation guaranteeing a protected environment both at the international and municipal law levels in Nigeria. In Chapter One the concept of environment is specifically discussed and defined to mean ‘the totality of the physical, economic, cultural, aesthetic and social circumstances and factors which surround and affect the desirability and value of/ property or which also affect the quality of people's lives’. Besides that, the concept of sustainable development and its history from the Stockholm Conference of 1972 to the Brundtland Commission Report of 1987 where a definite and precise definition was given to the concept is also discussed. Importantly, the author identified soil and coastal erosion, deforestation, oil pollution, solid waste management, liquid waste, toxic and hazardous substances as the basic environmental problems militating against the promotion of Sustainable Development in Nigeria. It is nonetheless pointed out that this book only discusses environmental problems generally in Nigeria and does not specifically treat the glaring environmental challenges in the Niger Delta Region. More so, some of the examples the author cited to support his claims in this book are imprecise and obsolete.

For instance, while discussing soil and coastal erosion in Nigeria he cited "Bendel state" as one of the states that suffer soil and coastal erosion in 2011. He never averted his mind to 'Edo and Delta" states that have since replaced "Bendel State", following the creation of the

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<sup>36</sup> P.A.K. Adewusi, ‘*The Environment: Law and Management in Nigeria*’ (Hybrid Consult, 2011) Pp 213 – 246

last set of states in the country in 1996, yet this book was written in 2011. That apart, this book only considered the legal implications of environmental protection but overlooked the efforts made to also enhance the physical development in areas with deplorable environmental conditions in the country like the Niger Delta.

## **xx Nigerian Energy & Natural Resources Law: Notes & Material**

This book<sup>37</sup> deals substantially with the concept of development, arguing that achieving the objectives of sustainable management of natural resources have remain elusive in this country because in Nigeria it is the government that owns, controls and manages natural resources to the exclusion and disadvantage of the locals, especially the masses of the resource producing communities. He thus pointed out that such exclusion of the indigenous people in the sustainable management of resources is an anathema to the principle of sustainability and environmental stewardship; emphasizing that sustainability anchors on the integration and equitable accommodation of the cultural and developmental needs of all people including indigenous communities and their resource management systems and policies. In part fifteen of the book, he therefore suggested that the Hybrid model of sustainable management of natural resources be adopted in the country to guarantee the success of the concept of sustainable development. Not minding the foregoing, it is pointedly noted that this book only discussed the concept of sustainable development within the context of the various countries in the African continent. The Niger Delta Region and its plethora of environmental challenges and the deliberate efforts made by government and international agencies to promote sustainable development in the region are not discussed in this book.

## **xxi. African Development Charter Series: Rethinking Sustainable Development in**

### **Africa.**

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<sup>37</sup> Y. Oke, '*Nigerian Energy & Natural Resources Law Notes & Material*' (Princeton & Associates Publishing Co Ltd. 2016) Pp9 – 27.

Like the ones earlier reviewed, this book<sup>38</sup> equally discusses the sustainability of the human environment and identified the indices that affect the growth of sustainable development of an area. In the opinion of the author these conditions border mainly on the economic, social and environmental content of the area. In chapter thirteen of the book titled ‘Sustainable Energy Development in Nigeria: Challenges and Implementation Strategies’, the critical socio-political issues identified as impeding the smooth realisation of sustainable growth and healthy livelihood in Nigeria include the following – absence of access to portable drinking water, agricultural production of food for consumption, education and poverty alleviation etcetera. The author says that, these issues are the principal objectives the Millennium Development Goals (MDGs) programme sets out to address. In conclusion, it is suggested that the strategies on how the ‘UN Initiative of Sustainable Energy for All (SE4ALL) Programme’ can be achieved in Nigeria should be adopted. Despite its laudable discussion of the strategies necessary for the attainment of a sustainable development, this book has some pitfalls. First, it only appraises the concept of sustainable development from a broad perspective based on the entire African continent. Apart from that, it also fails to discuss the monumental environmental challenges or any of the laudable steps so far embarked upon by the Federal Government of Nigeria or non-governmental agencies to promote sustainable development. These shortcomings frustrating the attainment of sustainable development in the Niger Delta Region are elaborately discussed in subsequent chapters of this thesis.

**xxii. The Nigerian State, Oil Industry and The Niger Delta: Proceedings of the First International Conference.**

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<sup>38</sup> ANAM, B. ‘*African Development Charier Series – Rethinking Sustainable Development in Africa*’ (Ethereal Bliss 2014) Pp83 – 111

This book<sup>39</sup> is a collection of sixty five well researched articles dealing with various aspects of the Niger Delta environmental question and contains one thousand, eighty one pages. For example, topics like ‘An Appraisal of a Practice of Environmental Sustainability Prescriptions: a case study of Niger Delta’; ‘Oil, Poverty and Insecurity in Nigeria: the case of the Niger Delta’; ‘Education and sustainable Development in the Niger Delta — the Role of the Youth’; ‘the Essence of Public Participation in Enshrining Sustainable Peace in Nigeria's oil Industry’ and many other articles with similar themes on the Niger Delta environmental question are contained in this compendium. However, an article captioned ‘the Geographical Niger Delta’ spanning from pages eight hundred and three to eight hundred and sixteen of the book written by Tamuno, extensively appraised the location, size, geology and relief, drainage and hydrology, climate, vegetable, resources, people and socio-economic activities in the Niger Delta. The important point is that in the authors opinion, the geographical area originally called Niger Delta is the area currently occupied by Delta, Bayelsa and Rivers States in Nigeria.

However, this article failed to establish whether Niger Delta is the same as oil producing states or South-South geopolitical zone in Nigeria? This is because in modern times the twin phrases – “oil producing states” and “South-South Zone” appear to be interchangeably used as though both refer to one and same geographical area in the country. Besides, the author only concentrated on the geographical definition of the Niger Delta Region while nothing is said about the environmental challenges and the efforts made to salvage and enhance sustainable development in the region. Above all, in his discussion of the various tribes in the Niger Delta the author failed to acknowledge 'Igbo' and 'Yorubas' as tribes in the region as

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<sup>39</sup> J. Adegoke, et al ‘*The Nigerian State, Oil Industry and The Niger Delta*’: *Proceedings of The First International Conference on the Nigerian State, Oil Industry and the Niger Delta*, March 11-13, 2008, Yenagoa, Bayelsa State, Nigeria Compiled By Dept. of Political Science Niger Delta University (Zelon Integrated Services Limited, 2008.) Pp6 – 31

provided in the NDDC Act which is the extant law defining the Niger Delta Region and by which definition, Imo, Abia and Ondo States are now part of the political Niger Delta Region.

### **xxiii. Corruption and the Locales: Reconsidering Niger Delta Marginalization**

This is another article<sup>40</sup> in the compendium entitled “the Nigerian State, Oil Industry and the Niger Delta”. This article covers a reasonable number of pages in the compendium and discusses very critical issues that have the capacity of affecting the sustainable growth of Niger Delta and by extension, the Nigerian nation. Principally, the author identified corruption among the ruling class and political elites as the bane of development in the Niger Delta and by extension the Nigerian society. In the opinion of the author, in discussing the problem of Niger Delta people, one may be apt at looking at it from the peripheral level without exploring the depth of its causative factor(s). The challenge currently faced by Niger Delta indigenes can be situated within the purview of the overall predicament of the poor terrain it is located and the excessive corruption on the part of the managers appointed to oversee the agencies seized with the mandate of developing the region<sup>41</sup>. He added that ‘without any ambiguity, state corruption accounts for the current predicament of Niger Delta people’ which occurs in three main forms, to wit: (1) the prevalence of fraud and acute mismanagement of oil revenues, a development which accounts for the non – translation of massive revenue from oil resources into meaningful physical development both locally and nationally; (ii) the contribution of domestic political accumulation and diversion of money for Niger Delta Development to private accumulation implication in the routine practices of the political and traditional elites and (iii) it involves the ‘procedural remittance of funds’ based on the subsisting agreement between – the corrupt officials at all levels responsible for fund

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<sup>40</sup> J. A. Ebenezer, ‘Corruption and the Locals: Reconsidering Niger Delta Marginalization Thesis’ in J. Adegoke, et al (ed) *The Nigerian State, Oil Industry and The Niger Delta*: *Proceedings of The First International Conference on the Nigerian State, Oil Industry and the Niger Delta*, March 11-13, 2008, (Zelon Integrated Services Limited, 2008). Pp927 – 937.

<sup>41</sup> *ibid* p933

disbursement (Federal Executives), project executors (State Governors) and traditional elite (title holders) who are often cut in – between class and ethnic interests.<sup>42</sup>

Appraising the role of powerful locales in the region as agents for institutionalizing corruption, the author submitted that the institution of corruption also accommodates the role of influential locales that severally facilitate the commerce of corruption. Therefore, even in Niger Delta, most influential locales are not left out in the hierarchy of corruption since they serve as errand boys for the elite and in the process perfecting the chain of corruption. And that this group includes those who are at the vanguard of various agitations and help in the coordination of the masses towards the actualization of the people's interest. In the same vein, the masses are bribed with peanuts and their existence constitutes a force in the hand of their local elite who manipulates their strength in bargaining for concessions from both the state and the oil multinational companies. Under the arrangement, concessionary releases are after diverted to private use by those who possess strong link or access to cashflow from either the state or foreign oil companies. The author thus summed up the colossal effect of corruption on the people contending that majority of Niger Delta people are victims of deception , their current problem of underdevelopment is generated by systemic corruption sustained through deceptions continually perpetuated by their reserved political leaders and or local traditional articulators of group interest and educated elite: insisting that the unbridled corruption in Niger Delta has occasioned pervasive physical, human and material backwardness in its development.

On the basis of the aforesaid and given that corruption is a major cause of poverty in human society, the author's discussion of the devastating impact of corruption on the sustainable development of Niger Delta is highly commendable. However, upon critical evaluation of the article it is clear that the author's appraisal of the theme of corruption in Niger Delta is

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<sup>42</sup> *ibid* p934

defective in some areas. First, his article only generally discussed the issue of corruption in Niger Delta but did not treat any specific institution or agency in the region, which performance has been crippled by corruption. Ideally the author ought to cite and discuss some corruption cases and instances in the Niger Delta Region like OMPADEC,<sup>43</sup> the failure of which was largely attributed to the massive corruption and administrative ineptitude on the part of the managers of that Commission. That apart, given that the article was written and published in 2008, some cases of corruption had already been leveled against some past key administrative officials of NDDC. For instance, it was alleged that a former managing director of NDDC named Godwin Omene<sup>44</sup> and a one time chairman of the board called Edem squandered and mismanaged a substantial sum of NDDC funds. These allegations were levelled against them between 2005 and 2007 which was earlier than when this article was written in 2008. Although they were not tried and convicted by competent courts for corruption, they were relieved of their appointments in the commission on grounds of corruption.

Besides, Alamieyeseigha, former Executive Governor of Bayelsa State and Ibori<sup>45</sup>, former Governor of Delta State were also accused of being corrupt while serving as governors in their respective states. Whereas Alamieyeseigha was convicted of corruption<sup>46</sup> and subsequently granted state pardon,<sup>47</sup> Ibori, though tried in Nigeria for corruption was not convicted.<sup>48</sup> It is however noted that a London Court later convicted him on corruption

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<sup>43</sup> Established through Decree 23 of 1992 (now repealed and the Commission scrapped)

<sup>44</sup> A. A. Akinwale, 'Re-Engineering the NDDC's Master Plan: An Analytical Approach' in J. Adegoke, et al (ed) *The Nigerian State, Oil Industry and The Niger Delta*: *Proceedings of The First International Conference on the Nigerian State, Oil Industry and the Niger Delta*, March 11-13, 2008 (Zelon Integrated Services Limited, 2008). Pp317 – 332.

<sup>45</sup> *ibid* p318

<sup>46</sup> 'In July 2007: Chief Diepreye Peter Solomon Alamieyeseigha Pleaded Guilty'. <<https://star.worldbank.org>> accessed 27 November, 2019.

<sup>47</sup> Section 175 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>48</sup> ***Ibori v FRN (2009)*** NWLR (pt 1127) P.56

charges.<sup>49</sup> These facts are fundamental and ought to be cited whenever public corruption in the Niger Delta is discussed as an issue, hence it is argued that the author of this article supposed to incorporate them as references in his article on corruption in the Niger Delta Region.

#### **xxiv. Oil Poverty and Insecurity in Nigeria: The Case of Niger Delta**

This is also one of the sixty five articles<sup>50</sup> that form the compendium titled ‘The Nigerian State, Oil Industry and the Niger Delta’ and it discusses poverty as one of the causes of insecurity in the Niger Delta Region. It is contained in page nine hundred and eighteen to nine hundred and twenty six of the compendium and covers seven out of the eleven thousand, eighty one pages in the book. The article is important to this research because ‘poverty’<sup>51</sup> and ‘insecurity’<sup>52</sup> occupy central places among the seventeen goals of sustainable development, by reason that they form an integral part of the challenges undermining the continuous survival and peaceful existence of human beings on earth. It is noted that the concept of sustainable development is essentially an attempt to ameliorate the existential problems challenging man and guarantee the survival of present and future generations.

The author quoted Aina, J. et al as having defined poverty as a ‘situation of lack of resources and materials necessary for living within a minimum standard conducive to human dignity and wellbeing’,<sup>53</sup> adding that within the Nigerian context Anyanwu has categorized the poor into different categories , to wit: (i) households or individuals below the poverty line whose incomes are insufficient to provide for their basic needs,<sup>54</sup> (ii) households or individuals

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<sup>49</sup> Reuters: ‘Corrupt Nigeria Governor Gets 13 years Jail term’ <www.reuters.com> accessed 13 April, 2020.

<sup>50</sup> S. C. Udeh, ‘Oil Poverty and Insecurity in Nigeria: The Case of the Niger Delta’ in J. Adegoke, et al (ed) ‘*The Nigerian State, Oil Industry and The Niger Delta*’: *Proceedings of The First International Conference on the Nigerian State, Oil Industry and the Niger Delta*, March 11-13, 2008 (Zelon Integrated Services Limited, 2008) Pg. 918 -926

<sup>51</sup> ‘The number 1 of the 17 Sustainable Development Goals the United Nations’. <<https://sdgs.un.org/goals>> accessed 27 September, 2019.

<sup>52</sup> *ibid* Sustainable Development Goal No. 13.

<sup>53</sup> Udeh, (n 50)

<sup>54</sup> *ibid* p919



lacking access to basic services, political contracts and other forms of support;<sup>55</sup> and (iii) people in isolated rural areas who lack essential infrastructure<sup>56</sup>. Other persons he argued that fall within the purview of being poor are (i) female households whose nutritional needs are not being met adequately;<sup>57</sup>(ii) persons who have lost their job and those who are unable to find employment<sup>58</sup> and (iii) ethnic minorities who are marginalized, deprived and persecuted economically, socially, culturally and politically.<sup>59</sup> Appraising the area called the Niger Delta Region in Nigeria, the author asserted that the area referred to as Niger Delta is located in the southernmost region of Niger. That the Niger Delta Region has the ninth largest drainage area of the world's rivers as well as one of the world's largest wetland.<sup>60</sup> He argued further that although three states in Nigeria namely – Bayelsa, Delta and Rivers occupy the area originally referred to as Niger Delta, for political and administrative reasons, nine states in Nigeria now forms Niger Delta Region, namely Abia, Akwa, - Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers<sup>61</sup>.

He also gave the population of each State in the region and cited the 2006 population census figures of the State as the basis of his submission. Going by the article each state in the region has the following population figure – (i) Abiah has a total population of 2,833,999 (males 1,434,193 while females are 1,399,806); Akwa Ibom boasts of a population of 3,920,208 persons out of which 2,044,510 are males while 1,875,698 are females. Bayelsa State's total population is put at 1,703,358 with 902, 648 male and 800,710 females. The total population figure for Cross River State in the 2006 census is 2,888,966 out of which 1,492,465 are males while 1,396,501 are females. Delta State has a total population of 4,098,391 persons the breakdown of which shows that 2,074,306 are males while 1,577,871 are females. For Edo

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<sup>55</sup> *ibid* p920

<sup>56</sup> *ibid* p920

<sup>57</sup> *ibid* p920

<sup>58</sup> *ibid* p920

<sup>59</sup> *ibid* p921

<sup>60</sup> *ibid* p921

<sup>61</sup> Section 30 of the Niger Delta Development Commission (Establishment, etc) Act, 2000.

State the table shows that the State has a total population of 3,218,3332 out of which 1,640,461 are males and 1,577,871 are females. Imo State has a total population of 3, 934, 899 out of which the male population is 2,032,286 and the female population is put at 1,902,613. Ondo is also a state in the Niger Delta Region. It has a total population of 3,414,024 comprising male 1,761,263 and female 1,679,761. Rivers is adjudged the largest State in the Region with a total population of 5,188,400. Out of this number males constitute 2,710,665 while the female population is 2,474, 735. The author then summed up the total population in the region and asserted that going by the 2006 population figure, the Niger Delta has a total population of 31,224,577 persons<sup>62</sup>.

Further to the above, the author also appraised the factors causing poverty in the Niger Delta Region to include: (i) unemployment, (ii) bad governments in the Region, (iii) insecurity in the region and (iv) other related socio – economic factors. Discussing unemployment as a source of poverty, the author contended that the National Bureau of Statistics figures show that the number of unemployment youths are more in the Niger Delta than any other region in the country, arguing that the unemployment figures in the South – South which has been argued as a synonym for Niger Delta Region is 23.8% and 26.2% respectively as released by the National Board of Statistics. He said that because of the excruciating hardship arising from unemployment, most youths in the region have resorted to fishing, hunting and farming. Another issue he attributed to as the cause of poverty is bad governance in the region. He is of the opinion that the failure of developmental agencies like the NDDDB, OMPADEC and now NDDC, is caused by bad governments in the region which has instigated corresponding unemployment in the Niger Delta Region. Summarizing the cumulative effect of unemployment in the region, the author submitted that it has caused unprecedented violence, serious hunger, inadequate shelter, lack of employment and many other socio – economic

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<sup>62</sup> National Population Census 2006 figures for the Niger Delta States

problems for the people. He therefore enjoined the Federal Government to ensure that the poverty situation in the region is addressed by way of promoting good governance and creating more employment opportunities for the people, mostly youths.

Despite the aforesaid the author's article on poverty is defective in some areas given that its treatment of poverty lacks an indebt appraisal and analysis of some key factors that instigate poverty in the region. First, it is imperative to note that poverty is an endemic socio – economic issue which is at the centre of underdevelopment. The pervading poverty in the Niger Delta is no doubts, the combination of many factors which are responsible for the ever degenerating socio-economic backwardness of the region and which include very critical issues like the weak and restrictive economy of the region, the absence of small and medium scale enterprises, the flip-flop educational system in the region, the non-pursuit of programmes and projects directed at encouraging concerted human capital growth in the region; the absence of industrialized cities and towns to accommodate the increasing population of the region, the ever increasing cases of corruption and embezzlement of funds aimed at promoting socio economic growth in the region, etcetera. Addressing these issues is a sure way of combating poverty and reducing unemployment in a society, therefore ought to form a pivotal part of any discussion on effective poverty alleviation in the region.

## CHAPTER TWO

### THE NIGER DELTA DEVELOPMENT COMMISSION (ESTABLISHMENT, ETC) ACT 2000 AS CATALYST FOR TRANSFORMATION IN THE NIGER DELTA REGION.

#### 2.1 Exploring the Real Area and Identity of the Niger Delta Region

Defining the exact geographical area called the “Niger Delta Region” in Nigeria and appraising its evolution and developmental trends from the advent of the colonial masters in the Atlantic Coast of South-South Nigeria, through independence to present day has remained a contentious debate among scholars and commentators on Niger Delta affairs. Frankly speaking, there exists no consensus among various environmental commentators and scholars as to which geographical area(s) precisely constitute the Niger Delta Region in Nigeria. In acknowledgment of this fact, Dappa<sup>63</sup>, an environmentalist and a renowned commentator on Niger Delta affairs wrote that “various authors and authorities have given different interpretations or explanations to the concept – Niger Delta Region” relying on the analytical inclinations, specificities and dynamics of the particular authorities. Going further, he defined the Niger Delta Region thus:

The Niger Delta area is a scattered triangular swampy landmass deposited by river Niger which empties itself into the Atlantic Ocean..., and that all the people within the triangular shaped area are within the Niger Delta.<sup>64</sup>

Dike however differed slightly with Dappa and maintained that “the Niger Delta is the area occupying the greatest part of the lowland belt and may be described as a region bound by the Benin river to the west and Cross River to the east, covering an area of 270 miles along the Atlantic coast”. In the opinion of Talbot “the Niger Delta is occupied predominately by the

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<sup>63</sup> C. G. Dappa, ‘The Niger Delta Impasse’. *Punch* Tuesday, May 16th, 2000. p33. Also E.J. Alagoa, ‘The Niger Delta and their Neighbours to 1800’ in J.F.A. Ajayi, et al (eds) ‘*History of West Africa*’ (Vol. I), (Longman Ltd, 1976) P.31.

<sup>64</sup> *ibid*

Ijaws....”<sup>65</sup> Apparently the definitions of Niger Delta above are defective in one way or the other. Dappa’s definition of the Niger Delta Region is defective because it lacks specifics and did not mention the boundaries of the so-called triangular Niger Delta area. Similarly, Dike’s definition of the Niger Delta only mentioned the western, eastern and southern limits of the area that formed the Niger Delta area. He failed to mention the northern limit of the area that formed the “Niger Delta Region.” In the same breath, Talbot’s definition of Niger Delta which dwelled principally on the aboriginal inhabitants of the area appears to be an over generalization, showing inadequate investigation of the region before drawing conclusions. It is submitted that besides the Ijaws there are also other major ethnic nationalities in the Niger Delta.

Howbeit where the origin of the term – “Niger Delta Region” is traced from its colonial roots, it is clear that from the period of the Berlin conference through the scramble and subsequent colonization of Africa but before the creation of the Niger Delta Development Board (NDDDB) in 1959, the area now known as Niger Delta Region spanning from river Calabar to river Bini was generally called the Oil Rivers Protectorate by the Colonial British Government and administered by their Royal Niger Company (RNC)<sup>66</sup>, which area subsequently became part of the Southern Protectorate. The foregoing notwithstanding, it is instructive to contend that in contemporary times the geographical area the colonial masters called coastal areas, spanning from river Calabar to the coastal plains of river Bini is majorly occupied now by Akwa-Ibom, Bayelsa, Delta, Rivers and Cross Rivers States; including the entire coastal areas of the ancient Bini Kingdom. Interestingly, Etekpe was quoted as having posited thus in respect of the origin of the area – Niger Delta;

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<sup>65</sup> O. J. Makbere, ‘Nigerian Federalism and the Resource Control Questions’ (2000) unpublished Works p18. Also S. Abila, et al ‘Sustainable Development Issues in the Niger Delta’ in O. F. Emiri, et al (ed) ‘*Law and Petroleum in Nigeria: Current Challenges*’ (Essays In Honour of Justice Kate Abiri) (Malt House Press Ltd, 2001) p274.

<sup>66</sup> A. Etekpe, ‘*The Politics and Conflicts over Oil and Gas in the Niger Delta Region: The Bayelsa State Experience*’ (Towergate Resources, 2007) Pp28 – 30.

The Niger Delta Region became prominent in 1923 when the first provinces were created in Nigeria and the Ijos (Izon/Ijaws), aborigines of the Niger Delta were not given their separate Province(s). At that time the total area of the coastal land mark of the Region was 70, 000 kilometers, covering the former Ogoni, Degema, Brass and Yenagoa provinces in the then eastern region and the western Ijaw division of the then western region ...<sup>67</sup>

Adumbrating on the above position, Etekpe states further that ‘the historical concept of Niger Delta geographically is limited to the area defined by the Willink’s Commission’<sup>68</sup>. Instructively, the report of the Commission appointed to enquire into the fears of the minorities and the means of allaying them, otherwise known as the Willink Commission’s Report, among other things recommended thus: 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<sup>69</sup>

Flowing from the Willink Commission’s recommendation, the then Governor-General of Nigeria – Sir James Wilson Robertson signed a legal notice entitled Legal Notice No. 192 on 25th August, 1959, which proclaimed the creation of the Niger Delta Development Board (NDDB). The legal notice expressly defined the geographical area that constituted the then Niger Delta Region which consists of the Western Ijaw division of Western Delta province together with the Brass province, Degema Province and Ogoni division of Port Harcourt Province in the Eastern Region. It is, however, noted that the provisions of the Legal Notice No. 192 of 1959 were subsequently incorporated into the Independence Constitution of Nigeria as an article<sup>70</sup> thereof.

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<sup>67</sup> S. E. Abila, et al ‘Sustainable Development Issues in the Niger Delta’ in O. F. Emiri et al (ed) ‘*Law and Petroleum in Nigeria: Current Challenges*’ (Essays in Honour of Justice Kate Abiri). (Malt House Press Ltd 2001) p274.

<sup>68</sup> A. Etekpe, ‘*Politics of Resource Allocation and Control in Nigeria*’ (Havey Publication Coy 2007) p45

<sup>69</sup> Paragraphs 2 & 3, Chapter 15, Willink Commission’s Report 1959, p105. Also paragraph 26 and 27, Chapter 14, Willink Commission’s Report 1959, Pp95 – 96.

<sup>70</sup> Article 14 (7), Constitution of Nigeria 1960.

In view of the foregoing exposition, it is correct to argue that the states currently in Nigeria that constituted the original Niger Delta Region are Bayelsa, Delta and Rivers states. This is correct because these three are the only states in Nigeria occupying the area expressly defined in the Willink Commission's Report of 1958 as Niger Delta which the legal notice issued by the Governor –General in 1959 affirmed as the original Niger Delta Region.

But in the post-Independence Nigeria particularly under the military governments and following the civil war viz-a-viz the creation of twelve states in the country, the geographical area referred to as the Niger Delta Region was then occupied by Rivers, South-Eastern and Midwestern States from which Cross River, Akwa Ibom, Rivers, and Bendel States were subsequently created. After the civil war the name of the region called 'the Niger Delta Region' was altered and other phrases based on oil production like 'Special development area', 'Oil bearing communities' and 'Oil mineral producing areas' became interchangeably used to describe the Niger Delta Region. For example, the Babangida regime created the Oil Mineral Producing Areas Development Commission (OMPADEC)<sup>71</sup> and expanded the states that constituted Niger Delta Region to include Edo State in 1995.

Furthering the notion of oil production as the parameter for defining the new Niger Delta Region, the Obasanjo administration in 2000 enacted the Niger Delta Development Commission (Establishment, Etc) Act 2000, wherein it added Abia, Imo and Ondo States as part of the Niger Delta region on the ground that they are equally oil producing states.<sup>72</sup> As a consequence, the total number of states currently forming the Niger Delta Region<sup>73</sup> are nine namely – Abia, Akwa-ibom, Bayelsa, Cross Rivers, Delta, Edo, Imo, Ondo and Rivers State.

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<sup>71</sup> Section 2 of Decree No. 23 of 1992

<sup>72</sup> Section 30, Niger Delta Development Act, 2000

<sup>73</sup> The Niger Delta Regional Development Master Plan: the Niger Delta Region; Land and People (2006) p53. (Accessed 10 October, 2016).

In a related vein, about 40 ethnic nationalities including Bini, Ijaws, Esan, Ibibio, Igbo, Anang, Oron, Ikwere, Itshekiri, Isoko, Urhobo, Ukwauni, Kalabari, Okrika, Ogoni and so on, speaking about 250 different dialects have now been identified to be in existence in the Niger Delta Region. However, other names like “Coastal states” and “South – South geopolitical zone” are being used synonymously to describe the Niger Delta Region by some writers. Despite the aforesaid some criticisms have been raised against some aspects of the new Niger Delta Region as defined in the NDDC Act. For instance, David Dafinone fiercely contended that the inclusion of Abia, Imo and Edo states as part of the Niger Delta Region is the continuation of the design to perpetually marginalize the Niger Delta minorities.<sup>74</sup> Etekpe on the other hand argued that there is a clear historical distinction between the Niger Delta Region, oil producing states and the South-South geopolitical zone,<sup>75</sup> maintaining that Abia, Imo and the upland part of Ondo and Edo states were never part of the historical Niger Delta.<sup>76</sup>

It is nonetheless noted that the opinion of Dafinone is correct only to the extent that viewed from the pre-independence definition of the Niger Delta, it is true that the upland areas of Edo and Ondo states together with the entire Abia and Imo states were not part of the Niger Delta Region as defined in legal Notice No. 192 of 1959. Further that, it is pointed out that drawing from Dafinone’s argument Cross Rivers state equally ought not to be in the Niger Delta Region because it also has upland areas that are not oil producing. The totality of the above discussion taking into consideration it becomes apparent that states like Imo, Abia, Cross Rivers, Edo and Ondo at best, would have only ended as oil producing states and not

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<sup>74</sup> Quoted in S. E. Abila, (n 67)

<sup>75</sup> *ibid*

<sup>76</sup> *ibid*



part of the Niger Delta Region because they have no relationship whatsoever with the definition of the Niger Delta Region as contained in Legal Notice No. 192 of 1959<sup>77</sup>

This above conclusion has drawn some questions such as whether cities like Asaba in Delta state and Calabar in Cross River State which are in the upland areas of Delta and Cross River States respectively are parts of the coastal area in the Niger Delta Region. To properly answer these questions, it is expedient to first explicate the meaning of coastal areas or waters. Briefly, coastal waters have been explained to mean “all waters opening directly or indirectly into an ocean and navigable by vessels coming in from the ocean.”<sup>78</sup> Where this explanation is juxtaposed against the question, it is correct to argue that Calabar in Cross river state by reason of the fact that it is located along the shores of the Atlantic ocean in Nigeria is a coastal city. But Asaba in Delta State, on the other hand, though situate along the banks of River Niger is an upland city. This is because going by the definition of coastal waters in the foregoing Calabar opens directly into the Atlantic Ocean, has a sea port and navigable by vessels coming in from the Atlantic Ocean. But Asaba in Delta State is semi land locked. Although the River Niger transverses it, Asaba does not open directly into the ocean and has no river or sea port for sea vessels to berth.

Prominent coastal cities in the Niger Delta Region include – Port Harcourt, Calabar, Bonny, Akassa, Onne and Warri. Land locked or semi land locked cities in the Region include Aba, Umahia, Owerri, Yenagoa, Asaba, Ughelli, Benin city, Uromi, Akure, Uyo and Abraka. In contrast, only Yenagoa, Port Harcourt, Bonny, Onne and Brass are cities that fall within the original geographical area defined as Niger Delta Region by the Willink’s commission which was later codified in Legal Notice No. 192 of 1959 issued by the then Governor –General, Sir James Wilson Robertson.

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<sup>77</sup>Article 14 (7) Constitution of Nigeria 1960

<sup>78</sup>G. A. Bryan. *Black’s Law Dictionary* (8<sup>th</sup> Edition) West publishing co. 2004, p1622

On Etekpe's contention that the Niger Delta Region is synonymous with the South-South geopolitical zone, it is our humble submission that there is a big difference between the two concepts. Whereas Niger Delta Region as presently constituted in the NDDC Act is purely based on oil producing states<sup>79</sup> comprising Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers States; the south-south geopolitical zone is made up of Akwa-Ibom, Bayelsa, Cross Rivers, Edo, Delta and Rivers States otherwise called the "BRACED" states. They are contiguous in geopolitical location and share some level of ethnic and political consanguinity.

It is however important to note that the concept of Niger Delta Region as conceived and applied in the thesis is based on the area defined as Niger Delta Region in section 30 of the Niger Delta Development Commission (Establishment, etc) Act 2000, though emphasis is placed more on the states occupying the area contained in Legal Notice No. 192 of 1959 as Niger Delta, that is – Bayelsa, Delta and Rivers States.

## **2.2 An Appraisal of the Concept of Sustainable Development as a Transformational Paradigm.**

Sustainable Development is a concept in International Environmental Law. Although Anam<sup>80</sup> had contended that social, economic and environmental issues such as the peoples' livelihood, access to water, agricultural production (food), education and poverty alleviation are some of the central issues sustainable development seeks to address; the basic issue needed to be resolved in the first place is the origin and evolutionary journey of the concept from its conception to present day. Broadly speaking, tracing the evolutionary journey of the concept from its conception to contemporary times is a very hectic and painstaking task, encompassing many milestones.

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<sup>79</sup> Section 30, Niger Delta Development Commission (Establishment, etc) Act, 2000 op cit.

<sup>80</sup> B. Anam, *African Development Charier Series – Rethinking Sustainable Development in Africa* (Ethereal Bliss 2014)

The starting point of the journey of the concept is traceable to the enactment of the United States of America's National Environmental Policy Act (NEPA) in 1969 and signed in 1970<sup>81</sup>.

The next important milestone in the evolution of the concept of Sustainable Development was the publication of a document titled "the World Conservation Strategy of 1980s: Living Resources Conservation for Sustainable Development" by the International Union of Conservation of Nature and Natural Resources (IUNCN), the World Wild Fund (WWF) and the United Nations Environmental Programme (UNEP). Thereafter the World Conservation strategy in its formulation of sustainable development stressed sustainability in ecological terms with emphasis on the physical environment.<sup>82</sup>

Further to the above, the United Nations Conference on Human Development (UNCHD) held in Stockholm, Sweden, in 1972 otherwise called the Stockholm Declaration equally served as an important milestone in the evolution of the concept of sustainable development. Effectively, the Stockholm conference of 1972 marked the first time the global community met to discuss issues relating to the world environment and drew up an action plan for the preservation and enhancement of the natural environment. It essentially defined some basic principles which highlighted the need to support people in the process of protecting the human environment. Edu described the resolutions and principles reached at the Stockholm conference of 1972 as the Magna Carta of the management, preservation and conservation of the human environment.<sup>83</sup>

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<sup>81</sup> J.C. Nwafor, 'M.Sc Programme In Natural Resources and Environmental Management (Modules) Sustainable Development Concept Principles and Practice'. (2013/2014 class handouts). University of Port Harcourt, Choba. April 2013. p6

<sup>82</sup> *ibid.*

<sup>83</sup> O.K. Edu, 'Environmental Impact Assessment: Policy and Law in Nigeria' in M.O.U. Gasiokwu, et al (ed) '*Ecology, Concept, Politics and Legislation*' (Chenglo Books 2013) p419.

Asides that the United Nations Assembly met at Nairobi, Kenya and inaugurated a commission in 1982 called the World Commission on Environment and Development (WCED), the objective behind which was to articulate the needs particularly the essential needs of world's poor. The Commission otherwise called the Brundtland Commission published its report in 1987 titled 'Our Common Future' wherein it defined the term 'Sustainable Development' as the 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.<sup>84</sup>

This definition is important to the appraisal of the concept of sustainable development in many ways. First, it identified and weaved together the three basic constituents of the concept, to wit, the social, economic and environmental dimensions which are interconnected but prior to the definition were discussed as isolated aspects of sustainable development.<sup>85</sup> Essentially, whereas the social dimension of the concept has subsequently been explained to cover activities that touch on the development of people, communities and culture to help achieve reasonable and fairly distributed life, healthcare and education across the globe; the economic dimension deals with equal economic growth and equal distribution of economic resources; while the environmental dimension deals with the protection and rational use of resources.<sup>86</sup>

Atsegbua while appraising the glowing environmental principles contained in the Brundtland Commission's report noted that during the 1980s there had been a marked increase in the incident of environmental crisis of a 'global nature' such as the draught in Africa which put some 35 million people at risk and killed perhaps a million. The report concluded that if

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<sup>84</sup> Oke, O. *'Nigerian Energy & Natural Resources' (notes and materials)* (Princeton & Associates Publishing Co Ltd 2016). p257,

<sup>85</sup>R. Ako, 'Militia Emancipation or Public Participation: The Quest for Sustainable Development in the Niger Delta Region' in S. I. Ibaba, et al (ed) *'Trapped in Violence, Niger Delta and the Challenges to Conflict Resolution and Peace Building'* (University of Port Harcourt Press; 2013) p85

<sup>86</sup>Acciona.Com 'What is sustainable Development?' <<http://www.acciona.Com/sustainabledevelopment>> assessed 14 June, 2018.

natural resources continued to be used at the current rate, if the plight of the poor was ignored, and if pollution and wasting of resources continued, a decline was expected in the quality of life of the world's population. Thus, it was the publication of the Brundtland report that led to the growing pressure for further international action on the environment, and eventually to the Rio Conference.”<sup>87</sup>

The next milestone in the evolution of the concept of Sustainable Development was the United Nations Conference on Environment and Development (UNCED) also known as the Earth Summit held in Rio de Janeiro in Brazil in 1992. The highlights of the Rio Conference are that two documents vital for the management of the human environment namely ‘Agenda 21’<sup>88</sup> and the Rio declaration principles<sup>89</sup>, which set out the basic guidelines and policies for the achievement of Sustainable Development were adopted.

Finally, the United Nations Conference on Sustainable Development christened World Summit on Sustainable Development (WSSD) was held in Johannesburg, South Africa in 2002. This Conference reaffirmed the fundamental principles of Sustainable Development and environmental protection, and drew-up an action plan on how the guidelines contained in Agenda 21 and the Rio Declaration principles could be domesticated and observed by each country. The resolutions reached in the conference ultimately became known as the ‘Johannesburg Plan of Implementation’. Importantly 44 distinct themes or areas have now been developed from the resolutions of the WSSD conference in Johannesburg, South Africa.

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<sup>87</sup> L. Atsegbua, et al ‘*Environmental Law in Nigeria: theory and practice*’ (2<sup>nd</sup> Edition) (Ambik 2010) p73

<sup>88</sup> A. T. Akujobi, Contended that Agenda 21 is a 800 page document adopted at the Rio Summit. It set out globalization plan for all states on development and the Environment. It is not legally binding but has strong political backing. It is comprehensive with 40 chapters dealing with all aspects of Sustainable Development including its social and economic dimension which includes the conservation of resources, deforestation, sustainable agriculture, waste and means of implementation, public awareness and education. A. T. Akujobi, ‘Human Right: The Environment and sustainable development in Nigeria’ in M.O.U Gasiokwu, (ed) ‘*Concept, Politics and Legalization*’ (Chengo Books, 2). p459

<sup>89</sup> The Comprehensive list of the 27 principles of the Rio Declaration on Environment and Development are clearly set forth in L. Atsegbua, et al ‘*Environmental Law in Nigeria, Theory and Practice*’, 2<sup>nd</sup> Edition (Ambik Press 2010) Pp508 – 513.

Consequent upon the foregoing, the International Court of Justice gave judicial recognition to what is meant by sustainable development in the GABCKOVO – NAGYMAROS dam case between *Hungary v Slovakia*<sup>90</sup> when it held inter alia that:

Throughout the ages mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to growing awareness of the risk for mankind- for the present and future generations of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed; set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight is, not only when states contemplate new activities but also when continuing with activities begun in the past. The need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.

Thereafter, the United Nations Organization in 2002 elaborately expounded, codified and incorporated the meaning of sustainable development into its Convention for Cooperation in Protection and Sustainable Development of the Marine and Coastal Environment of the North East, wherein it provides that:

Sustainable Development means the process of progressive Change in the quality of life of human beings, which places them as the central and primary subjects of development, by means of economic consumption patterns, sustained by the ecological balance and life support system of the region. This process implies respect for regional, national and local ethnic and cultural diversity, and full public participation, peaceful co – existence in harmony with nature, without prejudice to and ensuring the quality of life of future generation”<sup>91</sup>

Upon firmly establishing the definition and principles of the concept, the General Assembly of the United Nations met in September 2015 in New York and adopted 2030 Agenda for sustainable development, which sets out 17 goals<sup>92</sup> to be achieved under the concept. The 17

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<sup>90</sup> 25 September, 1977, ICJ Rep 7, 91 92

<sup>91</sup> Article 3 (1) (a), UN Convention for Cooperation and Sustainable Development of the Marine and Coastal Environment of the North-East

<sup>92</sup> According to the United Nations Development Programme (UNDP) the Sustainable Development Goals (SDGs), otherwise known as the Global Goals, are a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity. These 17 Goals build on the success of the Millennium

sustainable development goals, which emphasized a holistic approach to achieving sustainable development, are as follows: (i). No Poverty, (ii). Zero Hunger, (iii). Good Health and Well-being, (iv). Quality Education, (v). Gender Equality, (vi). Clean Water and Sanitation, (vii). Affordable and Clean Energy, (viii). Decent Work and Economic growth, (ix). Industry, Innovation and Infrastructure, (x). Reduced Inequality, (xi). Responsible Consumption and Production, (xii). Climate Action, (xiii). Life Below Water, (xiv). Life on Land, (xv). Peace, Justice and Strong Institutions, (xvi). Partnership to achieve the Goals and (xvii). Sustainable Cities and Communities.

In meeting the demands of the above goals, government and non-governmental organizations are therefore enjoined to pursue programmes/projects directed at: (i) how to meet the essential human needs, (ii) how to ensure a sustainable level of population, (iii) merging environment and economics in decision making, (iv) the urban challenges in developing countries, (v) housing and services for the poor, (vi) strategies for sustainable food security, (vii) improved health and education, (viii) improving the link between environment and development, (ix) the food/population balance, (x) conflicts as a cause of unsustainable development, (xi) peace, security, development and the environment, etcetera, essentially to improve the living condition of man and his environment.

This thesis however concentrates more on the socio – economic dimensions of sustainable development, as it relates to the overall wellbeing of the people of the Niger Delta Region.

### **2.3 The Legal and Institutional Framework for Sustainable development**

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Development Goals (MDGs), while including new areas such as climate change, economic inequality, innovation, Sustainable Consumption, peace and justice, among other priorities. These goals are interconnected – often the key to success on one will involve tackling issues more commonly associated with another. The SDGs work in the spirit of partnership and pragmatism to make the right choices now to improve life, in a sustainable way, for future generations. They provide clear guidelines and targets for all countries to adopt in accordance with their own priorities and environmental challenges of the world at large. The SDGs are an inclusive agenda. They tackle the root causes of poverty and unite us together to make a positive change for both people and planet... UNDP ‘What are the Sustainable Development Goals’ <[http:// www.ng. undp. org /content/nigeria/en/home/sustainable - development goals. Html](http://www.ng.undp.org/content/nigeria/en/home/sustainable-development-goals.html)> accessed 14 June, 2018.

## **In the Niger Delta Region**

It is a common fact that for any country to effectively pursue and realise the promotion of sustainable development for its population or part thereof, it must put in place a clear and elaborate legal and institutional framework for the formulation and implementation of its policies on the economy, housing, transport, agriculture, education, health care and so on; primarily to promote the socio-economic well-being of its citizenry. This is vital because as expounded in the case of *Socio-economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria*<sup>93</sup>, the attainment of adequate standard of living which sustainable development strives to realise would not be achieved without a legal and institutional framework providing for its existence.

Thus, every democratic nation makes provisions for the existence of some form of socio-economic rights or benefits for the enhancement of adequate standard of living for its citizens in the Constitution or a separate legislation enacted by the National Assembly (Parliament) of that country. Consequently, the legal and institutional framework aimed at promoting sustainable development in the Niger Delta Region and by extension, the entire Nigerian nation is examined hereunder:

### **a. The Legal Framework for Promoting Sustainable Development in Nigeria.**

Viewed against the backdrop that sustainable development, particularly its socio-economic dimensions, is tailored towards promoting adequate standard of living for the people of that country or region, it is safe to say that the first legal framework providing sustainable growth for the people of the Niger Delta Region is the Constitution of the Federal Republic of Nigeria 1999 (as amended). Although, all the nine sections in Chapter Two ranging from

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<sup>93</sup> *Socio-economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria* (Suit No. ECW/CC/08/09), delivered on 10th December, 2010.



sections thirteen to twenty four contain some form of socio-economic and cultural ideals, section 16 (2) (d) thereof is more eloquent in its provision of the basic ideals for the promotion of socio-economic development of the Nigerian society, hence in *AG of Ondo State v AG of the Federation & 32 Ors*<sup>94</sup> Uwaifo emphatically admonished the National Assembly of Nigeria to enact more Acts for the implementation of section 16 (2) (d) and other sections in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to provide the basic necessities for Nigerians to live healthy living. For purposes of clarity, section 16 (2) (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides thus: ...the state shall direct its policy towards ensuring –

That suitable and adequate shelter, suitable and adequate food, reasonable minimum living wage, old age care and pension, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

Evidently, section 16 (2) (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) reproduced above, enjoins the Nigerian Government to provide adequate food, shelter (houses), reasonable national minimum wage for workers, pensions allowances for old and aged persons, retirees and unemployed Nigerians, benefits inform of general welfare be paid to the sick and disabled persons in Nigeria. These laudable socio-economic ideals are what sustainable development seeks to address in the Nigerian society. However, by operation of section 6 (6) (c) of the same Constitution these objectives are declared non-justiciable in the Constitution of the Federal Republic of Nigeria 1999 (as amended), thereby preventing the people of Niger Delta vis-à-vis Nigeria from reaping the transformational benefits accruable to them if the provisions of Chapter Two of the Nigerian Constitution were made justiciable.

The non-justiciability of Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended) notwithstanding, in *AG of Ondo State v AG of the Federation -& 32 Ors*

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<sup>94</sup> *AG of Ondo State v AG of the Federation & 32 Ors* (2002) 9NWLR, (pt. 772) p222

<sup>95</sup> the Supreme Court of Nigeria while interpreting section 15 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which is a provision under the Fundamental Objectives and Directive Principles of State Policy in Chapter Two thereof, held among others that the National Assembly has power to enact an Act for the implementation of any section in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Further that, in the same case of *AG of Ondo State v AG of the Federation & 32 Ors*<sup>96</sup>, the Supreme Court categorically stated that the Corrupt Practices and Other Related Offences Act 2000 enacted by the National Assembly upon the invocation of section 15 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), to combat corruption in Nigeria is a valid enactment.

Flowing from the Supreme Court decision in *AG of Ondo State v AG of the Federation & 32 Ors*<sup>97</sup> that any of the provisions of Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended) can be made justiciable by the National Assembly through any of its specific enactment made to enforce same, the access to education provision under Chapter Two of the Nigerian Constitution is made justiciable by virtue of section 15 of the Child's Right Act 2003. Equally, the African Charter on Human and Peoples Right (Ratification and Enforcement) Act<sup>98</sup> which has been domesticated by the National Assembly of Nigeria in line with the provisions of section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended),<sup>99</sup> makes the right to education in Chapter Two of the Nigerian Constitution justiciable. Similarly, the Compulsory Universal Basic Education Act 2004 provides that the right to education is compulsory for every Nigerian thereby making it justiciable. Interestingly, socio-economic rights are provided for and made justiciable under

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<sup>95</sup> *ibid*

<sup>96</sup> *ibid*

<sup>97</sup> *ibid*

<sup>98</sup> Cap A9 LFN 2004.

<sup>99</sup> *Abacha v Fawehinmi* (2000) 6 NWLR (pt 660) p228

sections 20, 24, 25, 26, 27 and 28 of Chapter Five of the Constitution of Ghana 1992. Socio-economic rights are also contained in sections 26 (1), 27 (1), 29 (1), 30 and 31 (1) under Chapter Two of the Constitution of South Africa 1996.

Asides from the provisions of Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended) that serve as legal framework for promoting sustainable development in Nigeria, it is also correct to argue that if the decision in the case of *Gbemre v Shell Petroleum Development Company & Nigerian Petroleum Corporation*, wherein the court held inter-alia that ‘the action of the first and second respondents in continuing to flare gas in the course of their oil exploration and production activities in the applicants community is a gross violation of their fundamental right to life (including healthy environment) and dignity of human person as enshrined in the Constitution,’ is taken into consideration; it becomes apparent that Chapter Four of the Constitution of the Federal Republic of Nigeria also qualifies as a viable legal framework for promoting sustainable development in Nigeria.

Apart from the Constitution of the Federal Republic of Nigeria 1999 (as amended), other legislation that qualify as legal framework for promoting sustainable development also exist in Nigeria. For instance, the National Environmental Standards and Regulations Enforcement Agency Act<sup>100</sup>, sections 36 of which Act repealed the Federal Environmental Protection Agency (FEPA) Act 2004, is also another Act enacted by the Federal Government to promote sustainable development in the country, mostly in the Niger Delta area.

NESREA is an agency of the Federal Ministry of Environment. Its vision is to ensure that Nigerians access and live in a cleaner and healthier environment, while its mission is to inspire personal and collective responsibility in building a society that is environmentally

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<sup>100</sup> National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007.

conscious with a view to achieving sustainable development in the country. The agency's broad mandate is to enforce all environmental laws, guidelines, policies, standards and regulations in Nigeria and to prohibit processes and the use of equipment or technology that undermine environmental quality. NESREA is seised with the powers to enforce compliance with provisions of international agreements, protocols, conventions and treaties that Nigeria is a signatory<sup>101</sup>.

The Federal Government also enacted the Environmental Impact Assessment (EIA) Act;<sup>102</sup> which is also directed at enhancing the quality of the environment and promoting sustainable development in Nigeria. Section 2 (1) of the Act specifically demands an assessment of public or private projects likely to have significantly (negative) impact on the environment. Besides, the Harmful Waste (Special Criminal Provisions) Act<sup>103</sup> is also one of the basic Acts the Federal Government of Nigeria enacted to guarantee safe and sustainable environment in Nigeria. Essentially, the Harmful Waste (Special Criminal Provisions) Act is a penal legislation designed specifically to prohibit the carrying, disposing and dumping of hazardous waste on any land, territorial waters and/or any matter relating thereto. It seeks to prevent people from corrupting or poisoning any spring, stream, well, tank, reservoir or place so as to render it less fit for the purpose it is ordinarily used.

This provision in the Harmful Waste (Special Criminal Provisions) Act correlates with the provisions of section 234 of the Criminal Code which contain the offence of 'Common Nuisance'. The section provides that 'where a person does anything, which obstructs or causes inconvenience or damage to the public in the exercise of right common to all members of the public, the offence of Common Nuisance is committed'. The offence of 'Common

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<sup>101</sup> The vision and statement of mission of the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007.

<sup>102</sup> Now Cap E12, LFN 2004

<sup>103</sup> Now Cap H1, LFN 2004

Nuisance’ in section 234 of the Criminal Code glaringly is *mutantis mutandis* with the offence of ‘Public Nuisance’ under common law which could be raised to punish any person, institutions or corporations that unlawfully discharge toxic waste or pollute public land as well as waters, because such action is capable of causing inconveniences and damages to public<sup>104</sup> health and wellbeing.

The bottom line is that these Acts if effectively enforced could promote sustainable development in the Niger Delta Region because of the massive and negative cases of oil pollution and emission of carbon dioxide and other greenhouse gasses in the region. Unfortunately, no person or institution or corporation has been prosecuted and convicted for committing the offence of Public or Common Nuisance under the Criminal Code or the Harmful Waste (Special Criminal Provisions) Act, to serve as deterrent to others particularly the International Oil Companies operating in the Niger Delta Region. This, no doubt, defeats the noble aspirations and ideals for promoting sustainable development in the region. Other Acts the Federal Government enacted to guarantee environmental protection and promote sustainable growth in Nigeria include the Territorial Waters Acts;<sup>105</sup> the Oil Associated Gas Re-Injection Act;<sup>106</sup> the Oil in Navigable Waters Act;<sup>107</sup> the Petroleum Act;<sup>108</sup> the Oil Terminal Dues Act<sup>109</sup> etcetera.

Apart from the Municipal laws discussed in the foregoing, Nigeria is also a signatory to some International Conventions, Treaties and Protocols relating to the protection of the environment and promotion of Sustainable Development in Nigeria, particularly the Niger

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<sup>104</sup> S. E. Abila, ‘A Reappraisal of the Environmental Problems of Atmospheric Pollution, Air Quality Emissions and Applicable Control Mechanism in the Detection and Evaluation in the Niger Delta Region of Nigeria’, *Global Trends and Emerging Developments in the Light of the Recently Released Flare Gas (Prevention of waste and Pollution) Regulations, 2018, in Nigeria*, *Journal of Law, Policy and Globalisation*. Vol. 92, 2019 Pp167 – 179

<sup>105</sup> Now Cap T2, LFN 2004

<sup>106</sup> Now Cap A25, LFN 2004

<sup>107</sup> Now Cap 06, LFN 2004

<sup>108</sup> Now Cap P10, LFN 2004

<sup>109</sup> Now Cap 08, LFN 2004

Delta Area. Examples of such International Treaties Nigeria is a signatory to for the purpose of protecting the environment are: the International Convention for the Protection of the Sea by Oil 1954; Convention on Fishing and Conservation of Nature and Natural Resources 1968, Convention for Co-operation in the Protection and Development of Marine and Coastal Environment of the West and Central Africa 1984; the Basel Convention and the Control of the Trans – boundary movement of Hazardous waste and their disposal 1992; the Convention on the Conservation of Migratory Species of Wild Animals;<sup>110</sup> Convention on the Prevention of Marine Pollution by Dumping Waste 1985; the International Convention on Civil Liability for Oil Pollution Damage 1969; the Universal Declaration of Human Rights 1948 and the African Charter on Human and Peoples Rights.

As seen from the preceding discussions, the Federal Government of Nigeria has enacted various Acts aimed at addressing the environmental problems in the Niger Delta region, primarily to serve as the legal framework for the promotion of a robust sustainable development regime in the region. In concluding this sub-heading, it is noted that the above discussed Acts and others form the legal framework upon which this study is predicated.

#### **b. The Institutional Framework for the Promotion of Sustainable Development in the Niger Delta Region**

The institutions the federal government has established to achieve sustainable growth in the region include – the establishment of the Niger Delta Development Board in 1959 through an Executive Order by the then Governor General.<sup>111</sup> This board owed its creation to the recommendations of the Willink Commission's Report of 1959 and it served as the pioneer effort of the Federal Government to give attention to the development challenges of the Niger Delta Region. Thereafter, the Niger Delta Development Board was enshrined as a provision

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<sup>110</sup> This Convention is also known as the Bonn Declaration

<sup>111</sup> Supplementary Federal Government Gazette No. 56. Vol. 40 of 1959

in the Constitution of the Federal Government 1960<sup>112</sup>. The Niger Delta Development Board was subsequently rebranded and named the Niger Delta Basin Development Authority in 1976. It is however noted that in terms of achieving sustainable growth in the region, the NDDB board did very little or achieved virtually nothing.

This was followed by the establishment of the Oil Mineral Producing Areas Development Commission through Decree No. 23 of 1992, which was also a colossal failure in bringing about the desired development in the region. The important point to note before going forward in the discussion is that the laws enabling the institutions aforementioned have been repealed and the institutions created through them now scrapped.

Other institutions the Federal Government also established to promote sustainable development in the region include – the establishment of the Petroleum Technology Development Fund through Act 25 of 1973 as amended in Cap P15 of 2004 to repeal and replace the former Gulf Oil Company Training Fund Act 1964<sup>113</sup>. The main function of the Act is the development of manpower and the general promotion of infrastructural development in the country, with emphasis on the educational growth of the Nigerian youth particularly as it relates to the technological knowhow in the oil industry. As a result, PTDF built many facilities in both secondary and tertiary institutions to aid learning in Nigeria. In addition, it also awarded scholarships to Nigerians to pursue graduate and postgraduate degrees within and outside Nigeria. Stakeholders in the Niger Delta Region complain that PTDF grossly marginalises the region in the distribution of educational facilities to their schools and the award of scholarships to indigenes of the region. This claim however has not been effectively substantiated because PTDF in its 2020/2021 reports stated that its selection

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<sup>112</sup> Article 4 (7) of the Independence Constitution of Nigeria 1960

<sup>113</sup> S. O. Adekalu, et al. 'Appraisal of Petroleum Technology Development Fund (PTDF) Mandates on Human Capacity Development in Nigeria: Benefits for Nigerian Youths'. <[www.eajournals.org](http://www.eajournals.org)> accessed 10 March, 2014

process, criteria and requirements for the award of scholarships are highly competitive but open to all Nigerians both home and abroad and that only applicants who are outstanding across board are selected based on academic merits as evidenced by the quality of the applicant's degrees<sup>114</sup>. With this, it becomes doubtful whether the applicants from the Niger Delta Region meet the required standard set by PTDF selection committee for the award of postgraduate scholarships but were not picked.

Apart from that, the establishment of the Niger Delta Development Commission through the Niger Delta Development Commission (Establishment, etc) Act 2000 was another noticeable milestone in the history of interventionist institutions the Federal Government created to develop the Niger Delta Region. Without much, the NDDC is the extant institution seised with the responsibility of ensuring that the Niger Delta Region is developed and the socio-economic aspirations of the people realised, as extensively discussed in the latter part of this chapter.

Another critical institution the Federal Government created to promote sustainable development in the region is the inauguration of the Presidential Amnesty Programme for Niger Delta Ex-Militants in 2009. Although the main aim of the Presidential Amnesty Programme is to bring about peace in the region, the availability of which is a pre- condition for the enthronement of sustainable development in a society; the implementation of the Presidential Amnesty Programme for Niger Delta ex-militants has brought many other socio-economic benefits to the region as shown in the comprehensive discussion of the Presidential Amnesty Programme in Chapter three of this thesis.

The Federal Government of Nigeria also created the Ministry of Niger Delta Affairs in 2008 as an institution to promote sustainable development in the Niger Delta Region. Though it

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<sup>114</sup> 2020/2021 Overseas Postgraduate Scholarship Scheme Under PTDF Strategic Partnership in France, Germany, China & Malaysia. *Scholarship.ptdf.gov.ng*. December 4<sup>th</sup> 2019.



performs functions similar to those performed by NDDC, it now serves as the parent ministry of NDDC, supervising its funds, projects and activities in general. The major project the ministry is executing in the region currently is the ongoing East-West Road dualization; suffice it to say that the sustainable development projects and programmes of the Ministry of Niger Delta Affairs and other ancillary issues connected to the functions of the ministry are discussed in Chapter four of this thesis.

Asides from this, the Federal Government of Nigeria equally adopted and domesticated the Millennium Development Goals in the country, and by way of implementing its objectives, MDGs is executing various development projects/schemes in different communities in the Niger Delta Region.

#### **2.4 The Socio – Economic Objectives in the Nigerian Constitution and the Enhancement of Sustainable Development in the Region**

In appraising the socio – economic aspirations of the people, it is necessary to point out that what constitutes socio – economic aspirations of the people largely has to do with their aspirations to meet their daily needs in terms of food supply, employment, health care, portable drinking water, clean and healthy environment, economic and social development.<sup>115</sup> These variables, without more, constitute the basic needs of human beings which the 17 goals of sustainable development seek to accomplish. Conversely, where hunger, poverty, lack of essential amenities of life etcetera exist, sustainable development cannot be said to have taken place in that community or society.

Generally, it is the responsibility of the government of the nation to provide succour to the socio-economic needs of the people for the promotion of their welfare. Basically, the succour

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<sup>115</sup>Jaconelli contended that economic and social rights include ‘all rights which touch on the proprietary, commercial or industrial areas of life; for example, the right to peaceful enjoyment of one’s property (or at any rate, the right not to be deprived of the property without the payment of just compensation ...’ J. Jaconelli, ‘The Protection of Socio – economic Rights’. Third World Legal studies, (1984) Vol. 3 <<https://scholar.valpo.edu/cgi/viewcontent.cgi?article=1398&context=twis>> accessed 24th October, 2019.

to the socio – economic needs of the people are cast in form of constitutional rights, thereby creating and placing an obligation on the government to implement them for the common good of the citizens of the country. For example, sections 16, 17, 18 and 20 of the Fundamental Objectives and Directive Principles of State Policy in Chapter Two of the Nigerian Constitution provides for socio – economic rights<sup>116</sup>. In the South African Constitution, sections 26 and 27 appear as the most important of all the socio – economic rights thereof<sup>117</sup>. Similarly, Chapter 5 of the Ghanaian Constitution captioned ‘Fundamental Human Rights and Freedoms’ also contain some social, economic and cultural rights provisions.<sup>118</sup>

The ECOWAS Court in the case of *Socio-Economic Rights and Accountability Project (SERAP) v Republic of Nigeria*<sup>119</sup>, relying on international legal instruments, including the African Charter on Human and Peoples Rights,<sup>120</sup> which has already been ratified and domesticated as part of the municipal laws of the country,<sup>121</sup> held that ‘socio economic rights include the right to adequate standard of living which is further reduced to the right to food, work, health, water, life and human dignity, clean and healthy environment and the right to economic and social development’.

Socio economic rights by their very nature are egalitarian in their aim and they require positive intervention on the part of the state to be realized.<sup>122</sup> Where they are constitutionally entrenched, socio economic rights have the potential to transform a nation’s socio economic

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<sup>116</sup> O. S. Abdulfatai, et al. ‘Socio – Economic Rights for Sustainable Development in Malaysia: Lessons from selected African Countries’ Constitutions’. ISSN 1923-6662 (online). Available at <[http://www.ssrn.com/link/OIDA-Intl journal - sustainable development-htm](http://www.ssrn.com/link/OIDA-Intl%20journal%20-%20sustainable%20development-htm)> accessed 6 November, 2019. p16

<sup>117</sup> *ibid*

<sup>118</sup> *ibid*

<sup>119</sup> *Socio-Economic Rights and Accountability Project (SERAP) v Republic of Nigeria* ECW/CC/08/09

<sup>120</sup> African Charter on Human and Peoples Right (Ratification and Enforcement Act) Cap. A9, LFN. 2004.

<sup>121</sup> *Abacha v Fawehinmi (2014) 4 SC*, (pt 11) or (2000) 6 NWLR (pt 660) 228.

<sup>122</sup> J. Jaconelli, ‘The Protection of Economic and Social Rights’. Third World Legal Studies, (1984) Vol. 3 <[http:// scholar. valpo. edu/cgi/view/content.cgi?Article=1139content=twls](http://scholar.valpo.edu/cgi/view/content.cgi?Article=1139content=twls)> Accessed 14th November, 2019.

values and establish a society based on democratic values, social justice and fundamental human rights and improve the quality of life of all citizens in the country<sup>123</sup>. In essence, the realisation of socio economic rights means the amelioration of the conditions of the poor and the beginning of a generation that is free from socio- economic needs<sup>124</sup>.

Furthermore, it is also contended that ‘socio-economic rights by their scope of application are only entitlements to the avoidance of severe deprivation, particularly for the poor in society but not rights to the satisfaction of individual preferences generally’. They incorporate a safeguard against poverty, but not the provisions of life in luxury. They are urgent claims representing vital interests of the individual to avoid harm. Socio- economic rights do not guarantee access to the goods that we might desire to possess, so as to live a fulfilling life.<sup>125</sup>

At the International Law level, the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>126</sup> though not yet domesticated in Nigeria according to section 12 of its Constitution, acknowledges the under-listed as some of the socio-economic rights recognized globally:

- i. The individual’s right to work, to gain his living by work which he freely chooses and accepts and states shall take appropriate measures to safeguard these rights<sup>127</sup>
- ii. States are enjoined to ensure steady economic and social development<sup>128</sup>
- iii. There shall also be the right to worker’s remuneration with fair wages and equal remuneration to equal work,<sup>129</sup> safe and healthy working conditions,<sup>130</sup> equal opportunity of promotion,<sup>131</sup> rest, leisure and reasonable working hours and periodic holidays,<sup>132</sup>

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<sup>123</sup> L. Stewart, ‘Adjudicating Socio – Economic Rights under a Transformative constitution’, being a paper presented at the Constitutional Law Conference of the International Association of Law School, 11 & 12 September, 2009, Washington D. C. USA. Accessed 14th November, 2019.

<sup>124</sup> C. Mbazira, ‘Enforcing the Economic, Social and Cultural Rights in South African Constitution as Justiciable Individual rights. The role of judiciable remedies’: being a Ph.D. (Law Degree) thesis submitted to Faculty of Law, University of Western Cape Town, South Africa. Accessed 23th November, 2019.

<sup>125</sup> O. Abdulfaratai, et al ( n 116) op.cit.

<sup>126</sup> A United Nation’s Convention reached through Resolution 220 A (XXXI) on the 16th of December, 1966.

<sup>127</sup> Article 6(1) of the International Covenant on Economic, Social and Cultural Rights, 1966.

<sup>128</sup> *ibid* Article 6 (2)

- iv. Right to social security,<sup>133</sup> protection of family,<sup>134</sup>
- v. Right to special protection for mothers during and after child birth<sup>135</sup> and children<sup>136</sup>
- vi. Right to adequate standard of living which includes good food, clothing and housing<sup>137</sup>
- vii. The right to accessible and to some extent, free education<sup>138</sup>

The totality of the discussion in the forgoing taken into view, it could be summarised that socio-economic rights include but not limited to the right to housing, right to basic health care; because ill-health can lead to severe human suffering, right to education and right to work and decent working conditions. These socio-economic parameters for development though when provided are for the common good of all the citizens in the society, the poor in the society certainly need them most for their sustenance simply because of their weak financial and economic conditions of life. Thus, in the Indian case of *Minerva Mills v Union of India*,<sup>139</sup> Justice Bhagwati of the Indian Supreme Court observed that:

The large majority of people who are living in almost sub human existence in conditions of abject poverty and for whom life is one long unbroken story of want and destitution, notions of individual freedom and liberation, though representing some of the most cherished values of free society would sound as empty words bandied about in the drawing rooms of the rich and well to do and the only solution for making these rights meaningful to them was to remake the material conditions and usher in a new social order where socio -economic justice will inform all institution of fundamental liberalization for all maybe secured.

The relevance of Bhagwati’s observation would be best appreciated when viewed against the backdrop that in almost all constitutional democracies, greater attention appears to be given

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<sup>129</sup>ibid Article 7 (a)

<sup>130</sup>ibid Article 7 (b)

<sup>131</sup>ibid article 7 (c)

<sup>132</sup>ibid article 7 (d)

<sup>133</sup> ibid article 9

<sup>134</sup> ibid Article 10 (1) (a)

<sup>135</sup> ibid Article 10 (c)

<sup>136</sup> ibid Article 10 (c)

<sup>137</sup> ibid Article 11

<sup>138</sup> ibid Article 13

<sup>139</sup> AIR 1980 SC (1989)

to the civil/political rights (otherwise called the Fundamental Rights)<sup>140</sup> over and above the socio-economic rights. In fact, in some jurisdictions the courts have held that the socio – economic rights must conform to and run subsidiary to the fundamental rights. This is the position the court reached in the case of *Okogie v Attorney General of Lagos State*.<sup>141</sup> No doubt, the impression created by such judicial pronouncement is that the fundamental rights are superior to socio economic rights.

It is however argued that such dichotomy between the two sets of rights is misplaced. This is because commentators like Jaconelli have since debunked this notion and argued that ‘nowadays much emphasis is placed on the economic and social rights which include the right to decent standard of living, the right to education, or the right to development’.<sup>142</sup> The critical point to consider in this debate is that the right to access these vital benefits of human life are not available under the Fundamental Rights, but can only be realized in a country through the pursuit of the socio – economic provisions in the Constitution of the country. For instance, the ‘right to life’ guaranteed under the Fundamental Rights in Chapter Four of the Nigerian Constitution will not be effectively realised without the implementation of the accompanying socio-economic right to access food, clean water and good environment.<sup>143</sup> Copiously, fundamental rights will be meaningless to a poor and wretched people who cannot provide food, shelter and safe drinking water for themselves and their families. The correct position on the utility value of both the fundamental rights and the socio-economic rights is that they complement each other. None is more important than the other.

Arising from this background different countries have guaranteed socio-economic rights as provisions in their constitutions. For example, the Constitutions of Nigeria, South Africa and

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<sup>140</sup> Chapter four – Fundamental Rights, Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>141</sup> *Okogie v Attorney General of Lagos State* (1981) 2 NCLR, p350

<sup>142</sup> J. Jaconelli, (See footnote No. 115) op cit. p87

<sup>143</sup> A. T. Shehu, ‘The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience’, Afe Babalola University: Journal of Sustainable Development Law and Policy, Vol. 2 ISS. 1 (2013) Pp 101 – 120. Accessed on 23rd March, 2019.

Ghana lavishly provide for social and economic rights. In both the South African and Ghanaian Constitutions, the social and economic rights are justiciable like the Fundamental Rights<sup>144</sup> therein. But in Nigeria, the socio-economic rights are declared non – justiciable both by Nigerian Constitution<sup>145</sup> and judicial authorities<sup>146</sup>.

Importantly, the role of social and economic rights in the overall development of the South – African society has repeatedly been demonstrated in plethora of decided cases in the Southern African Constitutional jurisprudence. This being the case, it has become expedient to examine few socio-economic provisions in the South African Constitution and cases decided by the courts in that country as comparison with what is obtainable in Nigeria.

First, as earlier stated, the right of access to health care by the people is one of the socio-economic rights governments are enjoined to pursue, to enthrone socio-economic development and promote sustainable growth in society. This objective is codified as a constitutional provision in form of a right in section 27 of the South African Constitution 1996, which provision is to the effect that: everyone has the right of access to health care including reproductive health care.<sup>147</sup>

Thus, in the South African case of *Van Biljon v Minister of Correctional Services*<sup>148</sup> the South African citizens right to access safe health and adequate medical treatment became the main issue before the court. The facts of the case were that the applicants are prisoners infested with HIV and they sought to exercise their constitutional entitlement to adequate medical treatment under the South African Constitution by demanding that they should be provided with the expensive anti – retroviral medication. The respondent (the Minister of

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<sup>144</sup> O. S. Abdulfatai, et al (see footnote No. 116) op cit, Pp17 - 18

<sup>145</sup> Section 6 (6) (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>146</sup> *Adewale v Jakande* (1981) NCLR p262; *Anthony Olubunmi Okogie v Attorney General of Lagos State* (1981) 2 NCLR p350.

<sup>147</sup> Section 27 (1) of the South African Constitution, 1996

<sup>148</sup> *Van Biljon v Minister of Correctional Services* (1997) (6) BCLR (c)

Correctional Services) countered that for lack of funds, the prison authorities could not provide the drugs for the treatment of the applicants (the prisoners).

The Constitutional Court of South Africa held that lack of funds could not be an answer to a prisoner's Constitutional claim for adequate medical treatment, insisting that the prisoner has a Constitutional right to adequate medical treatment. The court therefore held the respondent liable and ordered him to supply the prisoners with the combination of anti – retroviral medication which had been prescribed for them as long as such medication continued to be prescribed.

Furthermore, in *Republic of South Africa v Irene Grootboom*,<sup>149</sup> the right of South African citizens to access shelter, basic nutrition, adequate health care and other social services as provided in section 26 of the South African Constitution was the main issue before the court.

Section 26 of the South African Constitution 1996, provides that:

Everyone shall have the right of access to adequate housing. (accessibility means that the state must create conducive conditions for all its citizens, irrespective of their economic status, to access affordable housing).<sup>150</sup>

As a result, when a group of residents in Cape Town were rendered homeless by reason that their formal abodes built on a private land earmarked for the construction of low cost houses were destroyed, they applied to the Cape Metropolitan Local Government Council to provide them with temporary shelters, adequate basic nutrition, health care and other social services pending their securing permanent homes. The Cape Metropolitan Council declined the residents' informal application for the provision of temporary houses for them pending their securing permanent homes. The residents therefore instituted this action as applicants against

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<sup>149</sup> *Republic of South Africa v Irene Grootboom* 2000 (11) BLCR 1169 (cc)

<sup>150</sup> Section 26 (1) of the South African Constitution, 1996

the Cape Metropolitan Council based on the provisions of sections 26 (i) and 28 (i) (c) of the South African Constitution.

The Constitutional Court of South Africa held that the measures of the provincial government to provide systematic housing schemes over a period of time is unreasonable, given that it contains no contingency plans for the provision of temporary shelters for the homeless and destitute people; adding that the state had failed to meet the obligation placed on it by section 26 of the Constitution, therefore declared the state housing programme as inconsistent with section 26 (1) of South African Constitution 1996.

Further that, the right of access to clean and adequate water by South African citizens is also one of the socio-economic rights in the South African Constitution. The availability of clean water for human consumption is very important to the sustenance of human life. The South African Courts have affirmed this fact by acknowledging that ‘the right to water is indispensable for leading a life in human dignity, adding that it is a prerequisite for the realization of other human rights’. In acknowledgment of this, section 27 of the South African Constitution guarantees the right of access to clean and adequate water for the citizens of that country.

Therefore, in *Residents of Bon Vista Mansion v Southern Metropolitan Local Council*,<sup>151</sup> the applicants tested the efficacy of section 27 (1) (a) of the South African Constitution which guarantees the right of access to safe water supply in the court. The facts of the case were that safe water supply to residents of Bon Vista Mansions area was disconnected on the grounds that they owed arrears of payment of water supplied to them. The residents of Bon Vista brought this action against the Southern Metropolitan Local Government Council, claiming

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<sup>151</sup> *Residents of Bon Vista Mansion v Southern Metropolitan Local Council* 2006 (6) BLCR 652 (W)



that the disconnection of water supply to them was an infringement on their rights to access clean and adequate water in section 27 (i) (a) of the Constitution.

The Court noted that the disconnection deprived the residents of existing right, and that the action of the council was prima-facie in breach of the constitutional duty to respect the Constitution and that the onus to justify why the supply of safe water to the residents of Bon Vista area was disconnected fall on the respondents. That the respondents failed to discharge the onus. The court thus held that the applicants' right of access to safe water supply had been infringed upon and the respondents were ordered to restore the water supply of the Applicants.

In a related vein, the right of access to social security and assistance for the citizens of South Africa is guaranteed in sections 27 (1) and 9 (3) of the South African Constitution. Thus, in the South African case of *Khosa v Ministry of Social Development Legislation*,<sup>152</sup> the court was invited to decide whether the deprivation of permanent residents and their children from access to social assistance was not a violation of the combined provisions of sections 27 (1) and 9 (3) of the South African Constitution. Section 27 (1) provides that: everyone shall have the right of access to social security.

Section 9 (3) of the South African Constitution 1996, on the other hand prohibits unfair discrimination against every South African citizen. The Constitutional Court of South Africa held that the exclusion of permanent residents and their children from the right of access to social security and assistance is a violation of section 27 (1) and 9 (3) of the South African Constitution 1996.

The implications drawn from the socio-economic right cases in South African Constitutional jurisprudence discussed in the foregoing are that, by adjudicating on the cases, the courts in

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<sup>152</sup> *Khosa v Ministry of Social Development Legislation* 2004 (6) BLCR 569 (cc) (S.Afr)

South Africa have helped to firm up socio-economic development, social justice and contribute to the general upliftment of the lives of the people in South Africa. Justice Moseneke emphasized the immeasurable benefits derivable from justiciable socio-economic rights in a country by contending that: "... social justice is the primer foundational value of our constitutional democracy" and that the creative jurisprudence of equality and substantive interpretation of the content of social economic rights should restore social justice in (the South African) society, emphasizing that other constitutional values of human dignity, openness should be used side – by – side or interactively to achieve the goals of social transformation <sup>153</sup> (of society). Liebenberg furthered this notion by adding that:

The winning of affirmative social benefits through litigation can create a favourable terrain for broader mobilization around deeper reforms. A substantive jurisprudence on social rights can facilitate 'nonreformist reform' and advance transformation in (South African) society. In particular, it can be served to enhance the participatory capabilities of those living in poverty and expose the socially constructed nature of poverty and inequality. At its best it should constantly remind us of our constitutional commitment to establish a society based on social justice, and facilitate the inclusion of marginalized voices in the debate on what is required to achieve such a society.<sup>154</sup>

From the foregoing elaborate discussion on the socio economic rights in the South African Constitution, it has become imperative to submit that 'the main purpose of the South African Constitution is not to merely protect extant rights but also to empower the disadvantage persons and contribute to the amelioration of social evils such as poverty, illiteracy and homelessness. To achieve this purpose, the socio-economic rights help to reflect specific areas of basic needs or delivery of particular goods and services. More importantly, they tend to create entitlement to the material conditions of human welfare"<sup>155</sup>

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<sup>153</sup> L. Stewart, (n 123) op cit. p486.

<sup>154</sup> *ibid* Pp488 – 489.

<sup>155</sup> O. S. Abdulfatai, et al (n 116) op cit.

The Constitution of the Federal Republic of Nigeria 1999 (as amended) also provides for social and economic objectives, by proclaiming that:

The state of social order is founded on the ideals of freedom, equality and social justice;<sup>156</sup> that every citizen of Nigeria has equal rights and opportunities before the law<sup>157</sup>; that the sanctity and dignity of the human person shall be recognised;<sup>158</sup> the government's actions shall be humane;<sup>159</sup> exploitation of human and natural resources shall be for the good of all;<sup>160</sup> and that the independence, impartiality and integrity of courts of law shall be secured and maintained<sup>161</sup>.

Other social and economic provisions contained in the Nigerian constitution are that 'the State is also enjoined to shun all forms of discrimination, provide for the peoples livelihood and welfare;<sup>162</sup> the State is also required to provide a self – reliant economy<sup>163</sup> and control the national economy in such a way to secure maximum welfare, freedom and happiness of every citizen<sup>164</sup>and direct its policy towards the promotion of a balanced and planned economy'.<sup>165</sup> In addition, it is provided that 'the security and welfare of the people shall be the primary purpose of governance'.<sup>166</sup> The State is to strive and where practicable, eradicate illiteracy by providing free and compulsory education.<sup>167</sup> The State is also to protect its environment and safeguard water, air, land, forest and wildlife in Nigeria.<sup>168</sup>

The socio-economic provisions highlighted above and as contained in the Nigerian Constitution though not as direct and forceful as those contained in the South African Constitution, still constitute the basic necessities needed for comfortable human living and the promotion of sustainable growth in society, if they are sincerely pursued and implemented

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<sup>156</sup> Section 17 (1) Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>157</sup> *ibid* section 17 (2) (a)

<sup>158</sup> *ibid* section 17 (2) (b)

<sup>159</sup> *ibid* section 17 (2) (c)

<sup>160</sup> *ibid* section 17 (2) (d)

<sup>161</sup> *ibid* section 17 (2) (e)

<sup>162</sup> *ibid* section 17 (3) (a)

<sup>163</sup> *ibid* section 16 (1) (a)

<sup>164</sup> *ibid* section 16 (1) (b)

<sup>165</sup> *ibid* section 16 (2) (b)

<sup>166</sup> *ibid* section 14 (2) (b)

<sup>167</sup> *ibid* section 18 (3) (a)

<sup>168</sup> *ibid* section 20

by the government of the country. No wonder, the Nigerian Constitution enjoins the three organs of Government in Nigeria, namely the executive, legislature and judiciary to ensure that their actions and policies conform, observe and apply the socio-economic objectives set out in Chapter Two of the Constitution while discharging their duties<sup>169</sup>. The Supreme Court of Nigeria however held in *AG Ondo State v AG of the Federation & 32 Ors*<sup>170</sup> that section 13 of the Constitution also applies to private individuals.

The lofty socio-economic objectives for the promotion of sustainable development embedded in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended), as expounded in the foregoing notwithstanding, by operation of a provision<sup>171</sup> in the same Constitution, Nigerians are foreclosed from approaching the courts to compel government to implement and/or enforce the socio-economic provisions for the benefits of the citizens.

The position in the Nigerian Constitution contrasts drastically with what is obtainable under the South – African Constitution, which avails its citizens the right to freely approach the Courts to challenge government or its agencies on the implementation of any socio-economic right, whenever an individual or group of individuals feel dissatisfied with the quality of socio – economic services provided by government or its agencies. It has therefore become necessary to examine few decided cases on the implementation of socio-economic provisions in the Nigerian Constitution and compare them with the position adopted by the South African Courts.

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<sup>169</sup> Section 13, Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>170</sup> *AG Ondo State v AG of the Federation & 32 Ors* (2002) 9NWLR, (pt. 772) p222

<sup>171</sup>Section 6 (6) (c) Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that “the judicial powers vested in accordance with the foregoing provisions of the constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in Chapter Two of the constitution.

Firstly, the access to education has earlier been identified as one of the socio-economic rights. Section 18 (1) and (3) of the Constitution of the Federal Republic of Nigerian 1999 (as amended), provides for the access to education by proclaiming thus:

(1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.

(3) Government shall strive to eradicate illiteracy and to this end government shall as and when practicable provide –

- a) Free, compulsory and universal primary education.
- b) Free secondary education;
- c) Free university education and
- d) Free adult literacy programmes.

Section 18 (1) of the Nigerian Constitution clearly shows that the Nigerian Government desires that all citizens in the country have equal and adequate access to educational opportunities, that is, apart from attending any school of your choice, every Nigerian can aspire to any level of educational attainment in the country. Besides, when subsection (3) of the section is read together with subsection (1), a conclusion can be drawn that the Government of Nigerian is committed to guaranteeing that illiteracy is eradicated from the Nigerian society.

Therefore in *Adamu & Ors v AG Bornu State & Ors*,<sup>172</sup> sections 18 (1), 35 and 39 of the Constitution of the Federal Republic of Nigeria 1979 (now defunct) was the main issue the court was invited to interpret and determine whether section 18 (1) of the 1979 Constitution provides for the access (rights) to education for a Nigerian. Similarly, the court was also prayed to determine whether section 35 of the Constitution of the Federal Republic of Nigeria 1979 vests the right to religion on a Nigerian, and whether section 39 of the Constitution of the Federal Republic of Nigeria 1979 vests on Nigerians the right to freedom from discrimination. It would however be noted that sections 18, 35 and 39 of the Constitution of

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<sup>172</sup> *Adamu & Ors v AG Bornu State & Ors* (1998) 1NWLR (pt 427) Pp681 – 687

the Federal Republic of Nigeria 1979 are *impari-materia* with sections 18 (1), 38 and 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The facts of the case were that Adamu and other Christian pupils in primary schools in Gwoza Local Government Area of Bornu State were educationally and socially discriminated against on the ground that they were Christians. Adamu and other affected pupils thus approached the High Court for a declaration that the action of the Bornu State Government is unconstitutional and void, by reason that it violates their rights as contained in sections 18 (1) and (3), 35 and 39 of the Constitution of the Federal Republic of Nigeria 1979, which avails Nigerians the access to education and the right of freedom against discrimination. The Maiduguri High Court held that its jurisdiction to entertain the matter which borders on the implementation of the socio-economic access to education by Nigerians in Chapter Two of the Constitution has been ousted by section 6 (6) (c) of the same 1979 Constitution.

The High Court of Lagos also reached similar decision in the case of *Ehinmare v Government of Lagos State*,<sup>173</sup> which also borders on the implementation of the access to education provided for citizens of Nigeria in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Asides that, the access to clean environment, water, air and land, forest and wildlife which are socio-economic ideals are provided for in section 20 of the Constitution of the Federal Republic of Nigeria 1999. Section 20 of the Constitution provides thus: ‘the state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria’.

Thus, the deprivation of Nigerians from enjoying the socio-economic benefits provided for in section 20 of the Constitution of Nigeria 1999, forms the crux of the case between *Morebishe*

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<sup>173</sup> *Ehinmare v Government of Lagos State* (1981) NCLR 166. Also, see the case of *Kaegbu v A G Imo State*. SC/83/1983 of 30/3/83 SC.

*& Ors v Lagos State House of Assembly*.<sup>174</sup> The facts of the case were that the Lagos State House of Assembly enacted a law that infringed on the environmental rights of the citizens of the state. Morebishe and others instituted this action in the Lagos High Court seeking an order declaring the law unconstitutional, null and void. The court held that by operation of section 6 (6) (c) of the Constitution, its power to adjudicate on the right to environment has been ousted, and that the right to clean environment is a provision under the Fundamental Objectives and Directive Principles of State Policy in Chapter Two of the Constitution which the courts have repeatedly declared non-justiciable.

The resultant effect of the refusal of the courts in Nigeria to adjudicate and direct the implementation of section 20 of the Nigerian Constitution, which provides for the access to clean and healthy environment is grossly inimical to the attainment of clean and sustainable environment in the country. This becomes obvious when juxtaposed against the decision of the South African Supreme Court in the case of *Mazibuko v City of Johannesburg*,<sup>175</sup> which borders on the implementation of the socio-economic right of access to clean water. The Court while adumbrating on the nexus between the right to clean and healthy environment and the right of access to clean water, pointed out that the right of access to clean environment for healthy living includes the availability and accessibility to scarce resources like clean water and adequate food.

It is therefore argued that the constitutional provision<sup>176</sup> and the pronouncements of Nigerian courts<sup>177</sup> foreclosing Nigerians from instituting suits against the government on the implementation of the provisions touching on the constitutional access to clean environment in Chapter Two of the Nigerian Constitution, also forecloses the implied access to clean

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<sup>174</sup> *Morebishe & Ors v Lagos State House of Assembly* (2003) 3WRN 134

<sup>175</sup> *Mazibuko v City of Johannesburg* W2008 JOL 21829 (SCA) (S.Afri)

<sup>176</sup> Section 6 (6) (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>177</sup> *Adamu & Ors v AG Bornu State* (n 172) op cit.

water and adequate food which are derivatives of the right to clean environment, water, air and land, forest and wildlife provided under section 20 of the Nigerian Constitution of 1999.

In all, the major drawback arising from the non-justiciability toga placed over the socio-economic provisions by the Constitution itself and the courts in Nigeria is that leading constitutional lawyers, analysts and jurists have roundly described the entire Chapter Two of the Nigerian Constitution as mere latent developmental declarations, grossly lacking the requisite capacity to stimulate sustainable growth in Nigeria. Nwabueze, for example, describes the laudable provisions in Chapter Two of the Nigerian Constitution thus:

I doubt whether they (socio-economic provisions) have real existence for any of the governments that have ruled the country since then. I feel certain that none ever consulted them, much less try to put them into practice...<sup>178</sup>

Flowing from the aforesaid, it is vital to argue that the socio-economic provisions in chapter two of the Constitution of the Federal Republic of Nigeria 1999 (as amended), by reason that they have been declared non-justiciable in plethora of cases, play very little or no significant role in promoting sustainable development in this country.

The non-justiciability sealing placed on the provisions in Chapter Two of the Nigerian Constitution notwithstanding, in *Federal Republic of Nigeria v Anache & Ors. in Re- Olafisoye*<sup>179</sup> the Supreme Court of Nigeria held that the effect of section 6 (6) (c) of the Nigerian Constitution is not total and sacrosanct. This is because the Supreme Court reasoned that the words used in section 6 (6) (C) creates a leeway through which the provisions in Chapter Two of the Constitution can be enforced. Thus, in *AG of Ondo State v AG of the Federation & 32 Ors*<sup>180</sup> the National Assembly's invocation of item 60 (a) of the Exclusive

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<sup>178</sup> B. O. Nwabueze, 'The value of the Human Rights and their Challenge for Africa' being paper delivered at the Annual Conference of the Nigerian Bar Association at Abuja on 27th August, 1998, p16.

<sup>179</sup> *Federal Republic of Nigeria v Anache & Ors. in Re- Olafisoye* (2004) ALL FWLR (pt 186) 1106 @ 1153

<sup>180</sup> *AG of Ondo State v AG of the Federation & 32 Ors* (n 170) op cit.



Legislative List, part I of the Second Schedule of the Constitution of the Federal Republic of Nigeria (1999) as amended to enact the Corrupt Practices and Related Offences Act, 2000, pursuant to section 15 (5) of the Constitution of the Federal Republic of Nigeria (1999) as amended, was held to be a valid enactment by the Supreme Court of Nigeria.

In Attorney General of Ondo's case, the Supreme Court unequivocally stated that by the powers vested on the National Assembly in item 60 (a) of the Exclusive Legislative List of the Constitution, it possesses the power both "incidental" and "implied" to enact the Corrupt Practices and Other Related Offences Act 2000, to implement the provisions of section 15 (5) of the Constitution of the Federal Republic of Nigeria (1999) as amended which is a provision under the 'Fundamental Objectives and Directive Principles of State Policy' in Chapter Two of the Constitution of the Federal Republic of Nigeria (1999) as amended.<sup>181</sup> Uwaifo, JSC in his judgment in the said case was emphatic on the need for the National Assembly to enact more Acts for the implementation of other provisions in Chapter Two of the Constitution by stating that:

...in fact similar enactments can possibly be made in regards to section 16 (2) (d) (and some other sections I earlier referred to) to ensure "that suitable and adequate food, reasonable national minimum living wage, old age care pension, and unemployment, sick benefits and welfare of the disable are provided for all citizens". See the constitutional court of South Africa case, **Republic of South Africa v Irene Groothboom**<sup>182</sup>.

Although Uwaifo JSC's dictum aptly underscores the necessity for the National Assembly to enact more Acts to enforce the socio-economic provisions in Chapter Two of the Nigerian Constitution with a view to making Nigerians access the benefits therein, but the reality is that, in the Constitutional jurisprudence of Nigerian, the socio – economic provisions remain

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<sup>181</sup>*AG of Ondo State v AG of the Federation & 32 Ors* (n 170) op cit., judgment: per WALI, JSC @ Pp 312 – 313 para F – A.

<sup>182</sup> *Republic of South Africa v Irene Groothboom* (2000) 11 BLCR 1169 (CC).

non-justiciable thus seen as mere constitutional declarations lacking the power of been enforced. In other words, the provisions in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended) cannot be enforced through any legal process for now unless the National Assembly enacts an Act for the implementation of any of the provisions therein as was held in the case of *AG Ondo State v AG Federation & 32 Ors*<sup>183</sup>.

Where this reality is taken into consideration, it becomes pertinent to submit that the sustainable development viability of the socio-economic provisions in Chapter Two of the Nigerian Constitution to the sustainable growth of the people of Nigeria is very minimal, if not completely non-existent. This fact clearly contradicts the position obtainable under the South African Constitution 1996 and the 1992 Constitution of Ghana where the socio-economic rights are placed side by side with civil and political rights under one Chapter dealing with the fundamental rights.

Specifically, sections 20, 24, 25, 26 and 28 under Chapter Five of the Constitution of Ghana 1992 provide for the socio-economic rights, while those of South Africa are contained in sections 24, 26(1), 27(1), 29(1), 30 and 31(9) under Chapter Two of the Constitution of 1996.

## **2.5 The NDDC Act: Meeting the Socio-Economic Needs of the People in the Region.**

### **i. The Niger Delta Development Commission (Establishment, etc) Act 2000: An**

#### **Overview.**

It would be recalled that Obasanjo upon assumption of office as President of the Federal Republic of Nigeria in 1999 invoked section 4 (2)<sup>184</sup> of the Constitution of the Federal Republic of Nigeria of 1999 (as amended) and enacted the Niger Delta Development

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<sup>183</sup> *AG of Ondo State v AG of the Federation & 32 Ors* (n 170) op cit.

<sup>184</sup>Section 4 (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that 'The National Assembly shall have power to make laws of the peace, order and good government of the Federation or any part thereof with respect to any material included in the exclusive legislative list set out in part I of the second schedule to this constitution'.

Commission (Establishment, etc) Act, 2000, which established the Niger Delta Development Commission. The NDDC Act consists of six parts subdivided into thirty one sections and a schedule.

Section 1 of the Act provides that: there is hereby established a body to be known as the Niger Delta Development Commission (in this Act referred to as ‘the commission’)<sup>185</sup>

The commission –

(a) Shall be a body corporate with perpetual succession and common seal<sup>186</sup>

(b) May sue and be sued in its corporate name<sup>187</sup>

Other preliminary provisions in sections 1 (3) and 2 of the Act are that: (i) the headquarters of the commission shall be situate in Port Harcourt, Rivers State; (ii) the Board of the commission shall comprise a chairman and one nominee representing each of the nine states that constitute the Niger Delta Region in the Act,<sup>188</sup> and (iii) three persons representing non-oil mineral producing states<sup>189</sup>. Other members of the commission’s board include – a nominee representing each of the following entities, to wit, Oil Producing Companies in the Niger Delta,<sup>190</sup> the Federal Ministry of Finance<sup>191</sup> the Federal Ministry of Environment<sup>192</sup> the Managing Director<sup>193</sup> and the two Executive Directors of the Commission.<sup>194</sup> Laudable as these provisions would appear, it is noted that the provision in section 1 (3) of the Act prescribing the inclusion of three persons representing non-oil mineral producing states in the NDDC board has continued to draw the ire of stakeholders in the region. They insist that the

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<sup>185</sup> Section 1 of the Niger Delta Development Commission (Establishment, Etc) Act 2000

<sup>186</sup> Section 1 (2) (a) of the Niger Delta Development Commission (Establishment, Etc) Act 2000

<sup>187</sup> Section 1 (2) (b) of the Niger Delta Development Commission (Establishment, Etc) Act 2000

<sup>188</sup> Section 2 (1) (a) and (b) of the NDDC Act 2000

<sup>189</sup> Section 2 (1) (c) of the NDDC Act 2000

<sup>190</sup> Section 2 (1) (d) of the NDDC Act 2000

<sup>191</sup> Section 2 (1) (e) of the NDDC Act 2000

<sup>192</sup> Section 2 (1) (f) of the NDDC Act 2000

<sup>193</sup> Section 2 (1) (g) of the NDDC Act 2000

<sup>194</sup> Section 2 (1) (h) of the NDDC Act 2000

inclusion of the three persons in the commission's board was uncalled for because the commission is not to serve the entire Nigeria but only oil producing states.

Another important provision of the NDDC Act is contained in section 4 which is to the effect that the office of the chairman should rotate amongst the member states of the commission in an alphabetical order starting with Abia State. It is however noted that the Act is silent on the rotation of the office of the managing director and the two executive directors of the commission amongst the states. This ambiguity has occasioned friction and disagreement among the NDDC states as to whose turn it is to produce the chairman of the commission at different times, thereby whittling down the desired cooperation and unity among NDDC states which is vital for the promotion of sustainable development in the region.

Specifically, section 7 of the NDDC Act provides for the functions and powers of the commission and which provisions are to the effect that 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 the sustainable development of the Niger Delta Area in the field of transportation including roads, jetties and water ways, 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 plan 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 inhabiting the development of the Niger Delta Area and assist the member states in the formulation and implementation of policies to ensure sound and efficient management of the resources of the Niger Delta Area;
- (g) Assess and report on any project being funded or carried out in the Niger Delta Area by oil and gas producing companies and any other company including non-governmental agencies and ensure that funds released for such project are properly utilized;
- (h) Tackle ecological and environmental problems that arise from the exploitation of oil minerals in the Niger Delta Area and advise the Federal Government and the member states on the prevention and control of oil spillages, gas flaring and environmental pollution;
- (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 other functions which in the opinion of the commission, are required for the sustainable development of the Niger Delta Area and its policies.

The provisions of section 7 of the NDDC Act as could be seen are generally designed to promote infrastructural development and provide social services in the Niger Delta Region, similar to the purposes the latent transformational ideals in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended) are designed to serve. Section 7 (b) of the Act clearly spells out the nature of facilities NDDC is expected to execute as its cardinal responsibility and which is to the effect that the commission shall Conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for the

sustainable development of the Niger Delta Area in the field of transportation including roads, jetties and water ways, health, education, employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunication.

Based on this, the Act enjoins the Niger Delta Development Commission to build houses, roads, health and educational facilities, water supply projects, electricity, telecommunication, agriculture and industries in the Niger Delta Region, purely for the attainment of its sustainable development ideals.

It is however noted that in meeting the obligation of implementing its functions in section 7 (b) of the Act through the constructing roads, housing schemes, educational and health facilities etcetera in the region; the Niger Delta Development Commission is accused of abandoning many of its projects. The recent forensic audit panel set up by the federal government to probe the activities of NDDC from its inception in 2000 – 2019 affirmed in its report that as much as thirteen thousand (13,000) NDDC projects are abandoned<sup>195</sup> in the region. In the words of Malami, the Attorney General of the Federation, the execution of thirteen thousand, seven hundred and seventy seven (13,777) projects in the Niger Delta were compromised as shown in the forensic audit report.<sup>196</sup> The only possible conclusion drawn from this damaging report is that, rather than promoting sustainable development in the region, the managers of NDDC only succeeded in killing the sustainable development mandate they are appointed to pursue in the commission.

Section 14 is another important provision of the Act by reason that it spells out the means available to the commission to source for funds to finance its programmes and services. For emphasis, the sources of funds of the commission as listed in the Act include:

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<sup>195</sup> NDDC Forensic Audit Report Submitted 13,000 projects, abandoned in the Niger Delta <<https://premiumtimesng.com>> accessed 17 September, 2021

<sup>196</sup> A. Malami, 'NDDC Forensic Audit Report shows 13,777 projects were compromised' <<https://www.thecable.ng>> accessed 17 September, 2021.

- (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;<sup>197</sup>
- (b) 3 percent of the total annual budget of any oil producing company operating, on shore and off shore, in the Niger Delta Area; including gas processing companies;<sup>198</sup>
- (c) 50 percent of monies due to member States of the Commission from the Ecological Fund;<sup>199</sup>
- (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;<sup>200</sup>
- (e) All moneys raised for the purposes of the Commission by way of gifts, loan, grants-in-aid, testamentary disposition or otherwise;<sup>201</sup> and
- (f) Proceeds from all other assets that, from time to time, accrue to the Commission.<sup>202</sup>

Going by the forensic audit report, between 2001 and 2019, the Federal Government has released Three Trillion, Three Hundred and Seventy Five Billion, Seven Hundred and Thirty Five Million, Seven Hundred and Seventy Six Thousand, Seven Hundred and Ninety Four Naira, Ninety Three Kobo (N3,375,735,776,794.93) as budgetary allocations; while Two Trillion, Four Hundred and Twenty Billion, Nine Hundred and Forty Eight Million, Eight Hundred and Ninety Four Thousand, One Hundred and Ninety One Naira (N2,420,948,894,191.00) has been received as income from statutory and non-statutory sources which brings the total funds received by the Niger Delta Development Commission

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<sup>197</sup> Section 14 (2) (a) of the NDDC Act 2000

<sup>198</sup> Section 14 (2) (b) of the NDDC Act 2000

<sup>199</sup> Section 14 (2) (c) of the NDDC Act

<sup>200</sup> Section 14 (2) (d) of the NDDC Act

<sup>201</sup> Section 14 (2) (e) of the NDDC Act

<sup>202</sup> Section 14 (2) (f) of the NDDC Act

for the period under review to approximately Six Trillion Naira (N6,000,000,000,000.00).<sup>203</sup> The forensic report in addition reveals that NDDC operates three hundred and sixty-two bank accounts.<sup>204</sup> Akpabio disclosed that the forensic audit covers the total of thirteen thousand, seven hundred and seventy-seven contracts that were awarded from 2001 to 2019 which total value was put at over three trillion naira. These startling revelations without doubt, corroborate the calls and protest by stakeholders in the Niger Delta Region that NDDC is a conduit-pipe for siphoning funds set aside for the development of Niger Delta Region, thereby killing the sustainable development aspirations of the region.

Further to the foregoing, the NDDC Act gave the President and Commander-In-Chief of the Armed Forces of Nigeria excessive powers in the management of the Commission. For instance, the President of the Federal Republic of Nigeria is vested with the power to appoint the chairman and members of the Commission's board.<sup>205</sup> Similarly, the President is designated as the authority to receive resignation letters submitted by members of the NDDC board in the Act.<sup>206</sup> Besides from that, the power to appoint successor to fill any vacant office in the Commission is also vested on the President.<sup>207</sup> Not only that, the authority to control or supervise the performance of the commission is also vested on the President.<sup>208</sup> By the provisions of section 18(1) of the Act, it is the duty of the President of the Federal Republic of Nigeria to present the commission's annual budget to the National Assembly. In a similar vein, the Act provides that the commission shall, at the end of every quarter in each year,

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<sup>203</sup> NDDC: Buhari Receives Forensic Audit Report, Says N6trn Approved in 18 years, <<https://www.vanguardngr.com>> accessed 17 September, 2021.

<sup>204</sup> *ibid*

<sup>205</sup> Section 2(2)(a) NDDC Act, 2000

<sup>206</sup> Section 2(2)(f) NDDC Act, 2000

<sup>207</sup> Section 5(3) NDDC Act, 2000

<sup>208</sup> Section 7(3) NDDC Act, 2000



submit to the President, Commander-In-Chief of the Armed Forces of the Federal Republic of Nigeria reports on the activities and administration of the commission.<sup>209</sup>

In another breath, the Act provides that the board of the commission shall prepare and submit to the President, Commander-In-Chief of the Armed Forces of the Federal Republic of Nigeria, not later than 30<sup>th</sup> June in each year, a report in such form as the President, Commander-In-Chief of the Armed Forces may direct the activities of the commission during the immediately preceding year and shall include in the report a copy of the audited accounts of the commission for the year and auditor's report thereto.<sup>210</sup> Besides, the President and Commander-In-Chief of the Armed Forces shall, upon receipt of the report referred to in subsection 1 of section 20, cause a copy of the report and the audited account of the commission and auditor's report thereon to be submitted to each house of the National Assembly.<sup>211</sup> Furthermore, the Act provides that the President and Commander-In-Chief of the Armed Forces may appoint members of a monitoring committee he deems fit from the public or civil service of the Federation for the commission.<sup>212</sup> In addition, the Act provides that the commission at all times, submit periodical reports to the President, Commander-In-Chief of the Armed Forces.<sup>213</sup> above all, the provision that 'subject to the provisions of the Act, the President and Commander-In-Chief of the Armed Forces may give the commission directives of a general nature or relating generally to matters of policy with regards to the performance by the commission of its functions, and it shall be the duty of the commission to comply with the directive',<sup>214</sup> appears to be the most authoritative power conferred on the President over the Commission by the Act.

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<sup>209</sup> Section 19 NDDC Act, 2000

<sup>210</sup> Section 20(1) NDDC Act, 2000

<sup>211</sup> Section 20(2) NDDC Act, 2000

<sup>212</sup> Section 21(1) NDDC Act, 2000

<sup>213</sup> Section 21(2)(b) NDDC Act, 2000

<sup>214</sup> Section 23 NDDC Act, 2000

The implications drawn from the above cited provisions of the NDDC Act are that the President is placed at the top as the overlord of the Niger Delta Development Commission therefore, it must discharge its functions in accordance with the whims and caprices of the President. Besides, the concentration of multiple powers on the President points to the simple conclusion that contrary to the general position that policies directed at promoting sustainable development in a society should be initiated and emanate from the members of the benefitting community, that is, from bottom to the top: in the case of NDDC the development objectives and projects are initiated at the top (Presidency) for the benefitting communities in the Niger Delta at the bottom.

Asides that, viewed against the back drop that the Act vests many supervisory powers on the President over the commission, which include receiving the commission's audited and independent auditors verified accounts for the year; it becomes curious and somehow baffling that the presidency was unaware of the monumental rot, mismanagement and diversion of public fund going on in the commission all these years as shown in the forensic report. This clearly raises a plausible conclusion that the presidency may have some level of complicity in the misappropriation of funds in the commission.

## **ii. The Niger Delta Development Commission: Meeting the Sustainable Development Aspirations of the People of the Niger Delta Region.**

Uwaifo's dictum cited in the foregoing ably elucidates the socio-economic benefits derivable from section 16 (2) (d) in the Constitution of the Federal Republic of Nigeria 1999 (as amended), where they are implemented and/or enforced by the Government and its agencies in the country. This is important because justiciable socio-economic provisions or rights serve as safeguard for the overall well-being of the people in the society. However, these much cherished socio – economic benefits in form of infrastructure and social services are almost non – existent in the Niger Delta Region. Saro Wiwa vividly describes the despicable

socio-economic condition of the Niger Delta people by asserting that... ‘even in this modern time, the people of Niger Delta still live in pristine conditions’<sup>215</sup>

Iruonagbe is even more succinct in his assessment of the poor socio-economic and environmental conditions of the people of the region, when he writes that:

The Niger Delta Region of Nigeria is indeed a convergence of squalor in abundance. It holds some of the world’s richest oil deposit; yet, Nigerians living there are poorer than ever. There are no infrastructural facilities in most parts of the region as what is easily notable are dense garbage – heap of slums stretching for miles. Villages and towns to river banks little more than heaps of mud walled huts and sacks. Group of hungry, half naked children and swollen adults wander dirty paths. There is no electricity, no clean water, no medicine, no schools. Also, their means of livelihood, farming and fishing have been destroyed by decades of oil pollutions.<sup>216</sup>

The above passage paints a gore picture of a Niger Delta that is ravaged by unsustainable tendencies of exploitation that has caused a great deal of underdevelopment to the people of the region. The consequential effect of the pitiable socio-economic backwardness in the region is that it has continued to instigate restiveness, violence, murder, insurgency, kidnapping and wanton destruction of facilities that would have helped to enhance the socio-economic well-being of the people of the region. It is therefore, the Federal Government of Nigeria’s determination to address the frequent cases of insurgency and bring about sustainable development to the region that prompted the establishment of the Niger Delta Development Commission through the enactment of the Niger Delta Development Commission (Establishment, etc) Act, 2000.

Based on the developmental items the NDDC is created to pursue and realize in the region as listed above, it is convenient to argue that the Commission seeks to realise facilities and

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<sup>215</sup> T. Mbeke – Ekenam, ‘*Beyond the Execution: Understanding the Ethnic and Military politics in Nigeria*’: (Capital/Graphic Communication and Publishing Co. 2000) p53.

<sup>216</sup> T. C. Iruonagbe, ‘The Niger Delta Crisis Challenges and Prospects for Peace and stability’ in J. Adegoke, et al (ed) *The Nigerian State, Oil Industry and The Niger Delta: Proceedings of The First International Conference on the Nigerian State, Oil Industry and the Niger Delta*, held at Yenagoa, Bayelsa, Nigeria, March 11-13, 2008 (Zelon Integrated Services Limited, 2008) Pp19 – 35.

services that are not only socio-economic in outlook but also transformational in scope; similar to the contents of sections 16, 17, 18 and 20 of the Constitution of the Federal Republic of Nigeria 1999. It is against the backdrop of this realisation that the argument that the NDDC Commission is aimed at giving teeth to the socio – economic aspirations of the people of the region becomes tenable. That being the case, the infrastructural programmes and social services NDDC is undertaking in the region which include building of roads, provision of safe drinking water, pursuit of poverty alleviation schemes, provision of better educational facilities etcetera, in the Niger Delta Region are assessed and discussed under the following sub-headings.

**a. The Provision of Safe Sustainable Water Supply in the Region.**

The provision of safe sustainable water supply to service human population has been identified as a necessary condition for the sustenance of a community. This is what is envisaged in sustainable development goal number six (6) which emphasises that in order to guarantee the promotion of sustainable development in a community, ‘clean water and improved sanitary conditions must exist in that community’.<sup>217</sup> Thus, the need to conserve water by ending wasteful uses and improving efficiency of water system or improving water quality and limiting surface withdrawals, in order to promote sustainable development in a community has become imperative.<sup>218</sup> It is this basic ingredient of sustainable development that has been incorporated into section 27 of the South African Constitution 1996, which specifically provides that: ‘Everyone shall have the right of access to clean and adequate water’.

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<sup>217</sup> Sustainable Development goal number 6 as listed in the United Nations Sustainable Development Conference held at New York, 2015; where the sustainable development goals as targeting Agenda 2030 were adopted.

<sup>218</sup> J. C. Nwafor, (n 81) op cit.

The same socio-economic objective is contained in section 20 of the Constitution of the Federal Republic of Nigerian 1999 which provides that: ‘The state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife in Nigeria’.

The irony is that whereas the South African courts in *Mazibuko*<sup>219</sup> and other related cases directed the implementation of the socio- economic right of access to water for the benefit of the citizens, the Nigerian courts in *Morebishe*<sup>220</sup> and related cases blatantly refused to enforce the implementation of section 20 of its Constitution, by reason that section 6 (6) (c) thereof has ousted its jurisdiction to entertain such matters. As a result, Nigerians are faced with serious crisis of unavailability and inaccessibility to clean and safe drinking water in their respective communities.

With all modesty, the Niger Delta Region is the worst hit in terms of non-availability and inaccessibility to clean and safe drinking waters. As a consequence, the scenario contemplated in the Sustainable Development Goal above is non – existent in most communities in the region. For instance, in a survey carried out by the NDDC it was established that:

Communities throughout the region suffer from delivery of water supply and access to potable water. The vast majority of the settlements in Niger Delta States depend on springs and wells for their water supply and some rural settlements particularly the large ones depend on water from boreholes.<sup>221</sup>

The United Nations Development Programme (UNDP) even painted a more pungent picture of the deplorable situation of safe drinking water in the region by asserting that: ‘as relatively recent as 1994 evidence show that only 27% and 30% of the households in the Region had access to safe drinking water and electricity respectively. This is below the national averages

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<sup>219</sup> *Mazibuko v city of Johannesburg* (n 175) op cit.

<sup>220</sup> *Morebishe & Ors v Lagos State House of Assembly* (n 174) op cit.

<sup>221</sup> Niger Delta Regional Development Master Plan (NDRDMP) 2004, p86

of 32% and 34%'<sup>222</sup>. Furthermore, 'a study tour of nine oil bearing communities in three states of the Niger Delta conducted by Kiikpoye and others to B – Dere, Kpean and Bodo in (Rivers State), Oporouza, Benekurukuru and Okpai – Oluchi in (Delta State) and Imiringi and Gbarantoru in Bayelsa State, discovered more worrisome findings. Kpean in Ogoni land showed among other things that the affected oil – bearing communities use drinking water in the same streams that also serve as lavatories with life expectancy on the low side'<sup>223</sup>.

The most baffling aspect of the despicable state of drinking water in the Niger Delta Region is that even in this modern era, the Niger Delta people still drink muddy, murky, dirty, impure and manifestly unhygienic water from the rivers and streams around their communities. For example, the communities inhabiting the lower Niger/Forcados rivers in Patani, Bomadi, Burutu, Warri South West and the coastal part of Warri North Local Government Areas of Delta State also suffer the absence of potable drinking water. Not only that, the same pitiable fate in terms of lack of potable drinking water also face most communities in Sagbama, Ekeremor, Kolokuma/Opokuma, Yenagoa, Southern Ijaw and Ogbia LGAs within the tropical rainy forest belt of Bayelsa state.

That apart, communities like Okorenkoko, Kurutie, Benikurukuru and the entire Gbaraunmatu area of Delta State; Kula, Abalama and Ke communities in Rivers state that are situate within the mangrove forest belt of the Niger Delta Region equally suffer the absence of portable drinking water, thus prompting the indigenous people to resort to digging wells beside their houses or sinking boreholes to provide water for their consumption. The impact of the urbanization of the area through the establishment of the Maritime University in

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<sup>222</sup> S. E. Abila, et al 'Sustainable Development Issues in the Niger Delta' in O. F. Emiri et al (ed) *Law and Petroleum in Nigeria: Current Challenges (Essays in Honour of Justice Kate Abiri)*. Lagos Malt House Press Ltd 2009, p244

<sup>223</sup> A. N. Thomas, et al 'Development Crisis in the Niger Delta: The Resources Control Option' being the *Proceedings of The First International Conference on the Nigerian State, Oil Industry and the Niger Delta*, held at Yenagoa, Bayelsa, Nigeria, March 11-13, 2008 (Zelon Integrated Services Limited, 2008) Pp19-35.

Kurutie has not effectively translated to the provision of befitting drinking water schemes for these communities by either government or non-governmental agencies. The paucity of potable drinking water in most Niger Delta Communities situate in riverine areas is very pathetic to behold. These facts were uncovered during the researcher's visit to most of the above-named Local Government Headquarters in the Niger Delta Region between April and August, 2018. Asides from the Local Government Headquarters within the creeks in the Niger Delta highlighted in the foregoing, it is equally a statement of fact that the same lack of portable drinking water also affect the communities in the upland areas of the Niger Delta, the State capitals inclusive. Situations like the ones cited above, no doubt, clearly undermine the ideals of sustainable development in a society.

Realising the grim shortage of sustainable water supply in the Region and in order to actualize the provisions of section 20 of the Constitution, particularly as it relates to the clause 'the State shall protect and improve...the water', NDDC as part of its mandate focused on the provision of sustainable drinking water for the Niger Delta population therefore formulated the following objectives as policy guide for achieving the goal of providing safe drinking water for the people of the region.

- i. To provide safe and sustainable water supply for two – thirds of rural communities by the year 2007 in accordance with the Federal Government goals and 85% coverage of the communities in the region by 2010.
- ii. To provide safe drinking water of at least 20 litres per person per day on the immediate term and 80 litres per capita per day, in the long term.
- iii. To conserve and preserve water resources.
- iv. To develop and adopt an integrated water resources and waste management master plan for the NDR in collaboration between the three tiers of government, Federal, State and Local Government Areas, with community participation.

- v. To build the capacity for good management and maintenance of existing and of future facilities, in partnership with private enterprises.
- vi. To introduce pipes sewerage systems that are separate from storm water drainage.
- vii. To introduce a safe sanitation technology to every home in the region.<sup>224</sup>

In implementing the above objectives, NDDC embarked upon the execution of many water projects to alleviate the lack of sustainable water supply in the region. Available records confirm that by 2010 a total of six hundred and six (606) water projects comprising community water schemes, solar powered projects, bore holes etcetera had been executed by NDDC in the region.<sup>225</sup> The breakdown of these water projects among the nine NDDC States show that Abia State had 28 solar water and 19 motorized others; Akwa – Ibom had 48 solar waters and 31 motorized others; Bayelsa State had 42 solar powered water schemes and 47 motorized others; Cross River had 23 Solar waters projects and 9 motorized others; Delta State had 58 solar powered schemes and 30 motorized others; Ondo State had 28 solar water projects and 36 motorized others; and Rivers State had 49 solar powered water projects and 45 motorized others.<sup>226</sup> As evident in the foregoing list, no water project was executed in Edo and Imo States by NDDC up to 2010 when the report discussed here was released. This development is condemnable because it creates the impression that Edo and Imo States are no longer in the Niger Delta Region as defined by the Niger Delta Development Commission (Establishment, etc) Act, 2000.

It is however important to note that on ground most of the above NDDC water projects are either abandoned or claimed to have been completed but nonfunctional. For instance, the 700,000 litres NDDC water project in Okutukutu community that is designed to serve the twin clans of Epie and Attisa hosting Yenagoa, the capital city of Bayelsa State and its

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<sup>224</sup> Niger Delta Region Development Master Plan, 2004. p205.

<sup>225</sup> NDDC Annual Report 2010, p8

<sup>226</sup> *ibid* p8



environs though completed since 2009 has remained nonfunctional till date. Similarly, the Biseni 100,000 litres water project, the 70,000 litres Otuabagi (Oloibiri) water project and the 700,000 litres Kaiama solar water project respectively in Bayelsa State executed by NDDC are all nonfunctional.

The NDDC water schemes in Eleme, Ubie, Bane, Soku and other communities in Rivers State are equally nonfunctional. The story is not different in Kurutie, Burutu, Akugbene, Patani and other riverine communities in Delta State where NDDC has constructed water projects but none is functional. Rather only few water projects executed by MDGs<sup>227</sup> that are functional in some communities but even these schemes are affected by epileptic power supply, given that under the MDGs operational guidelines the communities are enjoined to provide fuel to operate and service the generators and maintain them from time to time. But since most communities don't have steady funds to provide diesel to fuel these generators or service them when they develop fault, majority of the MDGs water projects too are just lying fallow and moribund in these communities; therefore, lacking any reasonable sustainable development value.

Where the preceding discussion is summed up, a conclusion can conveniently be drawn that the NDDC and other related agencies have made concerted efforts at providing potable drinking water to boost sustainable development in the Niger Delta Region, nonetheless, much is still needed to be done in this regard as majority of the communities in the region still remain without safe drinking water schemes. Even cities and urban centres in the Region like Port Harcourt, Yenagoa, Asaba, Warri, Aba etcetera are without functional public provided water schemes contrary to what was obtainable in these and other townships in the 1960s and 70s in Nigeria.

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<sup>227</sup> *MDGs Compendium of Projects Implemented in the Niger Delta Region from 2012 – 2015: 'Some Health Related Projects Implemented in Bayelsa, Delta and Rivers State'*. Pp103 – 157. also the 2011 CGS TO 113 LGAs Comprehensive Project Implemented Report, August, 2013.

In fact, the Niger Delta population is currently serviced by privately owned water vendors such as boreholes, bottled water companies and sachet hawkers. In all, the following factors are identified as being responsible for the poor drinking water supply in the region: (i) the low level of priority attached to the effective management and provision of safe drinking water; (ii) lack of effective urban planning; (iii) inadequate attention from government to the private sector in water resources management and service provision, (iv) inadequate funding, (v) absence of effective maintenance culture and (vi) non-involvement of the members of the local communities in the construction and management of water projects in their communities,<sup>228</sup> etcetera. The implication is that the full attainment of this sustainable development goal still remains an illusion in the Niger Delta Region.

#### **b. An Aggressive Pursuit of Poverty Alleviation Programmes in the Region**

Alleviating poverty globally is the number one goal the concept of sustainable development seeks to achieve. This objective generally formed the basis behind the institution of the Brundtland Commission in 1982 as reflected in its recommendations.<sup>229</sup> Though in ordinary parlance the term ‘poverty’ is used to describe the state of being poor monetarily, that is, lacking the financial ability to meet ones daily wants in life; researches conducted on the topic have elucidated that the term poverty has a meaning far broader and more expansive than mere lack of financial capacity. For instance, poverty has been described as a situation of lack of resources and materials necessary for living within a minimum standard conducive to human dignity and well-being.<sup>230</sup>

Within Nigeria it has been contended that the term ‘poor’ is used to describe, (i) households or individuals living below poverty line and whose income are insufficient to provide their

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<sup>228</sup>Niger Delta Region Development Master Plan 2004, p24.

<sup>229</sup> L. Atsegbua, et al (n 86) op cit.

<sup>230</sup> S. U. Chinedu, ‘Oil, Poverty and Insecurity in Nigeria: The Case of The Niger Delta’; in J. Adegoke, et al (ed) *The Nigerian State, Oil Industry and The Niger Delta: Proceedings of The First International Conference on the Nigerian State, Oil Industry and the Niger Delta*, held at Yenagoa, Bayelsa, Nigeria, March 11-13, 2008 (Zelon Integrated Services Limited, 2008) Pp19 – 35.

basic needs; (ii) households or individuals lacking access to basic services, political contracts and other forms of support and people in isolated rural areas who lack essential infrastructure; (iii) female households whose nutritional needs are not being met adequately; (iv) persons who have lost their jobs and who are unable to find employment and (v) ethnic minorities who are marginalized, deprived and persecuted economically, culturally and politically.<sup>231</sup> Besides, the lack of access to safe water, shelter, education, health services and social conditions of the population and its security which are closely related to the effective income are also identified as factors influencing the poverty profile of a people.<sup>232</sup> The fact is that ‘poverty’ as explicated in the foregoing is a multi – faceted and multi – dimension concept that manifests in all spheres of human life.

The qualities of what constitutes poverty as highlighted above obviously fall squarely within the poverty situation in the Niger Delta Region. Many researches conducted on the poverty condition of the Region are unanimous in their findings that the Niger Delta Region and its inhabitants are severely poor, despite its abundant mineral resources (oil and gas) which accounts for 90% of the country foreign earnings. For instance, the World Bank report (1995) indicates that the GNP per capital in the Niger Delta Region is below the national average of \$4.280.<sup>233</sup> The Niger Delta Region Development Master Plan (NDRDMP) Committee in a survey conducted on the poverty status of the Niger Delta Region using income as the parameter, observed that at present some 70% of the population of the Niger Delta Region lives below the poverty line as measured by the following indicators – disposable income, access to health care, access to safe water, educational attainment, access to shelter and

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<sup>231</sup> *ibid* p919

<sup>232</sup> ‘Poverty and the Impetus of Change’ in *The Niger Delta Regional Development Master Plan*, p149

<sup>233</sup> F. A. O. Agboola, ‘Poverty Situation Among Women in Niger Delta’: in Adegoke, J. (ed) *The Nigerian State, Oil Industry and The Niger Delta: Proceedings of The First International Conference on the Nigerian State, Oil Industry and the Niger Delta*, held at Yenagoa, Bayelsa, Nigeria, March 11-13, 2008 (Zelon Integrated Services Limited, 2008) Pp19-35.

access to gainful empowerment; contending that majority of the poor of the Niger Delta Region live in rural areas<sup>234</sup>.

In all these, the critical factors responsible for the high level of poverty in the Niger Delta Region include – (i) unemployment, (ii) lack of enhanced socio – economic infrastructure, (iii) absence of access to micro – credit facility (iv) absence of good governance; (v) high level of violence and insecurity; (vi) deficiencies in rural development services; (vii) non-involvement of stakeholders in the formulation and implementation of development policies in the region, etcetera.

In order to address the above factors inducing poverty in the region, NDDC developed a thirteen (13) point's strategy<sup>235</sup> to combat and alleviate poverty in the Niger Delta Region, which include the following; (i). to increase economic growth in the rural areas by improving the productivity of agriculture and fishing and facilitating micro and small enterprises; (ii). to increase economic growth in urban areas by removing obstacles and creating enabling conditions that will encourage private enterprise; (iii). to reduce conflict and achieve substantial improvement in social stability and security of lives and property, (iv). to provide adequate housing for existing and future households. (v). to improve supporting services and financing for enterprise, (vi). to improve the standard of essential physical infrastructure, etcetera.

In appraising NDDC's implementation of the above strategies to combat poverty in the region, it would be realized that under-development and lack of socio-economic infrastructure necessary for the facilitation of effective economic growth, human development and community welfare in the region have been identified as a major cause of

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<sup>234</sup> 'Poverty and the Impetus of Change' (n 221) op cit. p149

<sup>235</sup> 'The Strategy and Goals for Change in the Niger Delta Region'; in *The Niger Delta Regional Development master Plan* facilitated by NDDC. p161

poverty in the Niger Delta Region.<sup>236</sup> Consequently, NDDC in its determination to address the issue of under-development and lack of socio – economic infrastructure is pursuing the construction of projects and programmes designed to usher in increased economic activities to alleviate poverty in the region. NDDC is thus constructing roads for easy mobility of people and goods in the region, providing hospitals, clinics and potable drinking water schemes at both urban and rural communities to improve the welfare of the people particularly the rural population. This is in tandem with and could pass as an actualization of the provisions of the Constitution of Nigeria which provides as follows:

... it shall be the duty of the state to –

provide adequate facilities for and encourage free mobility of people, goods and services throughout the federation.<sup>237</sup> The suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.<sup>238</sup>

The on –going dualization of the East/West road which is jointly sponsored by both the NDDC and the Ministry of Niger Delta Affairs is contributing immensely to the improvement of trade among the people of the region. The availability of electricity in most rural communities through the assistance of NDDC is equally encouraging the rural population to embark on small scale business and entrepreneurship in the remote villages now, thereby promoting the growth of steady economic activities in the rural areas. This development synchronizes with the main economic objective of the commission “which is to vigorously pursue small business development initiative, essentially to trigger the process of industrialization in the Niger Delta Region; provide financial and business development support for businesses within the region; accelerate formation of new businesses and curb

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<sup>236</sup> S. U. Chinedu, (n 230) op cit, Pp920 – 925

<sup>237</sup> Sections 15 (3) (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>238</sup> ibid section 16 (2) (d)

new business failures; create jobs and reduce unemployment and boost poverty alleviation in the region.”<sup>239</sup>.

### **c. Embarking on Rigorous Schemes to Reduce Unemployment in The Region**

Another factor instigating poverty in the Niger Delta Region is unemployment. The National Bureau of Statistics affirmed that the rate of youth’s unemployment and/or underemployment are highest in the South-South geopolitical zone of Nigeria with a ratio of 23.8% and 26.3% respectively<sup>240</sup>. A survey conducted by the NDRDMP in 2000 show that the national unemployment rate of 5% when compared with those of Abia, Edo, Ondo, and other Niger Delta States clearly confirm that the unemployment rate in the Niger Delta States is higher. For instance, Akwa Ibom has 18.2%, Rivers 19.1% and Cross River 16.6% unemployment rates.<sup>241</sup>

Different factors are responsible for the high unemployment rate in the Region, which includes the geometrical increase in the number of secondary school leavers, and the unchecked production of university graduates without corresponding job opportunities to accommodate them in the region. Furthermore, the increasing number of retirees from both the public and private sectors of the economy as a result of recession and increasing insecurity, also contribute to the high level of unemployment in the region.

Unemployment having been identified as one of the pivotal forces inducing poverty in the region, NDDC stepped up visible steps to tackle the scourge and reduce poverty in the Region. It therefore embarked on projects and programmes aimed at creating employment and guaranteeing self-sustenance for the people of the region. The first instrument employed by NDDC to create employment in the region is the promotion of agriculture and allied economic activities in the region. To achieve this objective, NDDC in concert with

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<sup>239</sup> section 7 (the objective of the commission), NDDC Act 2000

<sup>240</sup> S. U. Chinedu, (n 230) op cit, p922.

<sup>241</sup> Niger Delta Regional Development Master Plan (NDRDMP) 2004 p70.

stakeholders in the Niger Delta States, Local Government Councils and rural communities formed what is known as ‘Rural Development Service Centres’ in rural communities, while Urban Centres like Port Harcourt, Aba, Warri, Calabar, Benin, Owerri, Akwa, Eket, Yenagoa and Brass are designated as growth centres to boost development in the Region<sup>242</sup>.

Pursuing projects aimed at improving agriculture related trades like cassava production, fishing, poultry and animal husbandry; NDDC acquired 1,500 hectares of land per state for the establishment of cassava farms in the region<sup>243</sup>. NDDC then shared the 1,500 hectares to 1 hectare per participant including women, youth and other stakeholders to enable them establish individual cassava, plantain, fish and poultry farms across the region.<sup>244</sup> In some cases, women were encouraged to form cooperative societies and patronized accordingly through the allocation of farmland to such groups to pursue agricultural activities. Not only that, NDDC created and granted soft loans to the beneficiaries to facilitate the effective execution of their farms.

In addition to farming, NDDC in its desire to empower the youths in the region and reduce poverty also created the NDDC Mass Transit Programme, under which it purchased thousands of brand-new 18 seater buses and speedboats to aid road and water transportation in the region. These buses and speedboats were distributed among youths and other stakeholders in the region to enable them operate their individual transportation business and overcome poverty. Further that, NDDC equally recruited youths into its skills acquisition programme and those who successfully completed theirs, were availed with a soft loan to establish their private workshop to become self-employed and self-reliant<sup>245</sup>.

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<sup>242</sup> *ibid*, Pp27 – 28

<sup>243</sup> NDDC Annual Report, 2010. Pp32 – 35. Also ‘Agriculture and Fisheries’ NDDC Master Plan, 2004, p36.

<sup>244</sup> NDDC Concepts and Guidelines Manual for Implementing the Quick Impact Projects based on the NDRMP facilitated by NDDC, Pp34 - 41

<sup>245</sup> ‘NDDC Human Capital Development and Empowerment Programmes (Skills Acquisition’, NDDC Annual Report 2010, Pp36 – 37

It is important to note that NDDC realized most of its empowerment objectives aforementioned through its Quick Impact Projects (QIP),<sup>246</sup> a breakdown of which show that from its inception till 2010 it has executed about three thousand, one hundred and eighteen (3,118) projects in the region, essentially to improve various aspects of the lives of the Niger Delta population.

NDDC, therefore, as evident in the foregoing discussion has committed tremendous goodwill and commitment at ensuring that the toga of high poverty, hanging on the neck of the Niger Delta populace is removed by rigorously driving the process of development in the region.

#### **d. Pursuing Enhanced Economic Growth in The Region.**

Besides the factors responsible for increasing poverty in the region as discussed in the preceding pages, the weak, restrictive and non-diversified economy of the Niger Delta has also been cited as a critical factor causing poverty in the region. In a survey carried out by the Niger Delta Regional Development Master Plan (NDRMP) Committee, it was established that whereas 80% of all persons employed in the Region are engaged in private sector, only a tiny 10% is employed in the public and semi-public sector of the nine states that constitute the Niger Delta Region.<sup>247</sup> It was further discovered in the survey that the informal sector of the region's economy is largely driven by small scale business enterprises like proprietorship, sole distributors, retailers, petty traders, artisans, hawkers at Urban Centres like Asaba, Warri, Ughelli, Benin, Aba, Owerri, Calabar, Uyo, Yenagoa etcetera.

Though a petroleum refinery and glass processing industry exist in Warri and Ughelli, respectively, only Port Harcourt with its vast Trans – Amadi Industrial area, refineries, Petro – chemical company, liquefied Natural Gas and fertilizer plants can pass as an industrialized

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<sup>246</sup> NDDC 'Concepts and Guidelines Manual for Implementing the Quick Impact Projects booklet, facilitated by NDDC' 2006 Pp1 – 109

<sup>247</sup> 'The Regional Economy' in Niger Delta Regional Development Master Plan (NDRDMP) 2004, p67



city in the region. It is nonetheless expedient to argue that even the hitherto buoyant Trans-Amadi industrial estate in Port Harcourt is now in a comatose state, because of harsh economic realities and the increasing hostile security situation in the region.

At the rural areas of the region a subsistence and an agrarian economy comprising predominantly of farming, fishing, hunting, agriculture, logging, tapping, carving activities constitute the main economic backbone of the Niger Delta Region. In 2004 a survey conducted on two thousand, three hundred and seventy seven (2,377) small enterprises in the region show that 26% of the Niger Delta population engage in agriculture, 30% in manufacturing/traditional crafts, 39% provide tertiary service, while 4% are engaged in multiple enterprises (that is, two or more services).<sup>248</sup> The report further show that about 16% of the enterprises employ just one person, 45% employ two to five persons, 22% employ six to ten persons, 11% employ between eleven to twenty persons, 5% employ between twenty to thirty five persons, while 1% employ over thirty five persons.<sup>249</sup>

Most worrisome, the committee report identified lack of capital or access to bank credits, loans and inadequate facilities like electricity and security as the most serious factors inhibiting progressive economic development and industrial growth in the region.<sup>250</sup> The cumulative effect of the constraints highlighted above on the economy of the region is that the Niger Delta economy is weak, restrictive, non-expansive and largely subsistent in scope thus, lacking the requisite capacity to trigger aggressive industrialization thereby occasioning high poverty rate in the region.

The above economic challenges confronting the region taken into consideration and determined to improve the Niger Delta economy, NDDC formulated an economic policy

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<sup>248</sup> Niger Delta Region (Demography and Baseline Sector Report, 2004) in Niger Delta Regional Development Master Plan (NDRDMP) 2004. p68

<sup>249</sup> *ibid*, Pp68 – 69

<sup>250</sup> *ibid* p68

aimed at diversifying the economic activities in the rural areas of the region. As a result, it created a Rural Development Service Programme (RDSP) which main objective is the entronement of enabling conditions for the growth of micro and Small Scale Enterprise (MSEs)<sup>251</sup> in the region, through the provision of business support services for Micro Credit facilities and training in relevant skills. The essence of the MSEs project, in the thinking of the commission, is to achieve the following goals<sup>252</sup> in the region.

- i. Trigger off the process of industrialization in the Niger Delta Region.
- ii. Creation of opportunities for sustainable development, industrialization and Development of local technology and efficient use of local raw materials through value added production processes,
- iii. Setting – up of a repository information base for businesses in the region and research as localized and/or regional success factors: These successes can be replicated and the recurrence of failure minimized.
- iv. Create financial support for business in the region.

Some important broad objectives<sup>253</sup> of the MSEs project NDDC identified and is trying to achieve in the region are;

- i. Substantial job creation
- ii. Income generation
- iii. Enhanced standard of living

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<sup>251</sup> NDDC contended in its manual that the development of micro and small enterprises (MSES) in the Niger Delta region has broad Macro and Micro economic benefits as well as social environment benefits. Because MSEs are a vital source of employment and income in the developing world, increasing their productivity and poverty alleviation. The development of (MSEs) can be particularly beneficial to improving the economic and social well-being of women, youths and other disadvantaged groups. MSEs commonly have relatively strong backward and forward linkages in the domestic economy, they increase the income – earning opportunities for other small – scale producers. The development of rural and peri – urban MSEs provided non – farm economic alternatives that diversify income against the usual risks of agricultural production.... *NDDC Concepts and Guidelines Manual for Implementing the Quick Impact Project*, 2006, p24.

<sup>252</sup>NDDC Quick Impact Project Document (n 246) op cit. p25

<sup>253</sup> *ibid*, p25

- iv. Reduction of income inequalities
- v. Youth and women empowerment
- vi. Poverty Alleviation or reduction
- vii. Reduction in youths' restiveness within the Niger Delta Region.
- viii. Reduction of crime rate

While implementing the above identified developmental goals, NDDC established new organizations and incorporated already existing co-operative societies, social institutions, community based organizations in the region particularly among the rural populations and availed them with financial loans and grants to establish small medium enterprises for the promotion of economic growth, employment creation and poverty reduction in the Region. To effectively realize these ideals NDDC through its directorates formed partnership with Local Government Councils, State Governments, Federal Ministries/Agencies and multinational organizations pursuing similar objectives of providing loans and grants to the rural population to boost economic growth and poverty alleviation in the region.

Instances where NDDC has collaborated with other agencies to enhance the economic growth of the region with the aim of reducing poverty are abound. For example, the Federal Government of Nigeria out of its desire to reduce poverty in the country established the National Economic Employment and Development Strategies (NEEDS) Programme. In a similar vein, the States and Local Government Councils equally developed their counterparts of NEEDS otherwise called SEEDS and LEEDS<sup>254</sup> respectively.

The essence of the these programmes is that they are designed to pursue long term goals of achieving poverty reduction, wealth creation, employment generation and value re-orientation in the nation. NDDC thus in its implementation of projects directed at reducing

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<sup>254</sup> T. Alaibe, 'Sustainable Development and the Challenges of good governance in the Niger Delta Region', being a convocation lecture delivered at Igbinedion University, Okada, November 23, 2007. Pp25 – 26.

poverty in the region, keyed into the projects and programmes pursued under NEEDS, SEEDS and LEEDS in the Niger Delta States and Local Government Councils, such as how to realize the Universal Basic Education goals, the Primary Health Care ideals, the National Programme on Immunization goals and Poverty Alleviation Scheme essentially to make concrete and measurable impact on poverty reduction and progress in human development in the region.<sup>255</sup>

To this end, at the educational front, NDDC built many classroom blocks in both primary, secondary and tertiary institutions in the region. It also provided desks, blackboard, books and other viable instructional materials to enhance learning for the pupils and students in the region. For instance, besides 8 classroom blocks that can physically be verified on ground in various primary and secondary schools in the region, NDDC also built various hostels/lecture halls in many universities in the Niger Delta Region which include university of Port Harcourt, Rivers State University-Nkpolu, Niger Delta University-Wilberforce Island, Delta State University- Abraka, Edo State university – Ekpoma, Akwa Ibom State university – Uyo etcetera. In the health sector, NDDC built many hospitals, cottage health centres in various communities in the region. Most importantly, NDDC embarked on massive periodic medical outreach programme to Local Government headquarters and rural communities in the region, where people with different ailments were treated, including embarking on operations in serious cases.

But due to lack of effective co-ordination and proper policy implementation, the fruits derived from the synergy between NDDC and NEEDS, SEEDS and LEEDS in alleviating poverty are not visible on ground in the States and Local Government Areas in the Niger

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<sup>255</sup> O. O. P. Dokun, '*Politics of International Environmental Regulations*' (Daily Graphics Nig. Ltd1998) 1705.

Delta Region, though NDDC's efforts at developing the region and alleviating poverty are continuing.

In a related vein, the United Nations Development Programmes (UNDP) which is an agency of the United Nations Organization (UNO) equally embarked on projects aimed at reducing poverty in the Niger Delta Region. For instance, under its First Country Cooperation Framework (CCF) Programme spanning from 1998 – 2002, the agency selected eight (8) communities in each of the Niger Delta States and provided them with many socio – economic services which include the construction of various skill development centres, facilities for the provision of Micro – finance, micro credit and youth employment programme. The UNDP specifically assisted in the preparation of the blue print for economic development for Bayelsa and Cross River States.<sup>256</sup> These UNDP projects are important because they serve as the foundation for NDDC's further action on the poverty alleviation fight in the region.

Asides from the foregoing, the world bank through its Community – Based – National – Research – Management programme in the Niger Delta Region, also contributed immensely to the economic growth and poverty reduction in the Niger Delta Region. The veracity of this claim hinges on the fact that in 2005, under a project targeted at enhancing the quality of lives of the rural poor with priority on women and youth; the World Bank disbursed the sum of \$82.2m for specialized projects and as loans to selected communities and persons in the Niger Delta States. An example of such World Bank assisted programmes aimed at reducing poverty in the region is the FADAMA II Agricultural Scheme,<sup>257</sup> which was developed with a \$100m loan and directed at increasing rural infrastructure, particularly the financing of small scale farming, creating feeder roads and community markets, etcetera. NDDC through

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<sup>256</sup> 'Regional Development Efforts: International Agencies of the United Nations' in the Niger Delta Regional Development Master Plan (NDRDMP) 2004. p105

<sup>257</sup>ibid. p105

its partnership keyed into the World Bank schemes in the region and used the World Bank projects as the basis for initiating poverty alleviation in the region, particularly those encouraging increased agricultural growth.

However, despite the efforts made by NDDC and non-governmental agencies like oil companies, World Bank, UNO, NEEDS and other related bodies to develop the Niger Delta Region over the years and reduce poverty among its population, the question stakeholders in the region and the generality of Nigerians are asking is: Why is the Niger Delta Region comparatively still poorer than most regions in Nigeria? The reasons for the pervading poverty in the region are not far-fetched. First, it should be realized that the underdevelopment of the region has lasted for a very long time spanning from 1956 when oil was first discovered in Oloibiri in present day Bayelsa State, through the recommendations of the Willinks Commission in 1958 to 2000, when NDDC was created to effectively address the underdevelopment and increasing poverty challenges of the region. Such prolonged and monumental period of underdevelopment cannot be sufficiently addressed in 10 years period.<sup>258</sup>

Furthermore, the increasing poverty in the region is caused by the systemic corruption and wanton mismanagement of funds by the managers of programmes and projects designed to alleviate poverty and develop the region. For instance, it is common knowledge that OMPADEC died as a result of the brazen corruption perpetrated by its managers.<sup>259</sup> The corruption allegations in NDDC are not only worrisome but equally confounding. In fact,

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<sup>258</sup> The BRACED Commission quoted the Willink's Commission as having observed in its report that: 'it is not easy for a government or a legislature operating from far inland to concern itself or even fully understand the problems of territory where communication are so difficult, building so expensive and education so scanty...; recommending however that the Niger Delta be declared a special area for focused development'. D. M. J. Fubara, (ed) *The Green Niger Delta Environmental* being a position paper compiled and submitted by the BRACED Commission to the Rio + 20 summit of the UN Conference on Sustainable Development, March 2013, p5.

<sup>259</sup> A. Etekpe, *Politics of Resources Allocation and Control in Nigeria: The Delta Experience*. (Havey Publication Coy 2007) Pp53 – 60.

NDDC is a cesspool of corruption. A catalogue of corruption cases in NDDC shows that one time Chairman and Managing Director respectively of NDDC namely Edet and Oneme, allegedly embezzled millions of the commission's funds and were thus relieved of their positions.<sup>260</sup> Besides, the Chairman of the Presidential Advisory Committee Against Corruption (PACAC) – Sagay on March 2017 frontally accused the Dan Abia led NDDC Board of willfully embezzling NDDC's funds. He asserted that:

NDDC bought over 70 cars that included eight super Lexus that cost N70 million each and 10 Toyota land cruiser jeeps at N65 million each. The cars were bought with money from funds meant for infrastructure, water, housing, hospitals, schools, without conscience and without a thought for the wretched people of the Niger Delta. These huge sums were plundered from their allocation and yet the managing director was ironically complaining that the NDDC lacks funds to execute projects<sup>261</sup>

Not only that, the interim committee appointed by Akpabio to manage the affairs of NDDC is currently enmeshed in serious corruption crisis. There are accusations and counter accusations among the top functionaries of NDDC for allegedly embezzling billions of naira. First it was alleged that the Brambaifa led interim committee of NDDC mismanaged billions of naira<sup>262</sup> for that reason he was removed from office. Thereafter, the Nunieh led interim committee was appointed to manage the affairs of the commission at the expense of the substantive board screened and cleared by the Senate. Nevertheless, before she could settle down to discharge her functions as the acting Managing Director of NDDC, Akpabio sacked her and appointed another interim committee headed by Pondei. Two fundamental developments bordering on the investigation of the corruption in NDDC occurred within this period. First, the presidency engaged an international accounting firm to probe the finances of

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<sup>260</sup> A. A. Akinwale, et al 'Re – Engineering The NDDC's Master Plan: An Analytical Approach', in J. Adegoke et al (ed) *The Nigerian State, Oil Industry and The Niger Delta: Proceedings of The First International Conference on the Nigerian State, Oil Industry and the Niger Delta*, held at Yenagoa, Bayelsa, Nigeria, March 11-13, 2008 (Zelon Integrated Services Limited, 2008) Pp317 – 332.

<sup>261</sup> I. Sagay, 'Sagay Accuses NDDC, Customs of Corruption'. <<http://vanguardngr.com/2017/03/sagay-accuses-nddc-customs-corruption>> accessed 10 October, 2017.

<sup>262</sup> E. Izuejiogu, 'NDDC Controversies and the Problems of the Niger Delta are caused by Niger Deltans'. *Opera News Politics* 20th June, 2020. Accessed 3 July, 2020.

NDDC from year 2000 to date through a forensic audit. Secondly, the Senate Committee on NDDC also commenced a probe on the management of NDDC by the interim management committees.

As a result Ekere, one time managing director of the commission revealed that he gave millions of NDDC funds to Akpabio for him to assist Ekere win the 2019 gubernatorial election in Akwa Ibom State.<sup>263</sup> Nunieh also alleged before the senatorial committee that she gave Akpabio contracts worth 500 million naira from the NDDC to execute and paid him upfront but he failed to execute none. She also alleged that between October last year and this year through the manipulative instrumentality of Akpabio the current interim management of the NDDC misappropriated 40 billion<sup>264</sup> and that the Pondei led interim committee of the commission shared N1.5 billion among themselves as Covid – 19 palliatives. Though Akpabio denied the allegations against him, Pondei, the interim Chairman of the NDDC management committee admitted sharing the N1.5 billion among the NDDC staff as Covid – 19 palliative.

Other factors responsible for the increasing poverty in the Niger Delta Region include the hostile and uncompromising attitude of host communities towards developmental efforts by government and non-governmental agencies; increasing insecurity in the Niger Delta Region; over politicization of the award and execution of contracts aimed at ameliorating poverty and hardship in the Niger Delta Region; and rampant cases of theft and vandalization of materials for the execution of development projects in the region. Apparently, these unchecked cases of corruption have contributed in no small way to the continued impoverishment of the people of the region thus defeating the attainment of sustainment development in the Niger Delta Region.

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<sup>263</sup> J. O. Nwanchukwu, 'NDDC Former MD, Joy Nunieh makes Damning Revelations About Buhari's Minister Akpabio (Video). Daily Post, July 11, 2020. <[www.operanewsapp.com](http://www.operanewsapp.com)> accessed 10 October, 2017

<sup>264</sup> E. Odivwri, 'Pols cope – Re: The Greasy Mess at NDDC' 17 January, 2020. <<http://www.thursdaylive.com>>



### **e. Providing Other General Infrastructure for Development in the Region**

Providing quality infrastructure and sustaining same over time in a society is the number nine (9) goal of the concept of sustainable development. Legally speaking, the term infrastructure means the undertaking framework of a system, especially public services and facilities such as highways, schools, bridges, water systems etcetera, needed to support commerce as well as economic and residential development.<sup>265</sup> That being the case, the efforts of NDDC to provide the following infrastructure to enhance development in the region has become the focal point of assessment in this subsection, given that the new infrastructure the commission is designed to provide will enhance the development of the region by reducing poverty, increase commerce and trade among the rural communities, create roads for accessibility and ease communication among its people. This is essentially to ensure that the Niger Delta Region comes out from its excruciating poverty which is caused by the age-long underdevelopment the region.

#### **Roads**

The availability of tarred and motorable roads is an integral part of the transportation architecture in a country, region, city or community. Roads, like every other form of transportation, perform the primary function of facilitating the transportation or conveying of personnel, goods and services from one place to another. The importance of good road network to the economic growth of a country or community is underscored by the lavished provision accorded it in the Constitution of the Federal Republic of Nigeria 1999 (as amended), which provides that: the Federal Government of Nigeria shall provide adequate facilities for and encourage free mobility of people, goods and services throughout the federation.<sup>266</sup>

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<sup>265</sup> G. A. Bryan, (n 78) op. cit

<sup>266</sup> Section 15 (3) (a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

This provision though not justiciable,<sup>267</sup> is one of the transformational ideals in the fundamental objectives and directive principles of state policy in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and expectedly, all levels including States and Local Governments are enjoined to pursue the construction of roads as part of their development strides.

The pivotal point to be appreciated in the constitutional provision cited in the foregoing is that the word “facilities” as used therein also includes roads and other means of transportation in Nigeria. This contention finds expression in the omnibus provisions in section 7(b) of the NDDC Act, which specifically lists roads as one of the targeted facilities the NDDC is expected to achieve in the region.

The various forms of roads in this country include rural, urban and regional (federal) roads. Whereas rural roads are designed to link the Local Government Headquarters with agricultural settlements like farm settlements, fishing sites and rural communities; urban roads are essentially designed to create more routes to ease transportation and decongest urban traffic. Regional or Federal roads on the other hand, usually transverse the region and connect two or more states in a region.<sup>268</sup> The East/West road which starts from Calabar and cuts across Akwa Ibom, Rivers, Bayelsa, Delta, Edo, Ondo states towards Lagos State is a good example of a regional road. To that effect where the entire discussion in the foregoing is taking into context, it becomes crystal clear that the provision and existence of well-constructed, tarred and motorable roads in a community or region is a strong booster for the promotion of sustainable development in that society.

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<sup>267</sup> Section 6 (b) (c), of the Constitution of the Federation Republic of Nigeria, 1999 (as amended).

<sup>268</sup> Schedule 1, Federal Highways (Declaration) Order, Federal Highways Act, (subsidiary Legislation) LFN, 2004

Well tarred and motorable roads are unfortunately very few in the Niger Delta Region because of the poor terrain and the prolonged underdevelopment of the area by successive governments in the country over the years. Ibeanu graphically summed up the poor road network in the Region by maintaining that ‘apart from the Federal trunk B road (i.e the East/West road) that crosses over Bayelsa State, the State has only 15 kilometer of roads.’<sup>269</sup> Though Ibeanu’s claim may not entirely represent the correct situation of roads in Bayelsa State by reason that other roads like the Okaki-Ogbia-Nembe ongoing road, the Yenagoa – Tombia-Amassoma road, the Sampou-Odoni-Agbere road and the Kaiama-Odi-Trofani also exist in the state;<sup>270</sup> his statement to a very large extent reflect the near absence of well-constructed motorable roads in the Region mostly in the extreme Deltaic areas like Bomadi, Burutu, Warri South – West and Patani Local Government Areas of Delta State; Ekeremor, Sagbama, Southern Ijaw and Brass Local Government Areas of Bayelsa State; and Degema, Asari-toru, Akuku-Toru, Bonny, Opobo-Nkoro and Okrika Local Government Areas of Rivers State.

A more profound revelation on the dismal state of roads in the region is contained in the Niger Delta Regional Development Master Plan (NDRDMP) baseline survey Report. The findings of the survey show that “...the Niger Delta holds 26% of Nigeria’s population but only 17.6% of the country’s length of roads. The distribution of length between States is uneven, with Bayelsa and Ondo having the lower share of roads in relation to its share of land area, while Abia and Imo have a greater share ‘... many roads or stretches of roads are in poor condition, and that 40% of the total length of the roads in the region fall into this

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<sup>269</sup> I. Ibeanu, ‘Two Rights Make a Wrong; Bringing Human Rights Back into the Niger Delta Discourse’ in J. Adegoke, et al (ed) *The Nigerian State, Oil Industry and The Niger Delta: Proceedings of The First International Conference on the Nigerian State, Oil Industry and the Niger Delta*, held at Yenagoa, Bayelsa, Nigeria, March 11-13, 2008 (Zelon Integrated Services Limited, 2008) Pp84 – 96 @ 86.

<sup>270</sup> NDCC Annual Report 2010 (n 243) op cit. Pp16 - 17

category'.<sup>271</sup> While many of the communities in the upland areas of the states are reasonably accessible by road, most of the wetland areas remain without roads and are difficult to reach.<sup>272</sup>

NDDC therefore since its creation in 2000 has massively awarded contracts for the construction of roads in the region. In its 2010 annual Report, NDDC's expenditure profile showed that a substantial part of its annual budget was devoted to the accomplishment of various development road projects in the region. For instance, the Commission's Report covering 2000 – 2010 show that it has executed a total of 3118 projects<sup>273</sup> in the region within this period. By 2013 the number of projects executed by the NDDC has increased to 6000 and subsequently to 8000 in 2015<sup>274</sup> and 9,280 in 2019.<sup>275</sup> Out of the 9,280 projects constructed in the region about 2,142 are roads the breakdown and spread of which on state by state basis show that 32 roads were constructed in Abia State, 70 in Akwa Ibom state, 62 in Bayelsa State, 19 in Cross Rivers State 132 in Delta State, 32 in Edo State, 43 in Imo State, 24 in Ondo State and 305 roads in Rivers State<sup>276</sup>. On the whole, it is noted that these figures have increased over the years and the number of roads in the Region have improved reasonably.

Among the 2,142 or thereabout roads NDDC has constructed or on-going in the Region are the Ogheye – Okoko road, Egbokodo township roads, Bomadi – Tuomo road. Further that, three rigid pavement roads in Effurun community in Uvwie and one other community in Warri South Local Government Areas in Delta State were also constructed by NDDC.<sup>277</sup> The

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<sup>271</sup> Niger Delta Regional Development Master Plan (Infrastructure roads) (n 221) op. cit. p82.

<sup>272</sup> *ibid* p82

<sup>273</sup> NDDC Annual Report 2010 (n 243) op. cit. p8

<sup>274</sup> H. Julian, 'Corruption and NDDC' posted in the internet on August 31th, 2015. <<http://thenationallineng-and-nddc>> accessed 10 October, 2017.

<sup>275</sup> *ibid*

<sup>276</sup> NDDC Annual Report 2010 (n 243) op. cit. p8

<sup>277</sup> Nine NDDC roads in Delta State. The Nation Newspaper. <<https://thenationonlineng.net>> Accessed 27 September, 2010.

Commission's Report equally show that Orhuwhorun township pavement roads and Ozoro Polytechnic internal roads were equally constructed by NDDC.<sup>278</sup> It was reported that during NDDC's inauguration of internal roads at Udu Community, stakeholders greatly applauded the good work the NDDC is doing<sup>279</sup>. In Rivers State some of the roads NDDC has achieved include the Okrika – Borikiri road and a bridge connecting Kolabi Community with Borikiri in Port Harcourt Local Government Area, the Omerelu – Okehi – Etche road, internal roads at Echi – Jinue Hitie,<sup>280</sup> Ozuoba in Obio Akpo Local Government, rigid pavement roads in Bonny and Opobo communities and internal roads in Isiokpo and Ubima Communities in Ikwere Local Government of the State are among the roads the commission has constructed and or ongoing in Rivers State.

In Bayelsa State NDDC constructed the Kaiama – Opokuma – Polaku road, Ogbia – Nembe road, Odi – Trofani road with bridges, East/West road junction – Sampou – Odoni – Osekwenike – Elemebiri road. Other roads NDDC constructed in the region include the Obazogbe – Abudu road, Benin – Abraka road, Akhaibe internal roads, Auchi –Jattu road in Edo State and the construction of Abayong – Usumulong Ebom road in Biase Local Government area of Cross Rivers State,<sup>281</sup> etcetera. Although , as earlier stated these roads are facilitating increased mobility and economic growth thereby promoting sustainable development in the Niger Delta Region; it is no gainsaying that some of these roads like Benin – Abraka road, the Bomadi – Kpakama road, the Ogbia – Yenagoa road and many other roads constructed by NDDC in the region are currently very bad and impassable. It is important to particularly mention that the Kaiama – Opokuma – Polaku road which is designed as an alternative route connecting the East/West road and Yenagoa, the capital cities

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<sup>278</sup> *ibid*

<sup>279</sup> NDDC Inaugurates Roads. <[www.nddc.gov.ng](http://www.nddc.gov.ng)> accessed 3 October, 2010

<sup>280</sup> NDDC Annual Report 2010 (n 243) *op cit.* p15

<sup>281</sup> *ibid*, p17

of Bayelsa State is currently cut into two halves at the Polaku junction because NDDC failed to complete the bridge across the small Polaku river. There are also reports that the Benin – Abraka road is currently in a very bad shape thereby making it very difficult for commuters to pass through.

### **Transportation**

Besides paucity of roads in the region, the absence of cheap and affordable public owned transport systems to ease the harsh mobility problems confronting commuters, equally constitutes a major sustainable development challenge in the region. The lack of effective publicly owned- vehicular transportation system in the region becomes even more worrisome when viewed against the backdrop that, almost all the nine states; in the Niger Delta Region operate a transport company or outfit named after their respective states like in Edo State, the government owns two transport companies namely - (i) Edo Transport Company and (ii) Edo line; Delta State government owns Delta line; the Bayelsa state Governments owns Bayelsa Transport Company; while Rivers State operates the defunct Waterlines now Rivers State Transport Company. The same is applicable to Akwa-Ibom and Cross River States. But a critical observation of the trend shows that of all the state-owned transportation outfits in the region, only Edo state transport service with its two transport outfits appear to be fairly well managed and consistent in its operations. The rest are poorly managed therefore merely offering epileptic and unreliable services. Faced with the increasing transportation hardship, the people of the region have resorted to travel by minibus, taxis, tricycles (keke) and motorcycles owned by private transporters in the cities and rural areas.

Capitalizing on the dysfunctional public transportation system in the region, various private transporters have flooded the region with privately operated transportation companies such as Bob Izua motors, Sunny Eru Transport Company, Agofure Motors, Cross-Country motors, King Koko Travelers, so on and so forth. The implication is that the private transporters,

citing the high cost of vehicle spare parts, high fuel prices and the hyper-inflation affecting the economy, have always increased their transport fares without recourse to the people's welfare thus exploiting commuters unreasonably.

Similar chaotic scenario also exists in the area of water transportation in the region, particularly when undertaking journeys along inland waterways which are usually done through outboard engine boats and hand paddled dugout canoes.<sup>282</sup> Compared with road transport, water transport attracts higher transport fares and takes longer time than road transport. The higher cost of water transport has been attributed to the higher cost of petroleum products which are not available in most riverine areas.<sup>283</sup> This is the fate most riverine travelers in the Niger Delta precisely those traveling to areas like Burutu, Ugulah, Okerenkoko, Kurutie, Ogbe – Ijoh from NPA (waterside) in Warri, Delta State, face daily. Other notable communities facing such high water transport fare challenges in the region include those travelling from Nembe jetty in Yenagoa, Bayelsa State to Local Government Areas like Southern Ijaw, Brass, Nembe, Ekeremor situate in the remote creeks in the state. A journey from Abonema Wharf, Nembe and Borikiri watersides in Port Harcourt to Kula, Abalama, Bonny, Opobo, Andoni, Bakana and other major community situate in the far mangrove creeks in Rivers State also attracts heavy transport fares,

Therefore, the provision of vehicles, speedboats and tricycles to assist and ameliorate the transportation hardship confronting the people of Niger Delta has become one of the priorities NDDC seeks to address. In accomplishing this objective NDDC through its directorate of utilities, infrastructural development and waterways, formulated a two-prong approach for the resolution of the scarcity of viable means of transportation in the region. As a first step, NDDC set up a mass – transit outfit by engaging a contractor to supply it with

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<sup>282</sup> 'Water Transport' (NDRDMP) (n 221) op. cit. p82

<sup>283</sup> *ibid*, p82

thousands of brand-new 18-seater buses, with the aim of distributing them to stakeholders<sup>284</sup> in the nine Niger Delta States. Each bus has a capacity of carrying 18 persons. In addition to the buses, NDDC also procured 20-seater speedboats powered by double 75 horse power engines and thousands of tricycles to facilitate transportation in the region.

The buses, speedboats and tricycles were subsequently distributed to various stakeholders in the Niger Delta States through the state offices in an elaborate ceremony. The beneficiaries got these buses, speedboats and tricycles free of charge but were strongly admonished to use them to operate small transportation business outfit, essentially to enable them earn a living and promote self-sustenance. NDDC however prescribed the routes these buses and speedboats would ply and through its directorates of monitoring, painstakingly monitored the operations of the buses and speedboats. It is therefore a truism that NDDC Mass Transit buses plied different routes in the Niger Delta Region daily transporting people, goods and services from place to place between 2002 to 2010. In a related vein, the speedboats also ferried people, goods and services from jetties in major cities to various communities in the interior creeks of the region that are not easily accessible by vehicles. Ironically, from 2011 or thereabouts to present day, the NDDC mass transit buses and speedboats are no longer available in Niger Delta roads, rivers and creeks due to poor management by beneficiaries and/or lack of spare parts to service them from time to time. Worst still, incessant cases of stealing of the buses, speedboats and horse-power engines were commonplace. These facts, no doubt, contributed to the disappearance of the NDDC assisted buses and speedboats from the roads and rivers of the Niger Delta Region.

To further consolidate the provision of a very functional transport system in the region, NDDC equally constructed several jetties for the berthing of speedboats and canoes in many

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<sup>284</sup> E. Aguariavwedo, 'NDDC Launches Mass Transit With 600 Buses'. Thisday 4th May, 2004. <<https://allafrica.com>> accessed 2 July, 2019.



coastal communities situate along the banks of various rivers and creeks in the region. This is necessary because most of the shore-lines of the Niger Delta communities, particularly those along river Nun in Bayelsa State, Niger and Forcados rivers in Delta State and river Calabar in Cross River State are ravaged by perennial coastal erosion, thus making it very difficult for travelers and home dwellers to climb the steep sloped shore lines of the community. Thus, NDDC built jetties to facilitate easy transportation and pave way for easy access to some communities<sup>285</sup> and cause the protection of the communities' shorelines in the region. Some Communities that have benefited from NDDC jetties and shoreline protection in the region include - Ebedebiri, Kaiama, Akassa, Amassoma, and Agbere in Bayelsa State; Okerenkoko, Kokodiagbene, Okpokunu in Delta State; and Abonema, Krakrama, Soku, Ogu, Buguma etcetera in Rivers state. In the words of NDDC 'it has embarked on 70 shore protection projects/jetties in some of the littoral communities in the Region which are at various stages of completion'.<sup>286</sup> A visit to most of the communities where NDDC claimed to have initiated the construction of these jetties clearly show that majority of them were started but abandoned midway, while others were not started at all. Only very few like those in Okerenkoko, Burutu, Ekeremor, Kaiama, Buguma, Abonima and Ebedebiri are completed and being put to use by the respective communities.

As clear in the foregoing elaborate expositions, NDDC has made concerted effort at improving and or boosting the despicable condition of roads and means of transportation in the region. This notwithstanding, some setbacks that tend to impede the smooth realization of sustainable roads and transportation facilities in the region still exist. For instance, a visit to the sites of some of the jetties/shore protection projects quoted in the NDDC report show that few have been completed, others on-going, while many appear to have been outrightly

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<sup>285</sup> NDDC Annual Report 2010: 'Jetties/Shore Protection Projects Embarked upon by NDDC in some littoral communities in the Region'. p18

<sup>286</sup> *ibid*, p18

abandoned or terminated. Further that, it was observed that most feeder roads, which are many in the region, still remain unpaved and overtaken by weeds and grasses.

Worst still, the suitability of most NDDC roads in the region for long time vehicular movement is highly doubtful. This is because drawing from the East/West road experience where a section has collapsed completely and becoming almost impossible because of the ongoing poor construction work done by Setraco Nigeria Limited, a company jointly engaged by the Ministry of Niger Affair and NDDC to dualize/maintain it; the people's trust in the durability quality of NDDC roads in the region has waned to the lowest ebb. Whereas most of the rural settlement roads are neither tarred nor well graded, even the few roads constructed and tarred in villages lack side drains.<sup>287</sup> Besides, owing to lack of effective monitoring and absence of proper maintenance culture, all NDDC Mass Transit buses and speedboats have now disappeared from the roads and creeks in the Region. Consequently, the people are now left to face the transportation hardship confronting them just as it was before the intervention of the NDDC.

## **Housing**

The phrase 'house' has been explained as a building intended for human habitation, abode, dwelling or residence<sup>288</sup>. Constructing and providing adequate and befitting housing schemes for the human population is part of the infrastructural challenges sustainable development is striving to achieve to guarantee better living conditions for human beings on earth. Hence it is treated as a very vital element of the 11th goal of sustainable development which centres on the building of sustainable cities and communities. The central position housing occupies in the sustainable development profile of a society is best appreciated when viewed against various sociological issues like the population size of the community, state or nation; and the

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<sup>287</sup>NDRDMP: Infrastructure (Transportation) Roads. p83

<sup>288</sup> G. A. Bryan, Black's Law Dictionary (n 78) op. cit. p156

type of economic activities in a given area. Besides that, it has also been contended that the resultant living standards (the quality of buildings and services, the internal and external densities) may equally play a part in the development process of a community. For example, issues such as inability of children to learn and develop efficiently, social unrest or lack of opportunity to develop home business are all attributable to the quality of housing development in an area.<sup>289</sup>

The scarcity of befitting housing schemes for accommodation, no doubt, is one of the major infrastructural problems confronting the Nigerian population. The situation is further compounded by the absence of official data for the Nigerian Government to develop an effective housing policy, and this has allowed the springing up of informal and unplanned settlements in urban centres in the country. The unplanned settlements have invariably thrown up corresponding serious challenges like non-existent drainages, poor waste disposal system, no safe drinking water, poorly ventilated houses, improper system of sewage disposal, no roads and electricity. Worst of all, the inhabitants in such settlements live in constant fear of being evicted any time either by government or wealthy private property developers. In essence, their tenancies lack the security of tenure.<sup>290</sup>

Besides, a greater confusion is further introduced into the already chaotic housing problem Nigerians are faced with, which is government's increasing penchant for the demolition of shanties, water front settlements and the selling or allocation of such lands occupied by peasants and or low income earners to wealthy citizens who construct solid modern high towering buildings, which are outside the reach and capacity of ordinary citizens to rent.

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<sup>289</sup> Niger Delta Regional Development Master Plan (n 221) op cit. p88

<sup>290</sup> Nigerian Tribune, 4th October, 2019.

The Federal Government of Nigeria being mindful of the housing problems confronting the Nigerian population, has at different times, pursued various housing policies to address the problems of housing in the country hence the constitutional provision that:

The state shall direct its policy towards ensuring that – (a) all citizens without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable enjoyment; (b) condition for work are just and humane, and that there are adequate facilities for leisure and for social religious and cultural life.<sup>291</sup>

In *Olga Tellis v Bombay Municipal Corporation*,<sup>292</sup> the Indian Supreme Court interpreted the phrase ‘livelihood’ as used in a similar provision in the Indian constitution to include the right to employment and accommodation. Similarly, based on the provisions of section 27 (1) of the Constitution of South Africa, the Constitutional court of that country, as shown in the preceding section of this thesis, held in *Khosa v Ministry of Social Development Legislation*<sup>293</sup>, that the citizens of South Africa have the right to be provided with accommodation. The efforts to provide jobs and houses for the citizens of a country is important because the availability of food and having a roof over their heads is one of the cardinal objectives sustainable development seeks to achieve.

To this end, the then Military Government of Nigeria, out of its desire to provide houses for all and promote its urbanization policy, promulgated the Mortgage Institutions Decree No. 53 of 1989; which was targeted at realizing the then existing housing policy in the country. The Babangida Regime specifically made a housing policy that encouraged private participation in the building and provision of houses for all Nigerians thus formulated the economic liberalization policy. These efforts were followed by the promulgation of both the Urban and Regional Planning Decree No. 88 of 1992 and the National Housing Fund (NHF) Decree No.

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<sup>291</sup> Section 17 (3) (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>292</sup> *Olga Tellis v Bombay Municipal Corporation* (1985) SCC (3) 545.

<sup>293</sup> *Khosa v Ministry of Social Development Legislation* (n 152) op cit.

33 of 1992 respectively. Importantly, the NHF decree was designed to ensure the continuous flow of funds for housing and the delivery of same for the benefit of all Nigerian citizens.<sup>294</sup>

The failure and lack of success in addressing the Housing problems in the country through the above decrees prompted the post military era administrations in Nigeria to pursue more rigorous and productive housing policies. For instance, in 2012 the Federal Government formulated the Housing and Urban Development Policy to correct the inconsistencies observed in the previous housing policies thereby contributing immensely to the development of housing schemes in Nigeria.<sup>295</sup>

Nevertheless, the housing crisis in the Niger Delta Region is far worse than what is obtainable in other parts of Nigeria, after 20 years of the operation of NDDC and other bodies due to population increase and influx to urban cities from the rural areas without corresponding increase in the provision of houses to cater for the increasing population. Furthermore, the non-committal attitude of Government at all levels i.e. National, State and Local Government towards providing befitting houses for the Nigerian population, mostly the working class is also responsible for the scarcity of befitting houses for Nigerians. Thus, as a first step in addressing the housing problem in the region, the commission conducted a survey on the housing needs in the region and made the following startling findings:

“Housing conditions and supply are characterized by inadequacy, for which a combination of social, economic demographic and technological factors are responsible”, emphasising “that throughout the cities in the region i.e. Port Harcourt, Calabar, Yenagoa, Asaba, Warri, Uyo, Benin City etcetera, statistic show quite clearly that urban dwellings are in general over crowded, lacking in most elementary amenities and surrounded by a deplorable urban landscape situation.”<sup>296</sup> Citing port Harcourt as a case study, the report particularly stated that about 30% of the population which accounts for more than 350,000 people, live in shanty towns. 70% or even more of the households in the region have about

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<sup>294</sup> A. F. Ibimilua, ‘Housing Policy in Nigeria: An Overview’. American International Journal of Contemporary Research, Vol. 5, No. 2, April 2015. <<https://www.adjernet.com>>8pdf. accessed 15 November, 2019.

<sup>295</sup> *ibid*

<sup>296</sup> Niger Delta Regional Development Master Plan (n 221) op. cit. p88

8 occupants and live in two rooms apartments, while about 40% of the population comprising 6 persons live in single room apartment.<sup>297</sup>

Asides from this, the report noted that even the existing houses are grossly defective for befitting accommodation in many respects which include the following areas; (i) the absence of essential amenities like electricity, water, over-crowded rooms, noisy neighbourhood, use of common latrine, toilets and usually poorly evacuated septic tanks. Above all, most of the streets in areas like Diobu in Port Harcourt, Biogbolo and other areas in Yenagoa are untarred thus making accessibility to these areas by motorist and pedestrians very difficult and almost impossible during rainy season. The concomitant result is that the delivery of sustainable and portable housing needs for the Niger Delta population under the above conditions becomes almost an impossibility.

In the estimation of the report, the total number of houses required for the entronement of portable housing units for the nine Niger Delta States is 607,343 or thereabouts at two persons per room.<sup>298</sup> To realize this objective, NDDC keyed into the Federal Government of Nigeria's ten thousand (10,000) housing scheme for low income earners. In 2010 the scheme which was targeted at producing 500 housing units in each of the nine Niger Delta States was funded by the Nigerian Mortgage Refinance Company (NMRC), with the main purpose of ensuring that the ordinary citizens in the region own houses at costs that are within their income bracket through a well-articulated mortgage of up to 20 years".<sup>299</sup>

Though the entire scheme was the brain child of the Federal Government of Nigeria, NDDC adopted it for the benefit of stakeholders in the Niger Delta Region. In so doing, NDDC, in conformity with demands of sustainable development principles encouraged stakeholders in the region to participate and benefit from the scheme, while guaranteeing to assist them own

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<sup>297</sup> *ibid*, p88

<sup>298</sup> *ibid*, p89

<sup>299</sup> 'FG's 10,000 Housing Schemes Get Boost From NDDC'. <[www.ndc.govng/new](http://www.ndc.govng/new)> accessed 22 October, 2019.

their individual houses through the scheme. To firmly achieve this objective, NDDC held series of sensitization meetings with stakeholders in the Region in notable cities of the region. This feat, no doubt is laudable, because it provides houses for the well-being of the people and by so doing, created an avenue for meeting the sustainable development needs of the people. Consequently, the Federal Government and NDDC's collaboration to build houses for Nigerians was experimented through demonstration housing units in the various Niger Delta States. For example, a unit of such demonstration housing units were built in Aggrey-road Port Harcourt, River State, Rison-palm road Yenagoa, Bayelsa State and other Niger Delta States. However, only very few houses were built by NDDC in Aggrey-road Port Harcourt while those built in Yenagoa are uncompleted and abandoned.

Apart from the above steps it has taken to address the peoples' housing needs in the region, NDDC also launched a massive housing development scheme for the people in the nine Niger Delta States. As a result, it awarded contracts for the building of housing estate in designated cities such as Port Harcourt, Uyo, Calabar, Igbogene, Yenagoa, Benin city etcetera. The basic fact is that the efforts made by NDDC to provide housing facilities for the people of Niger Delta conforms with and/or a demonstration of the demands in section 16 (2) (d) of the Nigerian Constitution, which provision is to the effect that:

That suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

NDDC's feat in building houses for the Niger Delta population also synchronizes with Uwaifo's dictum in the *AG Ondo State* case, which recommended the adoption of the decision of the South African Constitutional Court in *Grootboom's* case as part of the developmental efforts in Nigeria. A critical observation to be made in NDDC's efforts to provide befitting accommodation for the people of the Niger Delta Region is that, its propaganda to domesticate the Federal Government's 500 housing units in each of the nine

oil producing states was a monumental failure, as it was unable to complete the 500 housing units in any of the nine states. Put more succinctly, despite the elaborate publicity and propaganda given to its commitments to build 500 housing units in each of the NDDC states, the commission today cannot point to any state where it effectively completed the 500 housing units in the region. This is the true position of NDDC's housing efforts in the region.

In conclusion, it is submitted that the efforts made by NDDC at building roads, houses, water schemes and pursuing poverty alleviation programmes/schemes to better and transform the lives of the people in the region, could pass as a deliberate attempt by the Federal Government of Nigeria to actualize the socio-economic ideals in Chapter Two of the Nigerian Constitution in the region, with a view to providing succours to the existential needs of the Niger Delta people.

## **2.6 Corruption in the Niger Delta Development Commission among the leaders of the Niger Delta Region: a Major Factor Impeding the Sustainable Growth of the Region**

Corruption has been defined by many scholars in different ways. For instance, Jegede quoted Adeyemi as having defined corruption as 'an offence which aims mainly at the conducts of public officials who take advantage of their positions within public administrations for the purpose of private gains'.<sup>300</sup> One thing that is common with the many definitions of corruption is that it is a deviant behaviour associated with a particular motivation, mainly that of private gains at public expense.<sup>301</sup> To this end, the concept of corruption as used in this context means the dubious diversion of public funds or resources by the political leadership of the states that make up the Niger Delta region and the administrators of developmental

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<sup>300</sup> J. Adegoke, 'Corruption and the Locals: Reconsidering Niger Delta Maginalisation Thesis in J. Adegoke et al. (ed) *The Nigerian State, Oil Industries in the Niger Delta*, Proceedings of the First International Conference of the Niger Delta University, Wilberforce Island Bayelsa State (Zelon Integrated Services Limited, 2008) Pp927 – 937.

<sup>301</sup> *ibid*, p931



agencies in the region, who have formed the penchant for diverting public funds for their personal and private gains, thereby visiting upon the region stunted developmental growth.

Two known cases of corruption involving State Governors in the Niger Delta Region namely that of James Ibori and Diepreye Alamieyeseigha of Delta and Bayelsa States respectively exist.<sup>302</sup> Ibori's corruption cases revolved around the embezzlement and diversion of billions of public funds belonging to Delta State government to his personal accounts. Some of the corruption allegations leveled against Ibori as contained in the one hundred and sixty eight count charges EFCC filed against him at the Federal High Court Kaduna, include the payment of Delta State Government cheques amounting to the sum of Three Hundred and Twenty Million (N320,000,000) naira into the account of a company owned by one Vincent Uduaghan;<sup>303</sup> the transferring of stupendous sums of money in hard currencies to various foreign accounts in London and Florida owned by one Segun Fowora<sup>304</sup> for the building of an estate in Florida for Ibori; the transferring of Twenty Six Million (N26,000,000) naira from Delta State account to Ibori's personal account in Guaranty Trust Bank;<sup>305</sup> transferring of Five Billion (N5,000,000,000) naira from Delta State Government account in Oceanic and Zenith Banks for the purchase of Afric Bank shares for Ibori.<sup>306</sup>

Other allegations of corruption leveled against Ibori include using fictitious companies such as Double Dip Nigeria Limited, Arusha Nigeria Limited, Jakpa Nigeria Limited, Zaragoza Nigeria Limited, Azania Nigeria Limited, Ogan Global Nigeria Limited, Sandton Nigeria Limited, Global Heritage International and Fortress Construction Company to siphon and

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<sup>302</sup> O.B. Oloya, 'Corruption and the Niger Delta Crisis' in J. Adegoke (ed) *The Nigerian State, Oil Industries in the Niger Delta*, Proceedings of the First International Conference of the Niger Delta University, Wilberforce Island Bayelsa State (Zelon Integrated Services Limited, 2008) Pp776 – 791.

<sup>303</sup> *ibid*, p777

<sup>304</sup> *ibid*, p778

<sup>305</sup> *ibid*, p778

<sup>306</sup> *ibid*, p778

divert Delta State funds amounting to billions of naira to his personal accounts.<sup>307</sup> Furthermore, EFCC in conjunction with London Metropolitan Police, jointly investigated and confirmed a transaction between Wings Aviation Limited and Bombardier Inc. of Canada to purchase an Aircraft costing Twenty Five Million (\$25,000,000) dollars for Ibori's personal use.<sup>308</sup> Besides, the London Metropolitan Police charged Ibori for money laundering resulting to the court's freezing of his assets in Europe and America.<sup>309</sup> EFCC also discovered Ibori's diversion of public funds, apparently Delta State money, to acquire Wilbros Nigeria Limited, a multinational oil servicing company based in Port Harcourt in 2006 at the cost of One Hundred and Fifty Five Million (\$155,000,000) dollars through a company known as Ascourt Offshore Nigeria Limited owned by one Henry Imasekha.<sup>310</sup> Ibori also allegedly used the same Henry Imasekha to move funds in his Celtel and Notore Chemical Industries Limited transactions.<sup>311</sup>

Ibori allegedly specialized in perfecting his corrupt transactions through the use of cronies to acquire properties, merely to hide his identity. Some known cronies and their companies used by Ibori to perfect his transactions include, O-Secul Nigeria Limited owned by one Mark Orugbo and Brisbane Limited owned by Henry Imasekha who acted as Ibori's fronts to acquire substantial shares in the National Fertilizer Company of Nigeria at the cost of One Hundred and Fifty Two Million (\$152,000,000) dollars.<sup>312</sup> The allegations of corruption leveled against Ibori are legion and all cannot be effectively recounted here; suffice it to say that he was convicted on some of them, including the one decided by an England and Wales High Court (Administrative Court) which convicted him on April 17th, 2012 for money

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<sup>307</sup> *ibid*, p778

<sup>308</sup> *ibid*, p778

<sup>309</sup> *ibid*, p778

<sup>310</sup> *ibid*, p778

<sup>311</sup> *ibid*, p778

<sup>312</sup> *ibid*, p778

laundering in the case of *Ibori, R (on the application of) v the secretary of state for the home department*.<sup>313</sup>

Alamieyeseigha, one time governor of Bayelsa State in the Niger Delta Region was also accused of official corruption. He was impeached, arrested and tried by a competent court of justice where he pleaded guilty to a six count corruption charge and sentenced to two years imprisonment on each charge, which run concurrently. The facts of Alamieyeseigha's case were that he was arrested and detained in London for money laundering charges in 2005. It would be recalled that when the metropolitan police arrested Alamieyeseigha, they found about one million pounds cash in his home in London. Thereafter, an additional one million, eight hundred thousand pounds (\$3.2M) cash together with bank accounts belonging to him were also found.<sup>314</sup> Furthermore, four homes<sup>315</sup> worth about ten million pounds<sup>316</sup> belonging to Alamieyeseigha were also found in London. He was subsequently granted bail which he jumped and escaped while disguising himself as a woman and came to Nigeria his home country in December, 2005.<sup>317</sup>

Back in Nigeria, Alamieyeseigha was first impeached as Governor of Bayelsa State on allegations of corruption on 26 July, 2007<sup>318</sup> and subsequently arrested and made to face six charges bordering on money laundering. Each of the charges carry two years imprisonment, but instead of submitting himself to the complete court trial, Alamieyeseigha through a plea bargain pleaded guilty before the Nigerian court to all the six charges and was sentenced accordingly.<sup>319</sup> Many of Alamieyeseigha's properties in London, particularly the one he used

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<sup>313</sup> *Ibori, R (on the application of) v the Secretary of State for the Home Department* EWHC1207 (Admin) <<https://www.casemine.com>> accessed 28 September, 2021

<sup>314</sup> 'Nigerian Governor to be Impeached' BBC News, 23 November, 2005. Accessed 22 September, 2021.

<sup>315</sup> W. Fitzgibbon, 'Secret Offshore deals Deprive Africa of Billions in Natural Resources Dollars'; International Consortium of Investigative Journalists (25 July, 2016). Accessed 22 September, 2021

<sup>316</sup> S. Roberts, 'Diepreye Alamieyeseigha, Nigerian Notorious for Corruption, Dies at 62'; the New York Times of 15 October, 2015. Accessed 22 September, 2021.

<sup>317</sup> 'Nigeria's Runaway Governor' BBC News of 6 December, 2015. Accessed 22 September, 2021.

<sup>318</sup> 'Diepreye Alamieyeseigha'. Basel Institute on Governance. Accessed 22 September, 2021.

<sup>319</sup> A. Adesina, 'Alamieyeseigha Pleads Guilty, Bags 12 Years Jail Term'. (Daily Sun Nigeria July 27, 2007). Accessed 22 September, 2021.

as his personal residence but registered under the title ‘office of Solomon and Peters Inc.’,<sup>320</sup> valued at One Million, Seven Hundred and Fifty Thousand pounds were confiscated and ordered to be forfeited to the Bayelsa State Government.

Not only that, the United States (US) department of justice also executed an asset forfeiture Order on Alamiyeseigha’s Four Hundred and One Thousand, Nine Hundred and Thirty One (\$401,931) dollars in Massachusetts brokerage fund. Also, US prosecutors through the court targeted and secured an order of forfeiture of Six Hundred Thousand (\$600,000) dollars home Alamiyeseigha bought in Rockville Maryland,<sup>321</sup> which the prosecutors contended that was bought through the proceeds of corruption. It is however, noted that the President Goodluck Jonathan administration granted Alamiyeseigha state pardon<sup>322</sup> on 12th March, 2013.

Apart from the wanton corruption perpetrated by the governors of the Niger Delta states as ably shown in the foregoing that have grossly weakened the sustainable growth of the region, serious allegations of corruption are also leveled against the chief executives and managers of the interventionist agencies like NDDC, seised with the mandate of realizing the sustainable development of the region. Though no official of the Commission has been convicted in a competent court of law on corruption charges but like OMPADEC, monumental allegations of corruption have been leveled against the management of NDDC.

For example, through a press release a body called “the Patriotic Niger Delta Mothers” said that “the Wikipedia Encyclopedia aptly described NDDC as a vehicle of corruption and prebendalism. May be, no other description would have best painted a truer picture of what happened in the Commission in the last eight years... By 2004 it was alleged that the NDDC

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<sup>320</sup> M. Musikilu, ‘Alamiyeseigha London Property for Sale’ 234 next. December 2, 2009. Accessed 22 September, 2021.

<sup>321</sup> C. Matthews, ‘DOJ Executes Forfeiture on US Assets of Former Nigerian Governor’, The Wall Street Journal, (28 June, 2012). Accessed 22 September, 2021.

<sup>322</sup> Section 175 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

has received over N60 billion as allocation with no significant achievements on ground in the region. But they are clamouring for the release of the hundreds of billions of naira that the Federal Government was withholding”.<sup>323</sup> Earlier, a more fierce allegation of corruption was leveled against Godwin Omene and Sam Edem – one time Managing Director and chairman respectively of the Niger Delta Development Commission’s Management Board.<sup>324</sup>

Not only that, recently “the Presidential Advisory Committee Against Corruption, specifically on March 2, 2017 alleged that NDDC is corrupt” because “it bought over 70 cars that included eight super lexus that cost N70 million each and 10 Toyota Land Cruiser Jeeps at N65 million each. The cars were bought with money from funds meant for infrastructure, water, housing, hospitals, schools, without conscience and without thought for the wretched people of the Niger Delta. These huge sums were plundered from their allocation and yet the Managing Director was ironically complaining that the NDDC lacks funds to execute project”<sup>325</sup>.

Presently, very weighty allegations of corruption are levelled by top officials of NDDC against one another. Whereas one time Managing Director of NDDC- Nunieh accused Akpabio, the Minister of Niger Delta Affairs of fraudulently influencing the award of 300 NDDC contracts worth millions of Naira to himself and collected payment upfront without executing the jobs; the current Managing Director of the Commission, Pondei admitted sharing 1.5 billion Naira as coronavirus palliatives to staff of the Commission. In fact, Pondei collapsed and fainted before the senate panel that was investigating the allegations of

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<sup>323</sup> The Nation Friday May 8, 2008. p6

<sup>324</sup> A. A. Akinwale, et al ‘Re – Engineering The NDDC’s Master Plan: An Analytical Approach’, in J. Adegoke et al (ed) *The Nigerian State, Oil Industry and The Niger Delta: Proceedings of The First International Conference on the Nigerian State, Oil Industry and the Niger Delta*, held at Yenagoa, Bayelsa, Nigeria, March 11-13, 2008 (Zelon Integrated Services Limited, 2008) Pp317 – 332.

<sup>325</sup> I. Sagay, ‘Sagay Accuses NDDC, Customs of Corruption’. <<http://vanguardngr.com/2017/03/Sagay-accused-nddc-customs-corruption>> accessed 10 October, 2017

monumental corruption leveled against the Commission. In short, NDDC has been described as a cesspool of corruption.

The instances where corruption allegations have been raised against the NDDC Management Board are numerous and cannot be exhaustively discussed here. However, it is reiterated that in all these allegations of corruption, none of the officials involved in these corruption allegations has been charged to court and convicted accordingly. At this point, it would be necessary to appraise the allegations and counter allegations of corruption the managers of NDDC leveled against each other that prompted the Federal Government to institute a forensic audit panel to probe the funds of NDDC from 2000 – 2019.

The facts leading to the forensic probe show that in October 2019, nine Niger Delta Governors complained to Buhari, President of Nigeria on the large scale corruption at NDDC<sup>326</sup> which prompted the Federal Government to moot the idea of initiating the forensic audit to probe the activities of NDDC. On 30th October, 2019, a three man committee headed by Ojugbo was set up to manage NDDC for the duration of the forensic audit.<sup>327</sup> On January 16th 2020, Ojugbo announced to Nigerians that over One Trillion Naira worth of fraudulent contracts were already awarded by previous NDDC managements.<sup>328</sup> On January 16th 2020, the interim management committee of NDDC, preparatory to the commencement of the forensic audit announced that it has verified more than eight thousand NDDC contractors.<sup>329</sup> But, for some inexplicable reasons, the Ojugbo chaired Management Board of the Commission was sacked and another board headed by Joi Nunieh was curiously inaugurated to manage the affairs of the Commission.

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<sup>326</sup> NDDC Forensic Audit: A Timeline of the Unfolding Events between October 2019 and November 2020, <<https://fixouoil.com2021/03PDF>> accessed 23 September, 2021.

<sup>327</sup> *ibid*

<sup>328</sup> *ibid*

<sup>329</sup> *ibid*

Nunieh, the Acting Managing Director of NDDC alleged that the past board of the Commission awarded one contract fifty five times.<sup>330</sup> On February 13, 2020, the Federal Executive Council approved Three Hundred and Eighteen Million naira contract for the engagement of a lead consultant for the forensic audit of the NDDC. On February 20, 2020, Nunieh, the Acting Managing Director protested against the institution of the forensic audit therefore abstained and refused to participate in a tripartite meeting with the forensic audit panel. On February 19 2020, Akpabio, the Minister of Niger Delta Affairs sacked Nunieh as Acting Director of NDDC. She served for only four months. After her sack, the Federal Government instituted the forensic audit to probe the activities of NDDC.

Upon completion of its audit of the activities of the NDDC, the forensic audit report among other highlights revealed that thirteen thousand, seven hundred and seventy seven (13,777) contracts were awarded between 2001 to 2019 valued at three trillion (N3,000,000,000) naira by the NDDC,<sup>331</sup> but the Attorney General of the Federation alleged that the Federal government of Nigeria has approved the sum of six trillion (N6,000,000,000) naira to NDDC for 18years.<sup>332</sup> The Attorney General of the Federation specifically alleged that greater part of these funds was diverted into private pockets, adding that the execution of 13,777 projects were substantially compromised.<sup>333</sup> It was his further allegation that NDDC operated a total of 362 bank accounts which has occasioned ‘lack of proper reconciliation of its accounts’, threatening that the Federal Government will apply the law to remedy the deficiencies.<sup>334</sup> The consequences of the pervasive corruption perpetrated by top government officials and

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<sup>330</sup> *ibid*

<sup>331</sup> NDDC – Buhari Receives Forensic Audit Report, says N6trn approved in 18 years, vanguard online report, September 2, 2021. Accessed 24 September, 2021

<sup>332</sup> *ibid*

<sup>333</sup> *ibid*

<sup>334</sup> *ibid*

managers of the developmental agencies in the Niger Delta Region is that it leads to the absence of social infrastructure, unemployment, poverty and militancy,<sup>335</sup> etcetera.

Brisibe, in a well researched paper he presented recently on the sustainable development status of 24 local government areas in the extreme coastal portions of Bayelsa, Delta, Edo, Ondo and River States reveals the stark underdevelopment in these areas. In the paper, Brisibe argues that the unemployment rate in the local government areas that form the extreme coastal areas of Niger Delta Region as at 2020 was 30.24%, compared with the 27.4% in the upland areas of the Niger Delta.<sup>336</sup> In terms of educated persons, the paper shows that the local government areas in the extreme coastal Niger Delta boast of the lowest number of PhD holders.

Besides, it was discovered in the research that there are no road networks connecting the coastal communities across Rivers, Ondo, Edo, Delta, Bayelsa and Akwa Ibom States; emphasising that 75% of the communities in these extreme coastal local government areas are water locked, thereby making transportation very difficult in this part of Niger Delta except through river or water transportation.<sup>337</sup> Furthermore, the paper acknowledged that there is no electricity in these water locked communities of the Niger Delta Region; and that telecommunication service community penetration in these rural communities is very low at 15%.<sup>338</sup> Even where service is available, usage is deterred by varied factors such as poor network, network failure, non-availability of recharge-cards, and unreliable or complete

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<sup>335</sup> O. B. Oloya, 'Corruption and the Niger Delta Crisis' in J. Adegoke et al. (ed) *The Nigerian State, Oil Industries in the Niger Delta*, Proceedings of the First International Conference of the Niger Delta University, Wilberforce Island Bayelsa State (Zelon Integrated Services Limited, 2008) Pp776 – 781.

<sup>336</sup> S. F. Brisibe, 'The Minority Right Struggle of the Ijaws in Nigeria: A Critique of the Human Capital and Infrastructural Development Implication' being a paper presented at Late Isaac Adaka Boro 2021 annual memorial Lecture in Kaiama on 19th May, 2021 p6

<sup>337</sup> *ibid* p7

<sup>338</sup> *ibid* p8



absence of power supply to charge batteries, high charges by network service providers, stealing of phones, unskilled persons repairing phones in these areas and many more.<sup>339</sup>

Educationally, there are few tertiary institutions in the extreme coastal local government areas of Niger Delta Region which include the Niger Delta University – Wilberforce Island; University of Africa - Toru-Orua; Federal University – Otuoke; Federal Polytechnic - Ekowe; State owned Polytechnic – Aleibiri and Maritime University – Okerenkoko. Of these universities, the Niger Delta University, University of Africa and the Polytechnic, Aleibiri are owned by the Bayelsa State Government, while the rest are Federal Government owned. Besides, only the Maritime University Okerenkoko is located in the extreme coastal areas of Delta State, while all the other higher institutions aforementioned are located in the extreme riverine areas of Bayelsa State. Conversely, there are no higher institutions, either federal or state owned, that are established in the extreme riverine local government areas of Rivers, Edo, Akwa Ibom and Ondo States of the region. Similarly, no tertiary institution owned by the Delta State Government is established in any extreme coastal local government areas of the state.

In summary, the consequences of the large scale corruption perpetrated by the state governors and managers of the developmental institutions in the Niger Delta Region, is that, the sustainable development aspirations of the people in the region will continue to remain a mirage, unless drastic steps are taken to punish the perpetrators of corruption to serve as deterrent to others.

## **2.7 The Factors Undermining the Efficiency of NDDC as an Interventionist**

### **Institution for the Promotion of Sustainable Development in the Region.**

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<sup>339</sup> ibid p9

Despite the discussions on the performance of the Niger Delta Development Commission in the foregoing, it is however pertinent to note that the Commission, in the course of pursuing its objectives, is confronted with a myriad of challenges which include the following;

**a. Poor Funding**

Section 14 of the NDDC Act provides elaborately for the sources of fund for the Commission to meet its development obligation and these include: (i) 15% from the Federal Government's Statutory allocations to member states of the commission;<sup>340</sup> (ii) 3% of the annual budget of any oil or gas producing company operating in the region<sup>341</sup> and (iii) 50% of the ecological fund due member states of the commission<sup>342</sup> etcetera. It is the totality of all the listed sources of fund in the NDDC Act that culminate to form the annual revenue accruable to the commission to fund its budget for the year. However, it is noted that almost all the statutory sources designated to contribute to the funding of the commission are defaulting in their payment.<sup>343</sup> For example, the Federal Government at a point insisted to pay only 10% of its statutory 15%, while oil companies willfully deducted a reasonable part of their annual budgets before paying their 3 percent from the remainder to the commission. This development prompted the House of Representatives to express dismay over the trend of funding the commission by stating that:

Some oil companies are not complying with the NDDC Act... even the Federal Government is not fully complying with the provisions 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 its 3% deduction from the remainder. Another company budgeted \$1.203 billion for 2002 but deducted \$504 billion before the 3% was worked out. Federal Government is paying 10% instead of 15%.<sup>344</sup>

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<sup>340</sup> Section 14 (a) NDDC Act, 2000

<sup>341</sup> Section 14 (b) NDDC Act, 2000

<sup>342</sup> Section 14 (c), NDDC Act, 2000

<sup>343</sup> H. Julian, (n 274) op. cit.

<sup>344</sup> The Nation, Friday, May 8, 2008, p8

The heavy debt owed the Commission forced it to release a public statement in 2008 “that the Obasanjo regime was owing it over N400 billion and demanded that the Federal Government should pay the debt”. The Yar’Adua Government however responded that the withheld funds have become bad debt<sup>345</sup>. Angered by the Federal Government’s response, some stakeholders from the region filed a case in court against the Federal Government, demanding that the court should compel the Federal Government to release the withheld sum<sup>346</sup> to the Commission but the case was later abandoned and the debt owed against the commission has continued to increase over the years to this day. Consequently, NDDC has said that some of its projects that are uncompleted and abandoned in the region are caused by the epileptic funding it is experiencing from its statutory sources.

#### **b. The Overriding Powers of the Presidency**

Another serious challenge confronting the NDDC in the discharge of its function is the excessive powers given to the presidency in the Niger Delta Development Commission (Establishment, etc) Act 2000. A painstaking appraisal of the Act shows that the President and Commander-in-Chief of the Federal Republic of Nigeria is conferred with multiple powers as the ultimate approving authority in the Commission’s discharge of its functions. For example, the power to appoint the chairman and other members of the commission’s board is conferred on the President of the Federal Republic of Nigeria;<sup>347</sup> he is also designated as the authority to give approval to resignation letters submitted by any member of the NDDC Board except ex-officio members;<sup>348</sup> the President is also vested with the power to appoint a successor to fill any vacant office that occurs in the Board of the Commission.<sup>349</sup> Asides, the President is vested with the power to control or supervise the performance of the

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<sup>345</sup> S. E. Abila, et al. (n 66) op cit. p269.

<sup>346</sup> The Nation, Friday, May 8, 2008, p8

<sup>347</sup> Section 2 (2)(a) NDDC Act, 2000

<sup>348</sup> Section 2 (2)(f) NDDC Act, 2000

<sup>349</sup> Section 5 (3) NDDC Act, 2000

commission;<sup>350</sup> appoint the Managing Director of the Commission<sup>351</sup> and submit the annual budget of the Commission to the National Assembly.<sup>352</sup> On the whole, the President's powers in the effective administration of the NDDC are legion thus cannot be exhaustively listed and discussed here, suffice it to say that the provision which states that "subject to the provisions of the Act, the President and Commander-in-Chief of the Armed Forces may give the Commission directives of a general nature or relating generally to matters of policy with regards to the performance by the Commission of its functions, and it shall be the duty of the Commission to comply with the directive";<sup>353</sup> appears to be the most authoritative power the Presidency has over the Commission.

By this arrangement the President of the Federal Republic of Nigeria is well positioned at the top of the Commission while the oil producing communities in the Niger Delta Region that are supposed to benefit from the activities of the Commission are at the bottom. This structural arrangement is similar to the one adopted by OMPADEC that led to its failure. The implication of this structure is that all major policy decisions of the Commission are subject to the approval of the President. This development therefore places the NDDC at the whims and caprices of the President thereby availing him unlimited powers to manipulate the Commission. As a result, successive boards of the Commission cannot function independently but subject to and in accordance with what the Presidency desires thus deterring its free performance.

This situation was what played out during the inauguration of the recent NDDC board. Following the expiration of the tenure of the Nsima Ekere led board, a new board was nominated, screened and cleared by the National Assembly in conformity with the Niger

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<sup>350</sup> Section 7 (3) NDDC Act, 2000

<sup>351</sup> Section 12 (1)(b) NDDC Act, 2000

<sup>352</sup> Section 20 (1) NDDC Act, 2000

<sup>353</sup> Section 23 NDDC Act, 2000

Delta Development Commission (Establishment, etc) Act 2000. However, pending the inauguration of the board, the Minister of Niger Delta Affairs, Godswill Akpabio, claiming to be acting on a Presidential directive discountenanced the already screened board and constituted a caretaker committee for the commission. The President subsequently ratified and gave his consent to caretaker committee which is now managing the affairs of NDDC at the expense of the statutorily approved board.

### **c. Difficult Niger Delta Terrain and Ecological Problems**

The fact that the Niger Delta Region has a very complex terrain which is very difficult to develop is not in dispute<sup>354</sup>. The deplorable ecological conditions of the region are even worsened by the many years of unchecked oil and gas exploitation and exploration activities by multi-national oil companies. Consequent upon the degrading environmental condition of the region coupled with the long neglect by successive governments in the Country to develop the region over the years, large amount of money is needed to effectively develop the Niger Delta Region. Viewed against the foregoing background, the amount of money NDDC receives from its sources of fund to service the nine Niger Delta States becomes grossly inadequate. Worse of all, both the Federal Government and some oil companies as earlier pointed out, are not sincere in the payment of their statutory contributions to the Commission. This fact has prompted Yishau to argued that:

...the Niger Delta Region is not like any other region in this country. Neglected for years and with a particularly difficult terrain, NDDC was up against a monster...experts have insisted that for the errors of wasted years to be fully corrected, it requires more money than the Federal Government currently makes available for development of the region. From 2001 to January 2007, NDDC has received N241.508 billion from the Federal Government and other sources recommended by the Act setting it up. Taken at the face value, this may sound like a huge sum of money. But considering the fact that the commission deals with nine states, this comes to about N27 billion per state per year. This

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<sup>354</sup> D.M.J. Fubara, (ed) 'The Green Delta Environment' being a position paper submitted by the BRACED Commission to the Rio + 20 Summit on Sustainable Developments March 2015, p5.

still appears huge, but one needs to visit a project site (sic) like the Odi – Trofani road, where excavation work had to be carried out to understand that the terrain could pass as the most challenging and difficult in the world and thus require more money and hard work<sup>355</sup>

It is therefore concludable that striving to bring development to an environment such as the Niger Delta Region as described above is a herculean task, and the NDDC needs more than the ordinary to perform and effectively achieve its mandate.

#### **d. Increasing Insecurity in the Niger Delta Region**

One of the cardinal objectives for the attainment of Sustainable Development in an environment is the requirement that the public must participate in the activities that are geared towards promoting the development of the locality.<sup>356</sup> Where this principle is applied to the role played by NDDC in the region, it clearly shows that the host communities that stand to benefit from NDDC projects and programmes in the Niger Delta region ought to be partners in the development efforts of the agency. By this, they are duty bound to protect NDDC contractors and their materials for the construction of the projects in their respective communities.

But that is not the case in the Niger Delta Region. Rather, arising from the escalating violence in the region, NDDC contractors are kidnapped for ransom and in extreme cases, killed. Most disturbing is the fact that host communities are fond of levying NDDC contractors all sorts of levies including but not limited to matching ground, community development levy, bush entry levy, youth organizations levy etc. Besides from this, materials at project sites are stolen and carted away at night thereby frustrating the contractors from effectively executing the projects. Faced with these ugly scenarios contractors usually abandon their project sites midway into the execution of the contract when the situation becomes unbearable. This was how the NDDC 1000 litres water schemes in Epie Central in

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<sup>355</sup> O. Yishau, 'Good Cause, Crude Tactics' in Tell Magazine, April 9, 2007, p5.

<sup>356</sup> Principle 10 of the Rio Declaration on Environment and Development provides that 'environmental issues are handled with the participation of all concerned citizens, at the relevant levels...' L. Atsegbua, et al. *Environmental Laws in Nigeria, Theory and Practice* (New Edition) Benin City, Ambik Pres, 2010, p508

Yenagoa, Bayelsa State, designed to serve the entire Epie Clan of 41 communities became abandoned since 2003 till date, because the traditional rulers council of Epie clan and the Ijaw Youths Council (IYC) could not resolve who should supervise the NDDC contract and benefit from the accompanying gratifications from the contractor. The situation degenerated into a bloody conflict and the contractor fled from the site and the project became abandoned till date.

**e. Abandoned, Exaggerated and Non-Existent NDDC Projects in the Niger Delta Region.**

Granted that as shown in the foregoing, NDDC has done reasonably well in its project implementation by affirming that it has executed the total of 8,000 projects between 2000 and 2015 in the region; there is a groundswell of protests that many NDDC abandoned or non-existent projects litter the region. For example, the Environmental Rights Action (ERA) using Bayelsa, Delta and Rivers States as case study conducted a survey to ascertain NDDC's performance in these Niger Delta States. At the end, ERA reported that most of the major projects particularly those dealing with shore protection, road construction and water schemes award by NDDC since 2001 are abandoned or non-functional in these states.<sup>357</sup> In a similar vein, the Cross River State House of Assembly constituted a committee to investigate complaints of NDDC abandoned projects in the state. The committee report was not only damning but equally startling as it was reported that out of the total of 196 projects awarded by NDDC in the state which are mainly roads, water schemes, erosion control, housing and electricity valued at several millions of naira; work is yet to commence on 99, while 52 are completed but work has been stalled on 15 for a longtime.<sup>358</sup> Alarmed by the increasing

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<sup>357</sup> M. Alogoa, 'Environmentalists Accuse NDDC of Abandoning Projects in Bayelsa'. <<http://punch.com/environmentalist-accuses-nddc-of-abandoning-projects-in-bayelsa/>> accessed 14 October, 2017.

<sup>358</sup> Cross River State House of Assembly Report of an Inquest into the affairs of the NDDC captioned '71 NDDC projects abandoned in Cross River State'. <<http://Crossriverwatch.com/2013/02/71-projects-abandoned-incross-river-state/>> accessed on 14 October, 2017.

number of protests of abandoned, exaggerated and non-existent projects against the commission and following counter claims by NDDC officials, it was contented that:

The NDDC may not have lived up to its high billing after all, despite the number of projects it boasts of having executed, completed and commissioned. Some of these official claims could be fictitious, exaggerated or handled in manners inimical to the advancement of public interest which is the amelioration of the people's living conditions. The task of evaluating the performance and effectiveness of the NDDC presents us with a measurement dilemma. This is because there are no good independent studies of the effectiveness of the NDDC projects, and so we must for now rely on the opinion of interested parties. To complicate matters, opinions are sharply divided regarding the effectiveness of NDDC in discharging its responsibilities, and a large proportion of available views on the issue are negative. This explains why skepticism about project effectiveness is warranted<sup>359</sup>

Perhaps it was observations like the one above that might have prompted a key stakeholder in the Niger Delta development project to lament that: "only 12% completion rate was recorded in the several projects undertaken by the NDDC in the past years, while the rest were abandoned, adding that NDDC projects were deliberately meant to enrich some individuals. Sometimes, projects are designed not to succeed but just for some people to make money."<sup>360</sup> The bottom-line of all these is that following the growing skepticism against NDDC on its performance, the Commission is now faced with a major challenge on how to convince the people of the Region that it is performing with a view to dousing the negative perception the people hold against it.

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<sup>359</sup> S. E. Abila, et al. (n 66) op cit. p269.

<sup>360</sup> J. S. Omotola, 'From the OMPADEC to NDDC: An Assessment of State Response to Environmental Insecurity in the Niger Delta, Africa Today' (2007) Pp73-89.



## CHAPTER THREE

### A SOCIO – LEGAL APPRAISAL OF THE PRESIDENTIAL AMNESTY PROGRAMME (PAP) FOR NIGER DELTA EX-MILLITANTS

#### 3.1 Conflict as Cause of Unsustainable Development in the Region.

Arising from the high level of insurgency and militancy in the Niger Delta Region within the last 20 years or thereabout, the region has become very notorious in the international, national and local media. There is no gainsaying that many people in this country and elsewhere because of the high level of violence associated with it in recent times think the Niger Delta is the only delta in the world. This notion is not correct. There are other deltas<sup>361</sup> in the world some of which have equally witnessed violent agitations at one time or the other. Examples of other deltaic regions in the world that are also termed violent regions include the Pearl Delta in China and the Okavango Delta in Angola.<sup>362</sup>

The reasons why deltaic regions the world over are prone to violence are many and diverse depending on their peculiar socio-economic and environmental conditions. For example, whereas the Niger Delta in Nigeria and the Pearl Delta in China are underdeveloped and violence infested, the Mississippi Delta in the USA and the Mekong Delta in China respectively are highly developed and industrialized,<sup>363</sup> and are therefore free from the type of violent agitations we experience in the Niger Delta Region.

Drawing from this reality it has been argued that the common features of deltaic regions are:

(1) the complex terrain, (2) the availability of natural resources-oil and gas, and (3) the issues of sustainable development in the region which include the structural, institutional and legal

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<sup>361</sup>A. Etekpe, contended that there are ten (10) major deltas (wetlands) in the world which include the following: the Mekong delta in China, Mississippi delta in the USA, the Niger Delta in Nigeria, Nile Delta in Egypt, Yangtzedelta in China, Pearl delta in China, Okavango delta in Angola, Orinoco delta in Venezuela, Mahakam delta in Indonesia and Mackenzie delta in Canada. A. Etekpe, *Policy Option and Adaption: A Comparative Study of the Niger Delta and other Deltas of the World*. (Talent World publishing Nigeria 2009), Pp1-3.

<sup>362</sup> A. Etekpe, *Policy Option and Adoption: A Comparative Study of the Niger Delta and other Deltas of the World*. (World Publishing Nigeria, 2009) Pp1-3.

<sup>363</sup>ibid p7

frameworks, human capacity and infrastructural development, human (social rights) and resource control; stressing that the challenges of managing these issues have continue to make deltaic regions fragile and volatile<sup>364</sup>. Essentially, unfair revenue allocation formula, absence of true federalism, agitation for resource control, environmental degradation, lack of infrastructural development, state induced poverty<sup>365</sup> etcetera, have been identified as the main factors that have continued to instigate restiveness in the Niger Delta Region which greatly undermine the promotion of sustainable development in the region.

A painstaking investigation into the evolution of violent conflicts in the Niger Delta Region undoubtedly reveal that the origin of violence in the region is traceable to the colonial days, when the indigenous Kings fought the colonial masters as to who controls the economic resources in their domains. Available historical records show that in 1873 King Jaja of Opobo<sup>366</sup> violently confronted the colonial masters for attempting to sideline him in the then booming slave, palm oil and kernel trade in his domain. He was defeated and sent on exile. Thereafter King Nana of Itshekiri<sup>367</sup> in 1894 equally had serious conflict with the colonial masters for bye-passing him to trade with the King of Benin. He too was defeated and sent on exile. Further that, King Koko of Nembe Kingdom also attacked the Royal Niger Company (RNC) headquarters in Akassa and razed it down<sup>368</sup>. His kingdom was equally destroyed by Her Imperial Majesty's Royal Navy in 1895.

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<sup>364</sup> *ibid*, p2

<sup>365</sup> B. O. Nwankwo, 'The Politics of Conflict over oil in the Niger Delta region of Nigeria: A Review of the Corporate Social Responsibility Strategies of the Oil Companies', p3 <<http://pubs.sciepub.com/Education/3/411>> accessed 29 September, 2021.

<sup>366</sup> S. J. S. Cookey, 'King Jaja of the Niger Delta: His Life and Times' (UGR publisher). also A. Etekpe, 'Politics of Resources Allocation and Control in Nigeria: the Niger Delta Experience'. (Harey Publications coy, 2007) Pp1-10.

<sup>367</sup> E. Yafugborhi, '100 Years of Nana of Itsekiri's Living History'. <[http://www.vanguard.com/2016/07/100yearsnana\\_itsekirlivinghistory/](http://www.vanguard.com/2016/07/100yearsnana_itsekirlivinghistory/)> accessed 22 December, 2017.

<sup>368</sup> 'Frederick William Koko Mengi VIII of Nembe'. <<https://m.youtube.com/watch>> accessed 13 December, 2017.

The legal import of all these historical conflicts is that the colonial masters willfully violated the trade treaties<sup>369</sup> they earlier signed with the local kings in the region. For instance, article 3 of the 1873 Trade Treaty between King Jaja of Opobo and the European traders provided that “after April 5, 1873, the King of Opobo shall allow no trading establishment or hulk in or off Opobo Torr, or any trading vessel to come higher up the river than the white man’s beach opposite Hippopotamus Creek. If any trading ship or steamer proceeds further up the river than the creek above mentioned, after having been duly warned to the contrary, the trading ship or steamer may be seized by King Jaja, and detained until a fine of 100 puncheons be paid by the owners to King Jaja.”<sup>370</sup>

The European traders subsequently violated the provisions of this treaty and traded directly with the people of hinterland which include Ibeno, Essene Ndoki, Azumini, Qua-Ibo, Ohambele and Akwete. King Jaja protested against the actions of the European traders by invading the territories of Ibeno and Qua-Ibo. The action of King Jaja of Opobo infuriated Consul Hewet who accused him of trade monopoly in the Niger Delta and therefore arrested and detained him. He was later deported to Accra.<sup>371</sup>

However, when oil was discovered in 1956 in Oloibiri in current day Bayelsa State and following the indigenous peoples’ believe that they are not benefitting from the proceeds of the natural resources harnessed from their backyard, another round of violent conflict ensued in the region. This time Isaac Adaka Boro, a 24 years old youth from Kaiama Community in Kolokuma/Opokuma Local Government Area<sup>372</sup> in present day Bayelsa State launched a violent rebellion against the Federal Government of Nigeria in 1966 and declared a Niger

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<sup>369</sup> *ibid.*

<sup>370</sup> ‘King Jaja and His Trading State of Opobo’, <<http://alscon.net/early-history/41-king-jaja-andhistrading-state-of-opobo.html>> accessed 14 June, 2018.

<sup>371</sup> *ibid*

<sup>372</sup> I. J. A. Boro, ‘*The Twelve Day Revolution*’ (Idodo Umeh Publishers) 1982

Delta Republic. He was arrested, tried for treasonable felony<sup>373</sup> and sentenced to death but later granted state pardon.<sup>374</sup> Twenty-four years after Boro's revolution, Kenule Saro Wiwa, a renowned writer, dramatist and environmental activist<sup>375</sup> from Bane in Khana Local Government Area of Rivers State led a non-violent campaign to assert the environmental rights of his Ogoni people and emancipate them from state imposed poverty. He was also arrested, tried and hanged by the Sani Abacha administration in 1995.<sup>376</sup> The fundamental legal defect the tribunal that tried Ken Saro Wiwa suffered was that the decree<sup>377</sup> that established it ousted the powers to appeal against its judgment. In other words, the decision of the tribunal was final and not subject to appeal to higher courts.

The seeming endless violent agitations and increasing insurgency in the region nonetheless, the Federal Government of Nigeria, out of its determination to guarantee peace and promote sustainable development in the region has taken steps to effectively address the Niger Delta question. As a first step in this direction, the Federal Government of Nigeria constituted various committees/panels to look into the socio-economic challenges in the region with a view to making recommendations on the best possible ways of addressing them. Some of the committees constituted through Presidential Executive Orders<sup>378</sup> and proclamations<sup>379</sup> include the Ledum Mitee led Technical Committee on the Niger Delta 2008. The major criticism levelled against the Federal Government of Nigeria in respect of its committees on the development of the Region is that it has failed to implement their recommendations on the Niger Delta Region.

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<sup>373</sup> *Boro & Ors v The Federal Republic of Nigeria* (1966) NSC 314.

<sup>374</sup> Section 175 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>375</sup> 'Ken Saro-Wiwa: Nigerian Author and Activist'. <<https://www.britannica.com/biography/ken-saro-wiwa>> accessed 10 December, 2017.

<sup>376</sup> *Ken Saro Wiwa & Ors v AG Federation. Suit No. FHC/PH/33/94*. (unreported).

<sup>377</sup> Decree No.2 of 1987. See particularly section 8 thereof which provides inter alia that 'the validity of any decision of the tribunal may not be questioned in any court of law, hence no right to judicial review or appeal'.

<sup>378</sup> An executive order is 'an order issued by or on behalf of the president, usually intended to direct or instruct the actions of executive agencies or government officials, actions or to set policies for the executive branch to follow'. G. A. Bryan *Black's Law Dictionary*, 8<sup>th</sup> Edition (West Publishing Company, 1999) p610.

<sup>379</sup> *ibid*

In all these, it would be argued that the need for increased revenue sharing formula in favour of mineral producing areas and the enthronement of equitable fiscal policy for such areas in the country, without contestation, ranks the foremost demand of the Niger Delta people. The Federal Government of Nigeria in response to this demand has reviewed the derivation formula for oil/gas producing areas from time to time to bring peace and enhance the promotion of sustainable development in the region. For example, in 1977 the Federal Government constituted the Aboyade Technical Committee which recommended 3% derivation formula for the Niger Delta Region; in 1980 the Okigbo Commission recommended 7% derivation formula for the region; the Shehu Shagari regime in 1981 through the National Assembly reviewed the derivation formula and reduced it to 4.5%. In 1987 the Ibrahim Babangida regime reviewed the derivation formula downward to 1.5% for the Niger Delta Region, but dramatically raised it to 3% in 1992 and OMPADEC was established<sup>380</sup>.

Granted that the struggle to attract a befitting derivation formula to the Region by the people over the years has been very hectic, a reasonable progress on the issue was made in 1995 when the Constitution Drafting Committee for that year recommended 13% Derivation principle for mineral producing states and inserted same as a provision in the 1995 Draft Constitution of Nigeria as the basis for sharing the Federal Government Revenue. Although the 1995 Draft Constitution was later jettisoned and never materialized to fruition, it nonetheless laid the foundation for the increased derivation formula for the region. Section 163 (2) of the 1995 Draft Constitution provides that:

In determining the Derivation Formula, the National Assembly shall take into account, allocation principle especially those of Population, Equality of States, Internal

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<sup>380</sup> L. Edigin, et al, 'Mystifying Development Policy Strategies in the Niger Delta: The Unending Mistake': Department of political Science & Public Administration, University of Benin, Nigeria; Journal of Research in National Development; Vol 8. No. 2, December, 2010. Pp2 – 4.

Revenue Generation, Land Mass, Terrain, as well as Population Density, provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than 13 percent of the revenue accruing to the Federation Account directly from any natural resources, so however, that the figure of allocation of derivation shall be deemed to include any amount that may be set aside for funding any special authority or agency for the development of the State or States of derivation.

Expectedly, the recommended 13 percent derivation formula in the above section of the 1995 Draft constitution attracted various opinions and views from Nigerians. Whereas people from the North and some parts of South-Western geo-political zones vehemently opposed the ceiling of 13 percent derivation in favour of mineral producing areas, people from the South-South, South-East and part of the South-West geo political zones countered and supported the South-South position that derivation formula for oil producing areas should go as high as between 50 to 100 percent. In the opinion of some Northern elements, using derivation as a condition for sharing national revenue should be de-emphasized and that even if it is necessary to consider the oil mineral producing areas for a special derivation formula, such consideration should be ceiled between 5 and 10 percent. The 1995 Constitution Drafting Committee however adopted the following as its recommendations<sup>381</sup> on the issue of Derivation formula for sharing federal revenue in Nigeria:

- (a) The adoption of section 163 (2) of the 1995 Draft Constitution allocating Federal Revenue on the basis of derivation and the provision of not less than 13 percent to the States where natural resources are derived.
- (b) That sub-section 2 of section 163 (2) of the Draft Constitution be amended by deleting the clause 'so however, that the figure of the allocation for derivation shall be deemed to include any amount that may be set aside for funding any special authority or agency for

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<sup>381</sup> P. A. Oluyede, et al. '*Cases and Materials on Constitutional Law in Nigeria*'. (University Press Plc, 2003). Pp569 - 570

the development of the State or States of derivation’, to ensure the direct allocation of the funds to the State concerned.

Ultimately, the derivation formula for the region was raised to 13% in 1999 and enshrined as a provision<sup>382</sup> in the Constitution of the Federal Republic of Nigeria 1999 (as amended).

It is however important to note that during the 2005 National Political Reform Conference, the South-South delegates demanded for 50% derivation principle which sparked off a row leading to the delegates from the zone storming out of the conference in protest. Later, a middle course was worked out and 17% derivation formula<sup>383</sup> was agreed but the report of that conference never saw the light of day. So, the extant derivation formula for the oil producing states in the Niger Delta is pegged at 13% of the oil revenue accruing to the Federal Government of Nigeria as contained in section 162 of the Constitution of the Federal Republic of Nigeria 1999 as amended. In addition, the Niger Delta Development Commission Act 2000 also provides that 15% of the total monthly allocation accruing to the oil and gas producing states, that is, the Niger Delta Region should be given to the commission<sup>384</sup> to pursue the sustainable development of the region. Nonetheless, it is alleged that the Federal Government of Nigeria has not been sincere in the release of the said 15% to service the development institution (NDDC).

### **3.2 The Immediate Causes of the Escalation of Violence in the Region.**

In the late 1990s violence in the Niger Delta Region escalated and threatened the socio-economic and political base of this country. The reasons for the sudden rise in violence in the

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<sup>382</sup> Section 162 (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>383</sup> D. Arowolo, ‘Nigeria’s Federation and the Agitation for Resources Control in the Niger-Delta Region’. Department of Political Science and Public Administration, Adekunle Ajasin University, Ondo State, Nigeria, 2005, Pp3-5: <[www.ssrn.com/abstract=1973419](http://www.ssrn.com/abstract=1973419)> accessed 10 February, 2017. Also A. Etekpe, ‘*The Politics and Conflicts over oil & gas in the Niger Delta Region. The Bayelsa State experience*’ (Tower Gate Resources, 2012) Pp83 -88.

<sup>384</sup> Section 14 (9) of Niger Delta Development Commission (Establishment, Etc) Act, 2000 (now Cap N68, LFN, 2004).

region are many and diverse. Basically, the consciousness and awareness of the people of the region increased and their clamour for the right of ownership, management and control of the natural resources (oil and gas) in their region equally became heightened. They particularly demanded for the repeal of all laws in this country that deprived the oil producing communities from exercising the right of ownership, management and control over the natural resources in their domains. For example, they insisted that section 6 (1) and (3) of the Oil Pipeline Act, 1956 is oppressive and inimical to the interest of oil producing communities (OPCs) because it grossly limits the oil bearing communities' rights to ownership of the surface of the land, thereby depriving them of their entitlements to adequate compensation from oil/gas exploitation and exploration activities on their land.<sup>385</sup>

The Mineral and Petroleum Act 1969<sup>386</sup> is another Act the people of the Region protested against. They contended that sections 1 (a), (b) and 2 of the Petroleum Act, 1969 which regulates the entire oil and gas industry in Nigeria completely curtails the rights of the oil producing communities (OPC's) to participate and become co-owners in the administration, ownership and management of oil and gas in their domain in the Country. The Land Use Act 1978<sup>387</sup> is another federal enactment in the country that drew the anger of the Niger Delta people. They insisted that by the combined effect of sections 1, 2 (1) and (b), and 4 of the Land Use Act, that vest the ownership of their lands on the State Governor and the Local Government Council/Chairman, equally take away their rights to exercise jurisdiction over the oil and gas in their domain from them.

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<sup>385</sup> Section 6 (1) and (3) of the Oil Pipeline Act, 1956 (now Cap O7, LFN, 2004).

<sup>386</sup> Sections 1 (a), (b) and 2 of the Petroleum Act, 1969 (now Cap P10, LFN 2004).

<sup>387</sup> Sections 1, 2(1) and (b), and 4 of the Land Use Act, 1978 (now Cap N202, LFN 2004).



Furthermore sections 9, 10, 11, 12 and 13 of the National Inland Waterway Authority Act 1997<sup>388</sup> which confers ownership of their rivers, creeks, streams and canals on the Federal Government is an oppressive and unfair law because it takes away the indigenous peoples' right of ownership over the rivers in and around their communities. Perhaps the Niger Delta peoples' greatest agitation for the repeal of Federal Acts was directed at the provisions in section 315 (5) and item 36 (a) and (b) of the Exclusive list, second schedule, part 1 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which emphatically vests the power to control all land on the States and Local Governments as contained in the Land Use Act 1978. In a similar vein, item 36 (a) of the Exclusive list, second schedule, part 1 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), vests the power to control coastal waters used for shipping and navigation (tidal waters) on the Federal Government. Further that, the Federal Government by virtue of item 36 (b) is constitutionally empowered to control the movement of ships and other forms of navigations on River Niger and its affluent and on any such other inland waterway including the Niger Delta rivers and creeks. It is their demand that by virtue of their status as the indigenous people inhabiting the communities within the Niger Delta, the legal authority to own and manage the continental shelves, rivers and creeks in their domain ought to reside with them and not the Federal, State or Local Governments.

Another reason for the escalation of violence in the region at that time was the demand for the adoption of fiscal federalism as the basis for the distribution of revenue derived from minerals in the country. They cited section 140 (1) of the Constitution of the Republic of Nigeria 1963 to support their demand saying that by the provision of that section, 'the Federal Government paid to each region 50 percent as royalty/rents in respect of any proceeds got

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<sup>388</sup> Sections 9, 10, 11, 12 and 13 of the National Inland Waterway Authority Act 1997, (now Cap N47, LFN, 2004).

from that region in respect of mineral exploited in each region'. They contended in addition that by virtue of section 140 (5) of the said Constitution, minerals included oil.

Consequently, the people of the region in order to achieve their demands, began to form socio – political groups based on ethnic nationalities and issued position papers called 'bill of rights', containing their various positions on critical issues that affect their continuous existence in the Nigerian federation. They then served these various instruments on the Federal Government of Nigeria and demanded for implementation. Thus, the Ogonis formed the Movement for the Survival of the Ogoni People (MOSOP) in Rivers State in 1990 which later issued the Ogoni Bill of Rights<sup>389</sup> in October 1990. It is noted in addition that MOSOP later gave rise to the National Youth Congress of Ogoni People (NYCOP) - the youth wing of the body. During the trial of Ken Saro-Wiwa the tribunal, in its judgment, described the National Youth Congress of Ogoni People (NYCOP) as a militant organization<sup>390</sup>.

Following the Ogoni experiment, the Ijaws also formed the Ijaw National Congress (INC) which subsequently begot the Ijaw Youth Congress (IYC) as its foot soldiers and youth wing. On December 11, 1998 about 5000 members of the Ijaw Youth Congress assembled at Kaiama and issued their position paper called 'The Kaiama Declaration'.<sup>391</sup> Article 1 of Kaiama Declaration provides that: all land and natural resources (including mineral resources) within Ijo (Ijaw) territory belong to Ijo (Ijaw) Communities and are the basis of our survival.

Going further, Article 2 thereof provides that:

We cease to recognize all undemocratic decrees that rob our people/ communities of the right to ownership and control of our lives and resources, which were enacted without our

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<sup>389</sup> T. Mbeke – Ekanam, *'Beyond the Execution: Understanding the Ethnic and Military Politics in Nigeria'* (Capital/Graphic Communication and Publishing Co. 2000). Pp92 – 97.

<sup>390</sup> *ibid* p99

<sup>391</sup> *ibid*. Pp209 – 213.

participation and consent. These include the Land Use Decree and the Petroleum Decree, etcetera.

Upon service of the above documents on the Obasanjo administration in 2003 and having waited in vain for positive response from the Federal Government for years, the youth in the Niger Delta Region, mostly the Ijaw Youth Congress members began to form militia groups poised to confront the Federal Government and multinational oil companies for the right to control their resources. The notable militant groups and their leaders include – Mujahid Asari Dokubo- Leader of the Niger Delta Peoples Volunteer Force (NDPVF)<sup>392</sup> and Tom Ateke- Leader of the Niger Delta Vigilante Force (NDVF)<sup>393</sup>. These two militias were the prominent groups operating in the eastern zone of the Niger Delta i.e. Rivers, Akwa-Ibom and Cross River States. On the other hand, the Henry Okah and Tompolo controlled Movement for the Emancipation of the Niger Delta (MEND)<sup>394</sup> ruled the creeks in Bayelsa, Delta, Edo and Ondo States.

Furthermore, some avoidable incidents that occurred in the region within this period also helped to fuel the outbreak of full-scale violence in the Niger Delta. Especially, some oil producing communities in the region had clashes with multi-national oil companies over the non-payment of compensation to the indigenous communities and the Nigerian Army was called-in by the multi-national oil companies for the purpose of maintaining peace. Unfortunately, the military mobilized as if they were war bound, invaded and completely destroyed several communities in the Region which include- Biara (Ogoni) (1990), Umuechem (1990), Odioma (2005), Odi (1999), Okerenkoko (2005), Kurutie (2006) etcetera.

These Communities are in Bayelsa, Delta and Rivers States.

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<sup>392</sup>A. Eteke, 'Political Economy of Post-Amnesty Management in the Niger Delta: Prospects and Challenges'. *Niger Delta Research Digest A Journal of Articles and Special Reports on the Niger Delta Region, Vol. III, December, 2009*. Pp47 – 48.

<sup>393</sup> *ibid.* Pp47-48

<sup>394</sup> F.O. Roberts – Nyemutu, 'Natural Resources Governance in Federal Democracies: Oil & Gas Governance and Militancy in Nigeria's Niger Delta'. in S. I. Ibaba, et al (ed) '*Trapped in Violence: Niger Delta and the Challenges to Conflict Resolution and Peace Building*' (University of Port Harcourt Press, 2013) Pp55 -82.

Another issue that contributed to the escalation of violence in the Niger Delta Region was the one-million-man march organized by Sani Abacha to consolidate his presidency and further drum-up support for his bid to transform to life civilian president of the Country. To achieve his dream, it would be recalled that Abacha mobilized several youths from different parts of Nigeria to participate in his one-million-man march in Abuja, calling him to contest the presidential election then scheduled to hold in 1998. Many Niger Delta youth were mobilized and went to Abuja to participate in the Abacha's one-million-man march. On arrival at Abuja, these youths saw the opulence of the city and concluded that the entire beauty and development in Abuja is the oil wealth from the Niger Delta. Their anger therefore became increased and their resolve to violently confront the Federal Government and the multi-national oil companies operating in the Niger Delta Region became more firmed-up.

Perhaps the arrest of the leader of the Movement for the Survival of the Ijaw Ethnic Nationality (MOSIEN) - Timi Kaizar Ogoriba and his subsequent detention in a cell in Bayelsa State Government House on 12 July, 1998, on the orders of the then Governor of the State –Olubolade<sup>395</sup> also played a major role in triggering-off the violence in the Niger Delta Region. The facts of the Bayelsa State Government House confrontation are that when Olubolade ordered and arrested Ogoriba for organizing and leading resource control protest in the State, he was detained in Bayelsa State Government House in a cell.

The Ijaw Youths Congress sent several emissaries to the Governor, appealing for the unconditional release of their leader but the Governor refused. One morning some Ijaw Youths dressed in 'Egbesu'<sup>396</sup> (the Ijaw god-of-war) attires approached the Bayelsa State Government House gate firmly secured by fully armed soldiers from the Nigerian Army. The Youth demanded to see Olubolade in respect of the release of their detained leader but the

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<sup>395</sup> A. Etekpe, *'The Politics and Conflicts Over Oil & Gas in the Niger Delta Region: The Bayelsa State Experience'*. (Tower Gate Resources 2012) Pp38 – 40

<sup>396</sup> *ibid.* p37

soldiers refused and threatened to shoot them, if they attempt to enter the Government House forcefully. The weirdly dressed youths pushed the soldiers aside and went into the Government House and the soldiers opened fire on them but none of the Ijaw Youths died. They defied the soldiers' bullets went into the Government House and released their leader – Timi Kaizar Ogoriba from Olubolade's detention cell.<sup>397</sup> This feat emboldened other youths in the Region who became more eager to confront the Nigerian Army in combat, basking in the potency and invincibility of the powers of 'Egbesu', their god of war.

Without more, the final incident that shattered the tiny peace that existed between the Federal Government and the Niger Delta agitators was the arrest and detention of Mujahid Asari Dokubo, the leader of the Niger Delta Peoples Volunteer Force (NDPVF) by the Federal Government in 2003. The Ijaw Youth Congress made several appeals to the Government for his release but their appeals fell on deaf ears. Consequently, the High Command of the Ijaw Youths Congress particularly the NDPVF and MEND declared 'Operation Climate Change', 'Operation Isaac Boro' and 'Operation Cyclone' respectively in 2005, and ordered the various militant groups to attack oil facilities in the Region by way of expressing the accumulated grievances they hold against the Federal Government of Nigeria. As a result, oil and gas installations in the Niger Delta Region came under intense attack from the militants.

Precisely on December 5, 2005 militants operating in the Eastern zone of the Niger Delta bombed the headquarters of Nigerian Agip Oil Company (NAOC) in Rumeme, Port Harcourt, killed some policemen and catered away an undisclosed amount of money<sup>398</sup>. On January 11, 2006 MEND<sup>399</sup> struck SPDC oil location in Ojobo town in Ekeremor local

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<sup>397</sup> *ibid.* p40

<sup>398</sup> R. Ngomba – Roth, 'Oil in the Niger Delta: Reflections on Militancy and the Challenges of Violence Control' in S. Ibaba, et al: *Trapped in Violence: Niger Delta and the Challenges to Conflict Resolution and Peace Building* (University of Port Harcourt Press Ltd, 2013). Pp126 – 130.

<sup>399</sup> Acronym for the Movement for the Emancipation of the Niger Delta

Government Area of Bayelsa State and abducted four (4) expatriate workers<sup>400</sup>. They were only released after heavy ransom was paid.

Thereafter MEND on January 15, 2006 bombed Forcados oil Export terminal and took away expatriates as hostages. Barely three days later, MEND equally blew-up SPDC crude oil pipe line at Chanomi creek in Warri area, Delta State, supplying crude oil to both Warri and Kaduna refineries<sup>401</sup>.

On 3th April 2006, a car bomb exploded in Bori camp military barracks in Port Harcourt. MEND later claimed responsibility. This was followed by a car bomb containing 30kg of dynamite which was detonated through a cell phone in Warri in April 2006<sup>402</sup>. Not done yet, on June 8, 2006 another militant group known as the Idwunimi Volunteers Force attacked Peak Petroleum in Ekeremor Local Government Area of Bayelsa State and abducted 8 expatriate staff. Further that, militants operating in the eastern zone of the Niger Delta on October 2, 2006, ambushed two vessels along cawthone channel in Akuku-Toru and Degema Local Government Areas of Rivers State and killed thirteen (13) soldiers who were escorting the vessels<sup>403</sup>. While the Federal Government was looking for ways to resolve the increasing violence in the Region, another militant group called the Niger Delta Freedom Fighters (NDDFF) struck Mobile Producing Unlimited at Eket in Akwa-Ibom State on October 2006, overran the facility and abducted 7 expatriate staff. On October 16, 2006 a militant group<sup>404</sup> operating in Central Niger Delta attacked SPDC facility in Oporoma town, Bayelsa State and took sixty (60) oil workers hostage, citing the absence of electricity, potable water and none

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<sup>400</sup> A. Etekpe, (n 395) op cit. Pp116 – 117

<sup>401</sup> *ibid.*

<sup>402</sup> R. Ngomba –Ruth, (n 398) op cit. p69 -71

<sup>403</sup> A. Etekpe, (n 395) Op cit. Pp42 – 43

<sup>404</sup> *ibid* p42

payment of compensation as reasons for the attack. Heavy ransom was paid before the hostages were released<sup>405</sup>.

Fundamentally, before or after every attack someone with a pseudo-name called Jomo Gbomo who later turned out to be Henry Okah<sup>406</sup> would issue an online statement either warning or claiming responsibility on behalf of MEND for the attack. Sometimes one Comrade Whyte Cynthia also doubled as the spokesman for the Niger Delta Militants and would either forewarn of an impending attack or rationalize the reasons for an attack on any oil installation. In fact, instances where the militants attacked oil installations during the campaign for resource control in the Niger Delta Region are legion and cannot be exhaustively listed in this thesis, suffice it to say that, the violent attacks impacted negatively on the Nigerian economy, the environment and the efforts at attaining sustainable development in the region.

The socio-economic losses suffered by various entities, communities and individuals as result of the militancy crises in the region were monumental. Available statistics show that whereas Shell Petroleum Development Company Nigeria Ltd (SPDC) suffered a total of 233 attacks, Texaco-Chevron 41, while Nigerian Agip Oil Company suffered a total of 52 attacks<sup>407</sup>. In terms of quantity of oil lost by each company, the figures show that SPDC lost a total of 125 million barrels of crude oil as a result of attacks on their facilities by militants which in monetary terms was estimated at N406.25 billion (USD 3.125 billion).<sup>408</sup> Texaco-Chevron lost 55 million barrels of oil valued at N178.750 billion (USD 1.375 billion);<sup>409</sup> while Nigerian Agip Oil Company (NAOC) lost about 20 million barrels of crude oil worth N65.0 billion (USD 0.5 billion). At the peak of the hostilities majority of the multinational

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<sup>405</sup> A. Etekpe, (n 395) Pp121 – 122

<sup>406</sup> *ibid* Pp117 – 119

<sup>407</sup> *ibid.*, 119

<sup>408</sup> *ibid*

<sup>409</sup> *ibid*

companies were forced to retrench their staff, close their operational bases and declared force majeure<sup>410</sup> thereby putting their customers on notice that they would not be able to meet the pending supply contract, citing the escalating militancy in the Niger Delta Region as the reason.

On the part of the Federal Government of Nigeria, the report<sup>411</sup> shows that between 2003 and 2009 the Nigerian National Petroleum Company (NNPC) lost a total of about 872,000 barrels of crude oil daily due to violence induced leakages and forced shut down of oil flow stations. The above quantity of crude oil lost by NNPC per day when converted to monetary terms was put at an estimated N687,830 million daily. That apart, electricity supply to the nation dropped by 600 megawatts in February, 2005; scarcity of fuel, kerosene and cooking gas became so severe that how to get them constituted a constant source of worry in Nigerian homes. At a point, the Nigerian economy cave in due to the drastic drop in oil revenue and the Nigerian government found it extremely difficult to meet its budgetary obligations. At the International scene, following the escalation of militancy in the Niger Delta Region, oil prices at the International market also responded to the escalation and became skyrocketed.

Responding to the heightened militancy in the Niger Delta Region, Olusegun Obasanjo, the then president of Nigeria jettisoned dialoguing with the militants to peacefully resolve the crisis but opted for and adopted a counter insurgency approach. Therefore, a counter insurgency task force named the Joint Military Task Force (JMTF) to quell the militancy in the Niger Delta Region was established. In carrying out its obligations, the military task force bombed communities, camps and settlements in the region killing innocent citizens.<sup>412</sup> Thus

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<sup>410</sup> T. Mbeke-Ekanam, (n 389) op cit. p209

<sup>411</sup> K. Ajayi, 'Beyond Amnesty: The Crisis of Federalism and conflict of Resource Generation and Value distribution in the Niger Delta of Nigeria' in S. I. Ibaba, et all (ed). *'Trapped in Violence, Niger Delta and the Challenges to Conflict Resolution and Peace Building'* p44.

<sup>412</sup> A. Etekpe, (n 395) 194



some Gbaramatu Communities namely Okenrenko, Oporoza, Okokodiagbene and Kurutei<sup>413</sup> were bombarded on 13th May, 2009 in Delta State by the Joint Military Task Force.

Alarmed by the degenerating social, economic and environmental conditions in the Region, stakeholders within and outside Nigeria started piling pressure on Obasanjo to explore peaceful means of resolving the Niger Delta crisis. Precisely on the 13th of September, 2006, the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) embarked on a strike to compel the Federal Government to dialogue with the militants. Thereafter, the National Union of Petroleum and Gas Workers (NUPENG) also embarked on a strike<sup>414</sup> on 15th September, 2006 pressurizing the Nigerian Government to dialogue with the militants and resolve the crisis in the region. Not only that, some ambassadors from European Union (EU) countries also visited Obasanjo and pleaded with him to drop the counter-insurgency approach and explore dialogue by negotiating with the militants.

Resulting from these pressures President Obasanjo towards the tail-end of his 2<sup>nd</sup> tenure precisely 2006, somehow acquiesced to discussing with the Niger Delta militants so as to resolve the crisis in the region through dialogue. As a first step in this direction, he appointed two prominent citizens from the Niger Delta into key positions in his government, to wit, Edmund Dakoru and Andrew Azazi as minister for State, Petroleum and Chief of Army Staff respectively. Furthermore, he inaugurated the Presidential council on the social and Economic Development of the Coastal States<sup>415</sup> of the Niger Delta 2006, which committee recommended among other things that: ‘The Federal Government grants general Amnesty to the Militants to encourage most of them to leave the creeks for the city to engage in legitimate forms of livelihood’.

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<sup>413</sup> *ibid*

<sup>414</sup> *ibid*

<sup>415</sup> ‘The Presidential Council on Social and Economic Development of the Coastal States of the Niger Delta Report 2006.

Though Obasanjo did not implement the recommendations of the above committee, his further actions in facilitating the emergence of Goodluck Ebele Jonathan from the minority Niger Delta as the Vice Presidential candidate to the PDP presidential candidate for the 2007 general election – Umaru Yar’Adua suggests that he was inclined to making peace with the people of the Niger Delta Region towards the tail end of his presidency. Interestingly, it was from this humble position that Goodluck Ebele Jonathan later became the President of the Federal Republic of Nigeria in 2010<sup>416</sup>. The fundamental point worth noting is that when Alhaji Umaru Yar’Adua assumed office on 29 May, 2007 he jettisoned the counter insurgency approach of his predecessor in resolving the Niger Delta question and opted to explore peaceful means, thus, he inaugurated the Ledum Mittee led Technical Committee on the Niger Delta (TCND) in 2008 which recommended thus: the Federal Government should embark on disarmament, demobilization and re-integration (DDR) of militant groups in the region<sup>417</sup>

Umaru Yar’Adua implemented the recommendations of the Mittee’s Technical Committee and after due consultations, declared Amnesty for Niger Delta Militants on June 24, 2009, which was embraced by many militant leaders prominent amongst them were: Government Ekpemupolo (Tompolo), Chief Tom Ateke, Joshua Mckiver, Africa Owei, Victor Ben Ebikabowei (Boyloaf) Solomon Ndigbara (alias Osama Bin Laddin), Gidson Kala (Prince Igodo), Soboma George, Farah Dagogo<sup>418</sup> etcetera, together with their members. In all, it is noted that a total of 20, 000 or thereabout Niger Delta militants embraced the Presidential Amnesty Programme. Nonetheless, it is important to point out that Asari Mujahid Dokubo

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<sup>416</sup> ‘Goodluck Ebele Azikiwe Jonathan’ <<https://www.britannica.com/goodluck-ebele-jonathan/>> 5th May, 2010 – 29th May, 2015.

<sup>417</sup> The Technical Committee on the Niger Delta (TCND) report 2008.

<sup>418</sup> A. Etekepe. (n 392) op cit. Pp47 – 48

and the members of his Niger Delta People Volunteer Force (NDPVF) declined accepting the Amnesty and never participated in it<sup>419</sup>.

### **3.3 The Legality Question of the Presidential Amnesty Proclamation and its Sustainable Development Viability**

It would be recalled that on 24th June, 2009, Umaru Musa Yar'Adua, the then President of the Federal Republic of Nigeria, proclaimed the granting of amnesty and unconditional pardon to the militants in the Niger Delta Region thus commencing the process of Disarmament, Demobilization, Re-integration and post-conflict peace building in the Region. For effective discussion of the legality or otherwise of the presidential amnesty proclamation in this section, the same is reproduced hereunder verbatim and which is to the effect that:

Pursuant to Section 175 of the Constitution of the Federal Republic of Nigeria. Whereas the Government of the Federal Republic of Nigeria acknowledges that the challenges of the Niger Delta arose mainly from the inadequacies of previous attempts at meeting the yearnings and aspiration of the people, and have set in motion machinery for the sustainable development of the Niger Delta States; Whereas certain elements of the Niger Delta populace have resorted to unlawful means of agitation for the development of the region including militancy thereby threatening peace, security, order and good governance and jeopardizing the economy of the nation; Whereas the Government realizes that many of the militants are able-bodied youths whose energies could be harnessed for the development of the Niger Delta and the nation at large; Whereas the Government desires that all persons who have directly or indirectly participated in militancy in the Niger Delta should return to respect constituted authority; and Whereas many persons who had so engaged in militancy now desire to apply for and obtain amnesty and pardon.

NOW THEREFORE, I, Umaru Musa Yar'Adua, President of the Federal Republic of Nigeria, after due consultation with the council of states and in exercise of the powers conferred upon me by the provisions of Section 175 of the Constitution of the Federal Republic of Nigeria, make the following proclamation:

I hereby grant amnesty and unconditional pardon to all persons who have directly or indirectly participated in the commission of offences associated with militant activities in

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<sup>419</sup> 'Asari Dokubo Rejects Federal Government Amnesty Programme'. <[www.vanguardngr.com](http://www.vanguardngr.com)> accessed 10 October, 2017

the Niger Delta; The pardon shall take effect upon the surrender and handing over of all equipment, weapons, arms and ammunition and execution of the renunciation of militancy forms specified in the schedule hereto, by the affected persons at the nearest collection centre established for the purpose in each of the Niger Delta States; The unconditional pardon granted pursuant to this proclamation shall extend to all Persons presently being prosecuted for offences associated with militant activities; and this proclamation shall cease to have effect from Sunday, 4th October 2009”<sup>420</sup>

Yar’ Adua apparently predicated his amnesty proclamation on section 175 of the Constitution of the Federal Republic of Nigeria 1999 as the legal basis for granting the Niger Delta militants amnesty and unconditional pardon. Though some commentators<sup>421</sup> commend the amnesty proclamation describing it as laudable, because it is aimed at promoting peace in the region; others<sup>422</sup> criticised it as illegal, vague and not far-reaching enough. Consequently, this section of the research seeks to re-evaluate the constitutionality or otherwise of the Yar’Adua Amnesty proclamation for Niger Delta militants. However, before delving into the main discussion it has become imperative to first explicate the meaning of amnesty. Black’s Law Dictionary defines amnesty thus:

Amnesty is a pardon extended by the government to a group or class of persons, usually, for political offense; the act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have not yet been convicted.<sup>423</sup>

An analysis of the above definition shows that amnesty has the following qualities:

- i. It is a pardon granted by the government;
- ii. It is granted to a group or class of persons;
- iii. The offence for which amnesty is granted is usually political in nature;

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<sup>420</sup> Yar’Adua ‘Niger Delta’ Amnesty Proclamation. <<http://saharareporters.com/2009/006/24/yar’adua-niger-delta-amnesty-proclamation>> accessed 10 October, 2017.

<sup>421</sup> V. Egweni, ‘From militancy to Amnesty: Some thoughts on President Yar’Adua’s Approach to the Niger Delta Crisis’. *Current Research Journal of Economic Theory* 2(3): 136-141, 2010. August 30, 2010. Accessed 13 Nov. 2017.

<sup>422</sup> *ibid*

<sup>423</sup> G.A. Bryan, *Black’s Law Dictionary 8<sup>th</sup> Edition* (West Publishing Co. 1990), p93.

- iv. The group or class of persons benefiting from the amnesty are subject to trial but have not been convicted; and
- v. By legal implication, such group or class of persons once granted pardon under amnesty cannot be re-prosecuted.<sup>424</sup>

Yar'Adua, therefore, in proclaiming amnesty for the Niger Delta militants deemed them to fall squarely within the contemplation of the above definition of the word, meaning that he considered the definition of amnesty to be embedded in section 175 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), hence he invoked and relied on the said section 175 of the Constitution as the legal basis for the granting of amnesty to the beneficiaries. For clarity and avoidance of doubt, section 175 of the Constitution of Nigeria is reproduced hereunder:

*Section 175 – (1) The President may –*

- (a) Grant any person concerned with or convicted of any offence created by an Act of the National Assembly pardon, either free or subject to lawful conditions;*
  - (b) Grant to any person respite, either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;*
  - (c) Substitute a less severe form of punishment for any penalty imposed on that person for such an offence; or*
  - (d) Remit the whole or part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due the state on account of such offence.*
- 2. The powers of the President under sub section (1) of this section shall be exercised by him after consultation with the council of state.*
  - 3. The President, acting in accordance with the advice of the council of state, may exercise his powers under subsection (1) of this section in relation to persons concerned with offences against the army, naval or air force law or convicted or sentenced by a court martial.*

The important question is: whether by the provisions of section 175 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Yar'Adua can validly proclaim and grant

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<sup>424</sup> J. O. Olatoke, et al: 'An Examination of the constitutionality of the Amnesty Programme in the Niger Delta Region of the Federal Republic of Nigeria: (Journal of Law, Policy and Globalization, ISSN 2224 – 3240 (paper) ISSN 2224 – 3259 (online) Vol. 5,2012. Accessed 14 Nov. 2017.

amnesty to the Niger Delta militants in his capacity as President of Nigeria? The first point to be considered in this question is whether constitutionally speaking, the term amnesty is known to the Constitution of the Federal Republic of Nigeria 1999 (as amended)? Or whether there is any Act/law in the body of laws in Nigeria that provides for amnesty? This is vital because since Yar'Adua inferred his legal powers to grant amnesty to the Niger Delta militants from section 175 of the Constitution, the concept of amnesty has become a constitutional issue in this country. Besides section 36 of the constitution is sacrosanct demanding that:

Subject as otherwise provided by this Constitution a person shall not be convicted of criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a law of a state, and subsidiary legislation or instrument under the provisions of a law.<sup>425</sup>

It is against this backdrop that we hasten to state from this outset that the 1999 Constitution of the Federal Republic of Nigeria provides in section 1 that the Constitution is supreme. In *Olubukola Abubakar Saraki v Federal Republic of Nigeria*<sup>426</sup> the Supreme Court also affirmed that the Constitution is the supreme law in this country<sup>427</sup>. It was further held that every law in this country derives its validity from the Constitution.

Therefore, the need to ascertain the constitutionality or otherwise of the amnesty the president granted the Niger Delta militants based on section 175 of the 1999 Constitution or any other law in the Country has arisen. A thorough search of the Constitution of the Federal Republic of Nigeria 1999 (as amended) shows that the term “amnesty” is not expressly provided for either on the face of section 175 or any other provision of the Constitution. That been the case, amnesty as a legal concept is not known to the Nigerian Constitutional jurisprudence

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<sup>425</sup> Section 36 (12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>426</sup> Appeal No. SC. 852/2015, LegaPediaonline.com. Accessed 15<sup>th</sup> November, 2019. Also see *PDP v CPC (2011) 7NWLR*, pt. 1277, p485.

<sup>427</sup> Section 1 (i) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

and the same cannot be used as the bases to convict somebody or pardon a person convicted by a competent court because it does not meet the requirements of what qualifies as law in Nigeria as enshrined in section 36 (12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This is the position the court reached in the case of *Omatseye v FRN*<sup>428</sup>

Flowing from the aforesaid, it has become safe to conclude that the amnesty Yar'Adua granted the Niger Delta militants is not expressly contained on the face of section 175 of the Nigerian Constitution and it does not expressly vest the president with the necessary constitutional powers to grant anybody amnesty in the country and to that extent, the said amnesty declaration is inconsistent with the Constitution of the Federal Republic of Nigeria 1999 and thus unconstitutional.<sup>429</sup>

The next question is: whether section 175 of the Constitution of the Federal Republic of Nigeria 1999 as couched is solely prerogative of mercy or it embodies amnesty as well? The courts answered this question in the case of *Cadbury Nig. Plc v Federal Board of Internal Revenue*<sup>430</sup> where it was held that 'what the Constitution provides for in section 175 of the Constitution is prerogative of mercy'. Interestingly, the courts have further expounded the meaning and scope of the term prerogative of mercy in section 175 of the Constitution of the Federal Republic of Nigerian 1999 in other cases. For instance, in *Obidike v State*<sup>431</sup> where the Court of Appeal was invited to interpret the legal meaning of sections 161 and 192 of the Constitution of the Federal Republic of Nigeria 1979, which is in pari materia with sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Olagunju JCA emphatically interpreted the meaning of the two sections thus:

The Court is not unmindful of the power of the president of the country under section 161 of the Constitution of the

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<sup>428</sup> *Omatseye v FRN* (2017) LPELR\_42719 (Ca), also *Maideribe v FRN* (2014) 5NWLR (pt. 1399) 68SC

<sup>429</sup> Section I (3) of the 1999 Constitution of the Federal Republic of Nigeria as amended.

<sup>430</sup> *Cadbury Nig. Plc v Federal Board of Internal Revenue* (2010) 2NWLR (pt. 1179) 561 @ 579 para a –d.

<sup>431</sup> *Obidike v State* (2001) 7 NWLR (pt. 743) 601 @ 639 para g – h; 640 para e – f.

Federal Republic of Nigeria 1979, to grant pardon to a convicted Person or grant a respite or remission of punishment among others.

These similar powers were vested in a state governor by section 192 of the self-same constitution in respect of conviction of any offence created by any law of a state on terms identical with section 161 thereof. The parallelism of the powers described in the marginal note of each section is prerogative of mercy.

The purport of the above judicial pronouncement is that sections 161 and 192 of the Constitution of the Federal Republic of Nigeria 1979 which are the same with sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999 are entirely prerogative of mercy and nothing more. Olatoke<sup>432</sup> further contended that gleaned from the above position that section 175 of the Constitution is entirely prerogative of mercy, it then follows that the same is aimed at forgiving persons who have already been convicted of crime or someone whose conviction relates to the said section and not persons who have not been convicted; adding that even the phrase “any person concerned with” as used in section 175 (i) (a) of the Constitution does not cover the militants in the Niger Delta creeks who have not been convicted.

The foregoing argument finds justification in the realization that it is trite rule of interpretation of statutes under the *Ejusdem Generis* rule that when ‘a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed’.<sup>433</sup> On the premises of this, it is further submitted that where the general phrase – ‘any person concerned with’ as used in section 175 (i) (a) is read together with the specific class mentioned in the same sentence – ‘those convicted of any offence’; the Niger Delta militants who are yet to be convicted of any offence cannot fit into the provisions of section 175 of the Constitution of Federal Republic of Nigeria 1999 (as amended). This jurisprudential reasoning, in our opinion, represents the most appropriate interpretation and meaning of the phrase ‘prerogative of

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<sup>432</sup> J. O. Olatoke et al (n 424) op cit. p26.

<sup>433</sup> G.A. Bryan, (n 78) op cit. p556



mercy’ as used in section 175 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended).

Another aspect of section 175 of the Constitution of the Federal Republic of Nigeria 1999 that deserve being looked into to ascertain whether the section also embodies amnesty, is to critically examine the legal meaning of “pardon” as used in the definition of both amnesty and section 175 of the Constitution of the Federal Republic of Nigeria 1999. In other words, it has become expedient to establish from legal authorities whether the word ‘pardon’ as used both in the definition of amnesty and section 175 of the Constitution of the Federal Republic of Nigeria 1999 dealing with prerogative of mercy means the same thing? The Black’s Law Dictionary defines pardon as: the act or instance of officially nullifying punishment or other legal consequences of a crime<sup>434</sup>. Hornby describes Pardon as ‘to forgive or excuse’<sup>435</sup>

In Nigeria the concept of pardon has been explicated in many cases<sup>436</sup> by the courts. For example, in the celebrated presidential election petition case between *Falae v Obasonjo*<sup>437</sup> where the legal purport of pardon was a major issue, the Court of Appeal per Mustapher JCA interpreted the meaning of ‘pardon’ thus:

A pardon is an act of grace by the appropriate authority which mitigates or obliterates the punishment the law demands for the offence and restores the rights and the privileges forfeited on account to the offence ...the effect of a pardon is to make the offender a new man, to acquit him of all corporal penalties and forfeiture annexed to the offence pardoned.

A careful appraisal of both the Black’s Law Dictionary definition and the judicial position of what ‘pardon’ means show that ‘as an official act, pardon is only given after an offence has been committed and the offender tried and convicted’. Hammering this point further,

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<sup>434</sup>ibid p1144

<sup>435</sup>A. A. Kana, et al ‘The Principle of Double Jeopardy Versus the Principle of Condonation’: Revisiting the Supreme Court’s Decision in *Nigeria Army v Aminu Kano (2010)* 5 NWLR (pt. 1188) 429

<sup>436</sup> *FRN v Ifekwu (2003)* 15 NWLR (pt. 842) 113; *Jammal Steel Structure v ACB (1973)* All NLR 823

<sup>437</sup> *Falae v Obasonjo* (No. 2) (1999) 4 NWLR (pt. 599) 476

Mustapher JCA has been quoted as having adumbrated on the meaning of pardon in the case of *Ojukwu v Obasanjo*<sup>438</sup> by stating thus:

...a critical view of the definitions denotes that a pardon is an official Act and it is given after an offence has been committed. Similarly, we also hold the view that while both prerogative of mercy and amnesty are pardon in nature; the legal implication of both is different. Black's Law Dictionary has also differentiated amnesty from the general Pardon referred to in the constitution by stating that unlike an ordinary Pardon, amnesty is addressed to crimes against the sovereignty that is, to political offences with respect to which forgiveness is received and which is more expedient for public welfare than prosecution.

The legal implications deducible from the above judicial pronouncement is that although both prerogative of mercy and amnesty are pardon in nature; each of them has different legal effect. Whereas the person pardoned under prerogative of mercy must have committed a crime and convicted by a competent court, those pardoned under amnesty committed a political offence against the polity as it relates to the general administration of state (sovereignty) but who are yet to be convicted<sup>439</sup>. It is therefore safe to submit that as evidently shown in the preceding discussion, the phrase 'pardon' as used in section 175 of the constitution deals with prerogative of mercy and not in the sense contemplated under the ordinary definition of amnesty.

Going forward, the fundamental question that needs to be resolved at this point is whether from the foregoing discussion, we can now conclude that the President's power to exercise prerogative of mercy as provided in section 175 of the Constitution of the Federal Republic of Nigeria 1999 is sacrosanct or otherwise since it borders generally on pardoning convicted

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<sup>438</sup> *Ojukwu v Obasanjo* (2004) FWLR, (pt. 222) 1666

<sup>439</sup> J. O. Olatoke, et al (n 424) op cit. p27

criminals? Answering this question in the case of *Amanchukwu v Federal Republic of Nigeria*<sup>440</sup>, the Court of Appeal per Udow-Azogu JCA held inter – alia that:

...by virtue of section 175 (i) of the Constitution of the Federal Republic of Nigeria 1999, the President has power in consultation with council of state to grant a pardon to any person convicted of any offence or to remit the whole or any part of any punishment imposed on that person for such an offence, there is need for the president to exercise his powers of reprieve through the attorney General of the Federation in favour of the convict.

The above judicial position means that although by operation of section 175 of the Constitution of the Federal Republic of Nigeria 1999, the president in consultation with the council of state can grant pardon to persons convicted of any offence, he ordinarily needs to exercise such powers through the Attorney General of the Federation in favour of the convicted persons. Besides, the above judicial decision firmly confirms that section 175 of the Constitution of the Federal Republic of Nigeria 1999 does not empower the President to grant pardon to persons being tried and/or not yet convicted. Despite the aforesaid, it is still vital to point out that the courts have held that even the president's powers to grant pardon to convicted person is limited in certain circumstances. Thus, the Supreme Court in the case of *Solola v State*<sup>441</sup> per Edozie JSC held as follows:

A person convicted of murder and sentenced to death by a High Court and whose appeal is dismissed by the Court of Appeal is deemed to have lodged a further appeal to the Supreme Court and until that appeal is finally determined the head of state or the governor of the state cannot pursuant to sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999 as the case may be exercise his power of prerogative of mercy in favour of that person. In the same vein such person cannot be executed before his appeal is disposed of.

Flowing from the above Supreme Court decision, it is correct to submit here that before the President or Governor of a state can grant prerogative of mercy based on sections 175 and

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<sup>440</sup> *Amanchukwu v Federal Republic of Nigeria* (No. 2) (1999) 4 NWLR (pt. 5999) 479

<sup>441</sup> *Solola v State* (2007) 6 NWLR (pt. 1029) p1 @ 24

212 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the following conditions must have arisen.

- i. The person to be granted prerogative of mercy must have been convicted of an offence.
- ii. The President or the Governor must have consulted the council of state or the advisory council of state as the case may be.
- iii. The prerogative of mercy cannot be granted to a person under trial or not yet convicted, or who has been convicted but appealed to the Court of Appeal and his conviction confirmed but his further appeal is still before the Supreme Court.
- iv. Any person granted pardon cannot be re-prosecuted. This is the position the Court reached in the case of *Ibori v FRN*<sup>442</sup> because doing so will amount to double jeopardy<sup>443</sup>.

In contrast, it is emphasized that before amnesty can be granted the following conditions precedent must be met;

- i. The people to be granted amnesty must be a group of people or community and not an individual;
- ii. Such people must have committed a political offence and subject to trial but have not yet been convicted; and
- iii. Such group of people once granted amnesty cannot be re-prosecuted.<sup>444</sup>

From the totality of all the issues raised and discussed in the proceeding part of the amnesty discussion herein, it has become vital to sum-up the key legal points that make the amnesty Yar'Adua granted the Niger Delta militants defective in law.

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<sup>442</sup> *Ibori v FRN* (2009) 3 NWLR (pt. 1127) p56

<sup>443</sup> A.A. Kana, et al (n 435) op. cit. p3

<sup>444</sup> *ibid*

- a. Amnesty is not provided for on the face of the Constitution of the Federal Republic of Nigeria 1999, therefore not known to the constitution of the country.
- b. There is no Act or law in Nigeria that provides for Amnesty therefore it is a brazen violation of section 36 (12) of the Constitution of the Federal Republic of Nigeria 1999 for the president to act upon a none existent Act or Law.
- c. As shown in the preceding investigation of the provisions of Constitution of the Federal Republic of Nigeria 1999, particularly section 175 thereof, amnesty and prerogative of mercy are not the same.
- d. The President's power to grant prerogative of mercy under section 175 of the Constitution of the Federal Republic of Nigeria 1999, does not extend to the power to grant amnesty and there is no provision in the constitution enabling him to grant anybody or group of people amnesty in Nigeria.
- e. Contrary to the legal conditions for the granting of prerogative of mercy, the Niger Delta militants are not yet convicted, neither have they been accused nor notified of the specific criminal or political offence they committed. The amnesty granted them was purely based on the presumption that they have committed crimes, the nature of which was not disclosed to them as required by law. This manifestly curious amnesty granted the Niger delta militants without regard to the due process prescribed by law amounts to an illegality, because it grossly violates the sanctity of the constitutional safeguard of presumption of innocence<sup>445</sup> which tilts in favour of the accused person at all times in this country. This is the position the courts reached in the case of *COP v Tobin*<sup>446</sup>

In conclusion, it is noted that, in view of the arguments in the foregoing, the amnesty Yar'Adua granted the Niger Delta militants, relying on section 175 of the Constitution of the Federal Republic of Nigeria 1999 is legally faulty and the same is unconstitutional. This

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<sup>445</sup> Section 36 (5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>446</sup> *COP v Tobin* (2005) 11 NWLR (pt. 932) p640

defective legal foundation of the current amnesty, no doubt, creates a serious constitutional crisis which if not corrected timely, will continue to mislead successive governments to still rely on sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999, as amended to grant illegal amnesty to people in the country.

Already governors of some States in the country have started abusing the provisions of section 212 of the Constitution of the Federal Republic of Nigeria 1999 which is *mutatis - mutandis* with section 175 of the same Constitution, by relying on the said section 212 to indiscriminately grant amnesty to criminals in their respective states. For example, based on section 212 of the Constitution of the Federal Republic of Nigeria 1999, as amended, the Governors of Rivers, Imo, Osun, Benue and Bayelsa States among others have granted amnesty to organized criminal gangs at different times under the guise of combatting criminality.<sup>447</sup> Specifically, the Governor of Imo State, Owelle Rochas Okorochoa, invoked section 212 of the Constitution of the Federal Republic of Nigeria 1999, as amended and granted amnesty to 200 purported militants from Ohaji/Egbemo Local Government Area of Imo State on February 13, 2018. The truth is that the so called repentant militants were members of the dreaded gang led by late Prince Johnson Igwedibia, popularly called Don Wanny; a notorious kidnapper, mass murderer and cultist who was responsible for the New Year mass killing of Christian worshipers in Omoku, Headquarters of Ogba/ Egbema/Ndoni Local Government area of Rivers State<sup>448</sup>

### **3.4 The Sustainable Development Gains of the Post-Amnesty Programme in the Niger Delta Region**

The defective legal foundation of the Presidential Amnesty programme for Ex-Niger Delta militants notwithstanding, the fact that the same bequeathed monumental social gains to the

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<sup>447</sup> The Punch Editorial Comment of 13<sup>th</sup> December, 2016 captioned ‘Abnormality of granting Amnesty to Criminals’ <<http://punchng.com/abnormality-granting-amnesty-criminals/>> accessed 18 June, 2018.

<sup>448</sup> A. Onukwugha, ‘Wike, Okorochoa and Amnesty for Don Wanny’s Boys’. <<https://leadership.ng/2018/02/18/wike-okorochoa-amnesty-don-wannys-boy-2/>> accessed 19 June, 2018.

Niger Delta Region viz – a- viz the Nigerian nation cannot be disputed. Basically, the social benefits the Amnesty Programme brought to the Niger Delta Region are many and include the following;

- i. It caused the cessation of hostilities thereby bringing peace to the region which is a sine-quo-non for the thriving of sustainable development ideals in any environment.
- ii. Following the implementation of the Presidential Amnesty Programme, a corresponding upsurge in the economic activities in the region was triggered which led to the general growth of the Nigerian economy.
- iii. It served as a vehicle for accelerated human capital development in the region.
- iv. It encouraged monumental educational growth in the region.
- v. It caused the inflow of large sums of money into the region outside the statutory allocations coming to the Niger Delta States, to service the programmes under amnesty.
- vi. It reinforced and placed the issue of enhanced infrastructural development in the region at the front burner of national discourse in the country.

The above listed developmental issues pursued by the Presidential Amnesty Programme for the Niger Delta Ex-militants, without doubt, are not only vital but equally imperative for the sustained growth and development of the Niger Delta Region, by reason of the fact that it was just coming out of conflict. This fact is supported by the report of the United Nations panel on Peace Operations, which emphasized that “the general intention of post – conflict peace – building has been to build security and reconstruct the social fabrics of and equally develop human capacity in countries coming out of conflict so that a sustained long term peace can be established, emphasizing that peace building was an activity to be undertaken immediately

after the cessation of violence.”<sup>449</sup> The detailed discussion on each of the socio-economic gains the Presidential Amnesty brought to the Region is as follows:

### **Guaranteeing Peace in the Niger Delta.**

Without contestation, the first social gain the Region and by extension the Nigerian nation, derived from the amnesty proclamation is that it brought peace to the Niger Delta Region. This is important because during the conflict and heightened militant activities a lot of havoc, killings and destruction took place in the region. These facts were well captured by various public commentators. For example, it was said that ‘...in August 1999 about 500 Ijaw Youths attacked the divisional police headquarters in Sapele and took away their arms. About the same time, militant youths in army uniform attacked the naval base in Warri and confiscated several arms. In further appraisal of the chaotic security situation in the region then, it was equally stated that ‘...MEND also warned that future attacks could, in addition target ‘individuals who assume they can betray the people of the Niger Delta and go unpunished.’<sup>450</sup> In this regard, MEND warned the general public to steer clear of official convoys of governors in the Niger Delta States of Rivers, Bayelsa and Delta as well as such obvious targets as police and military personnel,’ Nyemutu-Roberts thus concluded that ‘this was how the militant irredentism heightened between 2006 and 2009 to an intolerable level as citizen of all gender and ages including children were targeted’<sup>451</sup>.

It was in an attempt to salvage the people of Niger Delta from the horrendous insecurity situation and atrocious activities of the militants and foster peace in the region that Yar’Adua,

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<sup>449</sup> Boutros, Boutros – Ghali: ‘An Agenda for Peace’ (New York: United Nations, 1992), 11

<sup>450</sup> F. O. Nyemutu – Roberts, ‘Natural Resource Governance in Federal Democracies: Oil and Gas Governance and Militancy in Nigeria’s Niger Delta’ in S. Ibaba, et al (ed) *Trapped in Violence: Niger Delta and the Challenges to Conflict Resolution and Peace Building* (University of Port Harcourt Press Ltd, 2007) p71

<sup>451</sup> *ibid*



the then president of Nigeria granted amnesty to Niger Delta militants which was the first step in the post – conflict peace building process and the same brought relative peace to the region. Principally, as a pre-condition for accepting amnesty the militants were made to compulsorily renounce violence, surrender their arms to the state, abandon criminality, sign an undertaking to be of good behavior.<sup>452</sup>

The importance of the amnesty granted to the Niger Delta militants was vividly reaffirmed by a commentator who argued that “...on the whole, at the expiration of the amnesty period, a total of about 8,299 militants surrendered their arms. A state by state analysis shows that Bayelsa State had the highest figure of 4,869 militants. About 2,760 assorted weapons and 287,445 ammunitions were surrendered by the militants. Militants from Bayelsa and Rivers States had the highest figures 130,877 and 82,406 ammunitions respectively. The military wares surrendered include dynamites, gunboats and magazines”<sup>453</sup>. The above is in tandem with the position maintained by Kofi Annan wherein he emphasized that peace efforts in conflict areas should involve collecting, securing and destroying light and heavy weapons, demining, demobilizing ex-combatants, dismantling militia groups, enhance regional security to stem the spillovers of conflicts across borders; identifying and resettling foreign ex-combatants, including children and women; supporting national disarmament, demobilization and re-integration programmes, promoting sensitization programme within communities<sup>454</sup> etcetera.

It is therefore correct to submit at this juncture that the availability of peace, being a veritable element for the promotion of sustainable growth and development in any society, the

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<sup>452</sup> Yar’Adua Amnesty Proclamation Speech (n 420) op. cit.

<sup>453</sup>K. Ajayi, ‘Beyond Amnesty: The Crisis of Federalism and Conflict of Resource Generation and Value Distribution in the Niger Delta of Nigeria’ in S. Ibaba, et al (ed) ‘*Trapped in Violence: Niger Delta and the Challenges to Conflict Resolution and Peace Building*’ (University of Port Harcourt Press Ltd, 2007) p46

<sup>454</sup> K. Annan, ‘Report of the Panel on United Nations Peace Operations submitted to the sixtieth session of the UN General Assembly’. United Nations, Disarmament, Demobilization and Reintegration document <<http://www.tandfonline.com/doi/full/10.1080/19362200802285757?src=recgs>> accessed 13 January, 2018

Presidential Amnesty Programme having brought peace to the region also doubles as a vehicle for promoting sustainable development in the Niger Delta. This position synchronizes with the postulations of Boutros Boutros Ghali, former Secretary – General of the UN, which is to the effect that “the pursuit of the goals of Disarmament, Demobilization, and Reintegration and post conflict peace building is essentially targeted at promoting the twin goals of sustained peace and sustainable development.”<sup>455</sup>

As evident from the above discussion, the granting of amnesty to Ex Niger Delta militants brought peace into the region and paved way for its environmental, economic and social growth which are basic ingredients for the promotion of sustainable development in any society. On the whole, it is correct to submit that the Federal Government’s action is an affirmation of the fundamental jurisprudential duty law is designed to perform in society, which is ‘to advance the common good of all citizens.’<sup>456</sup>

This important jurisprudential function of law has been incorporated into the Nigerian Constitution at different times. For instance, the preamble to the drafted Constitution of Federal Republic of Nigeria 1989 provides that ‘the purpose of the Constitution is promoting good governance and welfare of all persons in the country’.<sup>457</sup> The 1989 Draft Constitution of Nigeria specifically incorporated this function of law as a duty government owes the citizens of the country by providing that ‘the security and welfare of the people shall be the primary purpose and responsibility of government’.<sup>458</sup> The extant Constitution of the Federal Republic of Nigeria 1999 (as amended) also incorporate this provision by providing that: the security and welfare of the people shall be the primary purpose of government...<sup>459</sup>

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<sup>455</sup> Boutros Boutros – Ghali (n 449) op cit.

<sup>456</sup> J. M. Elegido, *JURISPRUDENCE*: (Spectrum Books Limited 1997) p338.

<sup>457</sup> The Preamble to the 1989 Drafted Nigerian Constitution.

<sup>458</sup> Section 15 (2) of the 1989 Drafted Nigerian Constitution.

<sup>459</sup> Section 14 (2) (b) of the Constitution of the Federal Republic of Nigeria 1999, as amended.

In summation, it is apt to emphasize that the amnesty the Federal Government granted the Niger Delta Ex-militants brought peace to the region and enhanced the people's security and welfare, which is the primary duty of government as contemplated in the above constitutional provision.

### **Enhancing the Economic Growth of the Region**

The second social gain the Presidential Amnesty bestowed on the Niger Delta Region and the Nigerian nation in general is that while ushering in peace in the Region, it equally enhanced the economic fortunes of the country. The truism of this assertion stems from the fact that oil and gas from the Niger Delta Region constitute the mainstay of the Nigerian economy. To put this claim more succinctly, it is worthy to realize that in 1958 the initial oil production from the region was merely 5,100 bpd, but the same rose astronomically over the years to about 2.1 million bpd in 1999. This quantity of oil production made Nigeria the biggest crude oil producer in Africa and the sixth crude oil producer in the Organization of Petroleum Exporting Countries (OPEC)<sup>460</sup> and ever since the country had enjoyed this economic bliss till the violent agitation for resource control broke out in the region in the early 2000s and oil facilities became the main targets of attacks. Specifically, between 2003 and 2009 following the escalation of insurgency in the Region, oil and gas production declined drastically thereby adversely affecting the Nigerian economy. The damaging effect of the Niger Delta insurgency on the Nigerian oil industry was aptly captured by various commentators on the Nigerian economy and social affairs. For instance, it was said that:

'between 2005 and 2006 alone Nigeria lost a total of about 872,000 barrels of crude oil per day due to forceful shut-down of oil flow stations, adding that out of this quantity SPDC's share of the loss was about 500,000 barrels per day, while Mobil, NAOC and Texaco – Chevron jointly shared the loss of 372,000 barrels daily'<sup>461</sup>. It was also added that at the peak of insurgent's attacks on oil installations in the Niger Delta

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<sup>460</sup> K. Ajayi, (n 453) op cit.

<sup>461</sup> ibid Pp44 - 45

Region particularly between 2005 and 2008 oil production in Nigeria was reduced to about 800,000 or 1,000,000 barrels per day<sup>462</sup>..

But upon the proclamation of the Presidential Amnesty for Niger Delta militants on the 24th of June, 2009 and following the return of peace to the region, oil production in the region increased and the Nigerian economy bounced back to buoyancy. Thus “from its downward curve of between 8,000 and 1,000,000 barrels per day in August, 2009, oil production moved upward at the end of October 2009 to an average daily output of 2.1 million per day”<sup>463</sup>. Today as a result of the continued cessation of violence in the region, oil production per day in the country is put at about 2.4 million barrels and the Nigerian economy has recovered from its recession. Asides that, it has been reported that multi-national oil companies like Shell, Mobil, Chevron etc that abandoned their oil fields at the peak of the insurgency in the region are now returning to their sites. The resultant effect of the above is that the monthly oil and gas earnings of the Federal Government have greatly increased thus guaranteeing more revenue and funds to all tiers of government in the country. In all, it is clear and we submit that the peaceful environment that Yar’Adua created in the Niger Delta Region through the proclamation of amnesty for the Niger Delta militants, accordingly propelled a buoyant economic growth which apparently serves as a platform for the provision of infrastructure aimed at promoting Sustainable Development in the region. The foregoing notwithstanding, it is expedient to note that the impact of COVID 19 pandemic on the International Oil Market is currently affecting the economy of the Niger Delta States in particular, and that of Nigeria in general, adversely.

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<sup>462</sup> ibid p45

<sup>463</sup> ibid p46

## **Facilitating Accelerated Human Capital Development**

Perhaps the greatest socio-economic benefit the Niger Delta Region derived from the Presidential Amnesty Programme is the acceleration of human capacity development in the Region, which is a basic component of sustainable development. This claim stems from the realization that nearly 20,000 Niger Delta Ex militants initially embraced the disarmament process and surrendered over 2,700 sophisticated weapons before the expiration of the 60 days amnesty period Yar'Adua allowed.<sup>464</sup> This number subsequently increased to 30,000 and all of them are benefiting one way or the other from the presidential amnesty programme.<sup>465</sup> The ex-militants were initially harboured in Aluu and Agbarho in Rivers and Delta States respectively for rehabilitation, re-integration and training before later moved to Ebobra training centre in Cross Rivers State and after the initial general induction, were further dispatched to different places for specialized training in various professions, skills and vocations which include oil/maritime services, welding and fabrication, under-water welding, exploration and production, information communication technology, security services, piloting, deep sea diving etcetera.

Not only that, some of the ex-militants were admitted into different universities to pursue various degrees both in Nigeria and abroad. Importantly, whereas those pursuing vocational trades were expected to graduate within 3 – 18 months, those pursuing university degrees were guaranteed a Federal Government sponsored scholarship for about 4 or 5 years. Upon completion of the training they were promised to be given an option to either get employed in an establishment or be self-reliant. As a result of this opening, there are now many youths trained through the Amnesty Programme who are well skilled in various vocations in the Niger Delta Region, some of whom are self-employed or engaged in wage earning

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<sup>464</sup> F. O. Nyemutu – Roberts (n 450) op. cit.

<sup>465</sup> P. Boroh, '317 Amnesty Beneficiaries graduate from US, UK Varsities'. <<https://www.naija.ng/1115183-317-amnesty-beneficiaries-graduate-us-uk-varsities-boro.html#1115103>> accessed 13 January, 2018.

employment elsewhere. This much was recently confirmed by the presidential amnesty office when it published that:

...the programme (PAP), which started in 2009, had sponsored the beneficiaries in various skill acquisition, education and entrepreneurship training, among others and has helped greatly to stabilize the Niger Delta Region, adding that the Federal Government is consolidating on the achievements to buoy the economy<sup>466</sup>

### **Increasing the Educational Growth in the Region**

Most importantly, viewed against the backdrop that education has been described as the bedrock of every society, it is pertinent to also discuss the monumental educational social benefits the Presidential Amnesty Programme brought to the Niger Delta Region. In this regard, it is noteworthy to point out that the Yar'Adua administration made it a cardinal objective of the programme to sponsor any ex-militant desirous of furthering his or her education to university level. As a result, a reasonable number of the ex-militant youths from the region seized this opportunity and enlisted to attend universities both in Nigeria and abroad under the sponsorship of the Presidential Amnesty Programme. Available records now show that majority of these ex-militants have not only graduated successfully from their respective universities, but most of them graduated with excellent results. For instance, it was reported that 59 amnesty beneficiaries graduated from Benson Idahosa University out of which 12 made first class in Agronomy and Environmental Management, Geophysics, Banking and Finance, sociology and Anthropology; while 20 graduated with second class upper division.<sup>467</sup>

Asides that, it was further reported that another 317 amnesty beneficiaries also graduated from various universities in the United States of American and the United Kingdom, amongst

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<sup>466</sup> P. Boroh, '59 Amnesty beneficiaries graduate from Benson Idahosa Varsity'. <<http://sunnewonly.com/59-amnesty-beneficiaries-graduate-from-idahosa-varsity/>> accessed on the 13 January, 2018.

<sup>467</sup> P. Boroh, (n 466) Op cit.

whom 6 passed with first class<sup>468</sup>. Besides the aforementioned, another 45 beneficiaries equally graduated from two Universities in Belarus with three of them clinching first class in information technology. Not only that, another 19 Presidential Amnesty beneficiaries also graduated from the University of Cape Coast, Ghana<sup>469</sup>. In addition to the foregoing, it was equally affirmed that 20 pilots trained under the Presidential Amnesty Programme in Germany have equally graduated and qualified as pilots<sup>470</sup>. In a similar vein, another 18 ex-militants had earlier been successfully trained as pilots in African Union Aviation Academy in Johannesburg, South Africa<sup>471</sup>. In all, it is correct to conclude that the sustainable development benefits of the Presidential Amnesty Programme to the Niger Delta Region, in terms of educational growth are overwhelming and the same have greatly enhanced the overall sustainable growth of the region. This fact was re-echoed by the Presidential Amnesty Office through a publication that:

In year 2017 alone, we have 177 graduates of amnesty Programme from the US and 140 from the UK. By the end of this month (April), we would be going for graduation in the UK...the programme is on course; it helps greatly in stabilizing the region; adding that we were invited to come and disclose what Nigeria is doing, particularly in the Niger Delta on the Sustainable Development Goals (SDGs) issues<sup>472</sup>.

### **Attracting Huge Additional Funds to the Region**

Another area the Niger Delta Region has immensely benefitted from the Presidential Amnesty Programme is that it is attracting a lot of funds from the Federal Government to the region. First, each of the 30,000 ex-militants receives at least N65,000 as monthly stipend<sup>473</sup>

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<sup>468</sup> *ibid*

<sup>469</sup> P. Boro, 'Amnesty: 20 Pilots for Aviation Training in Germany'. <<http://www.nigerianbestforum.com/index.php?topic=333476.o;wap>> accessed 13 January, 2018.

<sup>470</sup> K. Kuku, '18 Ex Militants Become Pilots' <<https://www.channelstv.com/2012/04/22/18/18-ex-militantsbecomepilots/>> accessed 13 January, 2018.

<sup>471</sup> P. Boroh, (n 466) *op. cit.*

<sup>472</sup> P. Brisibe, 'Amnesty Cannot Afford Training of Ex-Militants Any Longer'. <<https://www.vanguardngr.com/2017/06/amnesty-can't-afford-training-exmilitants-abroad-longerliaisonofficer/>> accessed 13 January, 2018.

<sup>473</sup> 'Buhari Increase Niger Delta Amnesty Programme by N35 Billion'. Being a vanguard online news editorial comment, dated May 6<sup>th</sup>, 2017.

for general upkeep and the same has continued from 24th July, 2009 till date. To meet this financial obligation, the Presidential Amnesty Programme national office in Abuja receives the sum of N53 billion as its annual budget<sup>474</sup> every year. This trend has continued since 2009 to date. However, when Buhari assumed office in 2015 as president of the country he slashed it down to N20 billion in 2016. But he later increased the Presidential Amnesty Programme budget to N55 billion per annum and accordingly released additional N35 billion<sup>475</sup> to the managers of the programme to cover the shortfall in 2016.

In a related vein, it is also vital to state here that as part of the largesse of the Presidential Amnesty Programme to the indigenes of the Niger Delta Region, selected leaders of the ex-militants were picked and awarded huge contracts by the Federal Government to secure and protect oil pipe lines and/or provide maritime security in the region as ably affirmed in this publication:

The American-based journal reported that the Nigerian National Petroleum Corporation, NNPC, and the Federal Government maintained an annual pipeline and maritime Security contract with Asari Dokubo, the leader of Niger Delta Volunteer Force for USD 9.5 million or N2 billion. Tompolo also enjoys another USD22.9 million (N3.614 billion) pipeline protection contract while two other militants-Boyloaf and Ateke Tom, are annually being paid USD3.8 million (N1.2 billion) each to protect pipeline in the Niger Delta<sup>476</sup>

Although these contracts awarded to Niger Delta indigenes were commendable, the critical question then was: what will be their fate after the Yar'Adua/Goodluck administration in terms of sustainability? Expectedly, upon the election of Buhari as President of Nigeria he immediately cancelled and stopped the surveillance and pipeline security contracts earlier awarded to the Niger Delta ex-militant leaders. Similarly, the entire Presidential Amnesty

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<sup>474</sup> *ibid*

<sup>475</sup> P. Brisibe, (n 472) *op cit*.

<sup>476</sup> K. C. W. Udeghunam, 'Peace – Building or Pacification: A critique of Nigeria's Post Amnesty Programme For Ex-Militants in the Niger Delta Region'. <<https://www.researchgate.net/publication/306410262-Peace-building-or-pacification-a-critique-of-nigeria's-post-amnesty-programme-for-ex-militants-in-the-Niger-Delta>> accessed 14 January, 2018



Programme is under serious threat of being stopped following allegations of corruption and non-performance on the part of the managers of the programme,<sup>477</sup> although not yet implemented in practical terms. Without doubt, these actions have the capacity of generating counter reactions which could impact negatively in the region and plunge it back into crisis again and stall its sustainable growth.

### **Enhancing the Infrastructural Growth of the Region**

Lastly, the proclamation of amnesty for Niger Delta Militants equally attracted the approval and commencement of some infrastructure in the region. To really appreciate this point it is expedient to recall that soon after the proclamation of the Presidential Amnesty for ex-Niger Delta Militants and by way of kick-starting the post amnesty peace resolutions, 14 former militant leaders, to wit, Government Ekpemupolo (Tompolo), Ateke Tom, Victor Ben Ebikabowei (Boyloaf), Henry Okah, Farah Dagogo and Soboma George etcetera, met with Yar'Adua at State House in Abuja on October 9, 2009 to discuss the way forward for the Niger Delta Region<sup>478</sup>.

Not too long after the Abuja meeting, a post amnesty summit was held on October 15, 2009 in Kaduna wherein a blue print to develop the region was worked out and adopted<sup>479</sup>. The major areas of the blue print are: training and skills acquisition for youth including ex militants, constructive engagement and pursuit of infrastructural and economic development in the region. Following the resolutions, an action plan for the implementation of the Kaduna summit was drawn up and Yar'Adua submitted a budget of N200 billion to the Federal

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<sup>477</sup> P. Brisibe, (n 472) op. cit.

<sup>478</sup>A. Etekepe, 'The Political Economy of Post-Amnesty Management in the Niger Delta Region: Prospects and challenges', Niger Delta Research Digest. *A journal of Articles and Special Reports on the Niger Delta* Vol. III, Dec. 2009. p50.

<sup>479</sup> *ibid*

Executive Council on the 4th of November, 2009 and secured its approval for the execution of the following projects and infrastructure<sup>480</sup> in the region.

- i. Establishment of Federal Polytechnic of Oil and Gas in Bayelsa State;
- ii. Upgrading of facilities at the Petroleum Training Institute (PTI), Effurun in Delta State.
- iii. Construction of the East-West highway;
- iv. Construction of East-West rail line running through Calabar – Uyo – Port Harcourt – Yenagoa – Warri – Benin – Lagos;
- v. Construction of the Atlantic Coastal Highway;
- vi. Development of Inland Waterway;
- vii. Clean up of the environment of oil spillage that have blighted the ecosystem.
- viii. Commencement of massive land reclamation; and
- ix. Development of new towns in the region while retaining the history and culture of the people.

Yar'Adua kept his promise and actually executed some of the projects listed above. For instance, a Federal Polytechnic was subsequently established in Ekowe, Southern Ijaw Local Government Area of Bayelsa State. Furthermore, a University of Petroleum Resources has also been established in Effurun, Warri, Delta State in addition to the existing Petroleum Training Institute (PTI). Goodluck Jonathan even improved on the educational aspect of the Region after the death of Yar'Adua and established both the Federal University Otuoke and a campus of law school in Yenagoa, Bayelsa State. Apart from the above, the East/West road is now being dualized and the foundation stone for the clean-up of Ogoni land has also been laid and contract for the cleanup already awarded.

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<sup>480</sup> ibid

The foregoing notwithstanding, the major criticism levelled against the execution of some of these projects is that their completion dates are not specified, thus making people to hold the view that their constructions are politically motivated. The critics cite the on-going dualization of the East/West road as an example, contending that the Goodluck Jonathan's administration promised to complete the construction of the road in December 2014<sup>481</sup> but till date, some sections of the East/West road are in deplorable condition. For instance, whereas the Warri to Kaiama section is relatively completed, the Kaiama to Port Harcourt Section in terms of completion is nothing to write home about. In fact, questions now exist whether this section of the East/West road has been abandoned?<sup>482</sup> In a similar vein, the Ogoni clean-up exercise which foundation stone was laid since August, 2016 also suffers the same fate of inactivity till date.

As shown in the foregoing discussion, it is crystal clear that the Presidential Amnesty Programme, by reason of the numerous socio-economic and environmental benefits it availed the people of the Niger Delta Region, has contributed immensely to the promotion of the tenets for sustainable development in the region although there are some operational pitfalls.

### **3.5 The Limitations of the Presidential Amnesty Programme for Niger Delta Ex-Militants as an Institution for Sustainable Development in the Region.**

Granted that the Presidential Amnesty Programme for the Niger Delta Ex-Militants has contributed immensely to the achievement of the Sustainable Development goals in the Region, certain factors which include but not limited to the ones discussed hereunder have

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<sup>481</sup> G. Orubebe, 'NDDC, Niger Delta Amnesty Programme Not Duplication of Function'. <<http://weekend.peopledail.ng.com/index.php/interviews/1454-nddc-niger-delta-ministry-amnesty-programme-not-duplication-of-functions-says-orubebe>> accessed 14 April, 2017.

<sup>482</sup> 'Minister: Contractors Need N100billion to complete East/West road project'. <<https://www.today.ng/news/Nigeria/minister-contractors-n100billion-complete-east-west-road-project-120513>> accessed 18 September, 2017.

continued to grossly limit its viability as an institution for the promotion of sustainable development in the Niger Delta Region. Such factors include the following:

**a. The Absence of an Enabling Legal Framework for the Programme as presently Constituted.**

Although the consensus in the country is that the Presidential Amnesty Programme for Niger Delta Ex-Militants and those granted by the governors of some states in the country are backed by sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999 (as amended); it has been ably shown in the preceding discussions that sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999 provide for prerogative of mercy and not amnesty. That being the case, the Presidential Amnesty Programme for Niger Delta ex-militants has no enabling law.

Therefore, in order to pre-empt a situation whereby successive Federal or State Governments approach the courts and secure judgments declaring the Presidential Amnesty Programme as presently constituted and everything done under it a nullity, similar to the fate of the Shonekan led Interim Federal Government as was decided by the court in the case of *Bashorun MKO Abiola & Ors v National Electoral Commission & Ors*;<sup>483</sup> it is suggested that a bill be presented to the National Assembly timely for the enactment of an Act to regularize the existing Presidential Amnesty Programme for the Niger Delta ex-militants. Alternatively, amend sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999 to expressly provide for the power to grant amnesty either by the President of the country or the Governor of a State. This is vital

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<sup>483</sup> *Bashorun MKO Abiola & Ors v National Electoral Commission & Ors* Suit No. M/573/93 (Unreported) a Lagos High Court presided over by Justice Dolapo Akinsanya held inter alia that the Chief Ernest Shonekon led Interim government of Nigeria was invalid, illegal, null and void, because President Ibrahim Babangida cannot validly sign a decree after vacating office.

because it is trite law that you cannot put something on nothing as held in the case of *Mcfor v UAC Nigeria Ltd*,<sup>484</sup>

**b. Vague and Imprecise Guidelines for the Implementation of the Presidential Amnesty Programme.**

A critical appraisal of the Presidential Amnesty Programme and its mode of implementation, clearly show that the guidelines regulating its existence are very vague and unclear. For instance, the Amnesty office lacks firm knowledge of the number of repentant agitators. This is because there is not fix period for accepting and admitting aspiring ex-militants to the programme hence phrases like 1<sup>st</sup> batch, 2<sup>nd</sup> batch or 3<sup>rd</sup> batch ex-militants now exists in the management of the programme. Besides, there is no clear time frame for stopping the payment of the N65,000 monthly stipend to each ex-militants. Most worrisome, even those on federal government scholarship or those who have completed their skill acquisition programmes and those who though accepted amnesty, but refused to participate in any form of rehabilitation are all still collecting the monthly stipend since 2009.

In fact, the ex-militants now believe that the monthly stipends paid to them will never end hence whenever information filters to their ears that the Federal Government is planning to stop the payment of their monthly stipends, they will renew their protests and threaten the region's security by blocking roads, kidnaping or killing persons perceived to be fueling the stoppage of their stipends. Evidently, the Federal Government is in a quagmire as what to do with the management of the ex-militants in the country. It is hereby suggested that the Federal Government should re-examine the programme and present a clear blueprint on how long an ex-militant would enjoy the benefits of the Presidential Amnesty Programme, at the expiration of which period he is automatically eased out from the programme. Worse of all,

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<sup>484</sup> *Mcfor v UAC Nigeria Ltd* (1961) 3 WLR 1405 @ 1409

the programme though has a clear commencement date, but has no expiration date meaning that it will exist forever.

**c. Failure to address the contentious environmental issues that have repeatedly triggered violent agitations in the Region**

One obvious limitation of the Presidential Amnesty Programme for Niger Delta ex-militants is that it completely failed to address the contentious environmental issues that have repeatedly triggered violent agitations in the region. For instance, as it has been pointed out in the earlier part of the research, the issues of unfair revenue allocation formula, absence of true federalism, failure to accord the indigenous people of the region the legal right to control the natural resources in their domain, environmental degradation, lack of infrastructural development, state induced poverty<sup>485</sup> etcetera, have been the issues that have continued to instigate restiveness in the Niger Delta Region. Ordinarily, one would have expected that how to address these issues would have been built into the Presidential Amnesty Programme and implemented alongside it.

This, however, is not the case. Only the persons who carried arms and challenged the Federal Government in the resource control fight were considered, while the multitude of people who are law abiding and did not participate in the insurgency but still suffer the degrading social, economic and environmental conditions in the region are left abandoned. Nothing is done to address their despicable conditions in the region, which conditions could easily prompt the emergence of another rebellious group of insurgents in the region, since it is only insurgency that attracts government attention, response and patronage. Besides, there is no guarantee that when the current Presidential Amnesty Programme ends, the ex-agitators would not capitalize on the excruciating socio economic and environmental conditions in the region to restart another round of insurgency.

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<sup>485</sup> B.O. Nwankwo, (n 365) op. cit.

Already the Niger Delta Avengers Militant group<sup>486</sup> has sprang up immediately Goodluck Jonathan's Administration ended. The group in March 2016 or thereabout openly proclaimed its existence and aim, which was primarily directed at attacking oil producing facilities in the Niger Delta Region with a view to causing the shut down of oil terminals in the region, thereby reducing Nigeria's oil production to the lowest level. The group without pretense actualized its objectives, attacked Nigeria's oil infrastructure and brought the country down on its knees economically in 2016. As a result, Angola surpassed Nigeria in oil production and emerged as the largest producer of the product in Africa. It is however noted that Nigeria has recovered and now restored to its former position, following the implementation of the Presidential Amnesty Programme for Niger Delta Ex-militants.

Viewed against the realities on ground, the Presidential Amnesty Programme as currently pursued could easily pass as a cosmetic enterprise lacking the adequate and proper approach to effectively address the socio economic and environmental issues that have constantly caused violent agitations and insurgency in the Niger Delta Region. It has thus become compelling to suggest here that the Federal Government of Nigeria, in order to completely tackle the issue of frequent insurgency and militancy in the Niger Delta Region, should urgently work out and implement a comprehensive scheme for developing all aspects of the Niger Delta Region by reviewing the existing revenue sharing formula upward, effect accelerated infrastructural development and environmental clean –up, repeal the laws that appear oppressive to the people of the region etcetera.

It is only when these issues are pursued and implemented side by side with the Presidential Amnesty Programme in the region that one can conclude that peace can be guaranteed to a large extent in the Niger Delta Region. Until such alternative schemes are pursued, the best we can say is that the Amnesty Programme as currently pursued is a mere cosmetic exercise

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<sup>486</sup> 'New Militant Group threatens Niger Delta Oil War'. <[www.reuters.com](http://www.reuters.com)>

and the region is sitting on a key of gun powder, waiting to explode again at the slightest provocation.

**d. No Clearly Defined Procedure for Absorbing or Engaging Graduates of the Programme**

A fundamental promise made to the ex-Niger Delta Militants at the point of surrendering their arms and accepting the Presidential Amnesty in 2009 was that upon completion of their skill acquisition training or university education, those who desire to be employed in wage earning employment will automatically be engaged, while those desirous of setting-up enterprises or personal business outfits will be assisted to do so straight away. It was based on these promises that almost all the ex-militants accepted and participated in one training or the other under the programme.

As we have shown in the forgoing, they are now graduating in droves<sup>487</sup> from their skill acquisition training and university education, while thousands are being admitted into the programme to pursue either formal university education or skill acquisition. But the managers of the programme contrary to the earlier promise, failed to provide employment for the multitude that have graduated from the universities or completed their skill acquisition training.

This failure has thus caused series of protests and blockade of roads, particularly the east-west road which has been blocked every now and then. For instance, on Tuesday, July 17, 2018 ex-militants numbering about 100 carrying dangerous arms stormed the Ondo State Governor's office, Alagbaka, Akure and took workers their hostage. The ex-militants who were protesting against their non-inclusion in the amnesty programme accused the State Government of collecting their guns and refusing to give them amnesty. Frightened by the

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<sup>487</sup> P. Boroh, (n 466) op. cit.



action of the ex-militants, some government officials escaped by scaling the fence of the governor's office.<sup>488</sup>

It is incidents such as this that have made the Federal Government of Nigeria very reluctant to name a specific date the Presidential Amnesty Programme will end. The obvious conclusion to be drawn from this reality is that as at the time of announcing the granting and taking off of the Presidential Amnesty Programme, the Federal Government of Nigeria, particularly the President did not have adequate understanding and preparation on how it would be operated, hence these avoidable lapses now exist at this point of its implementation.

In concluding this chapter it is important to reaffirm here that though the proclamation of the Presidential Amnesty for Ex-Niger Delta Militants caused the cessation of violence and brought peace into the region, thereby creating the ideal situation for the promotion of sustainable development in the area; it is apparently fraught with obvious pitfalls which have the capacity of impacting negatively on the attainment of sustainable development goals in the region particularly the absence of an enabling law backing it. Gleaning from the foregoing it is suggested strongly again that the National Assembly should, as a matter of expediency, enact an Act to regularize the legal basis of the programme. Surely, doing so will make the achievement of the goals of sustainable development through the Presidential Amnesty Programme for the Ex-Niger Delta militants in the region more secured.

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<sup>488</sup> D. Johnson, 'Government Officials Scale Fence as Ex—Militants Protest in Ondo'. Vanguard, Tuesday July 7, 2018, p11.

**CHAPTER FOUR**  
**The Fundamental Objectives of the Nigerian Constitution as**  
**Transformational Paradigms: An Examination of the Role of the**  
**Ministry of Niger Delta Affairs**

**4.1. The Ministry of Niger Delta Affairs as a Panacea for Peace and Sustainable Development in the Region**

The Ministry of Niger Delta Affairs is one of the institutional frameworks and specialized agencies the Federal Government of Nigeria created to promote infrastructural growth in the region. By this development, the Niger Delta is the only region in Nigeria a special federal ministry is created to cater for its development needs. A careful look at the events that led to its creation reveal that, in furtherance of their prolonged agitations for improved socio-economic and environmental conditions, the indigenous people in the region towards the tail-end of the 1990s formed ethnic nationalistic organizations to press home their demands for resource control and self-determination within the Nigerian Federation. Thus, the Ogoni people mobilised themselves and created a socio-political organization called MOSOP<sup>489</sup> in Rivers State in 1990. MOSOP subsequently gave rise to a youth wing of the group which the tribunal that tried Ken Saro Wiwa declared as a militant body. It is noted that MOSOP subsequently issued the Ogoni Bill of Rights<sup>490</sup>.

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<sup>489</sup>According to Elvis-Imo Gina the general sense of discontentment among the Ogoni People led to the emergence in 1992 of the Movement for the Survival of Ogoni People (MOSOP) under the leadership of renowned playwright and author Kenule Saro Wiwa. MOSOP was poised to attain ethnic and environmental rights. The Federal Government in its determination to ensure that nothing disturbs the lucrative trade in oil resolved to curtail what it perceived as the excesses of MOSOP. It therefore in 1993, set up the Rivers State Internal Security Task Force headed by Major Paul Okuntimo. This Task Force was responsible for the death of hundreds of Ogonis between 1993 and 1998. See Elvis – Imo, G. ‘Vindicating Property Rights of the People in the Niger Delta through Interventionist agencies’ in F. Emiri et al (ed) *Law and Petroleum Industry in Nigeria: Current Challenges – Essays in honour of Justice Kate Abiri* (Malthouse Press Ltd, 2009) Pp 307 – 326.

<sup>490</sup> T. Mbeke – Ekanem maintained that Ogoni is a minority tribe in the south-eastern fringes of Rivers State. Beneath the Ogoni land lies millions of barrels of crude oil that has been exploited since 1958 by Shell Oil Company. Yet by 1990 most of the people continued to live in pristine conditions; mud houses as existed in the dark ages could be found everywhere. No electricity or cooking gas even though gas is being flared always just yards away. No adequate medical facilities or school, no potable water... After years of unanswered demands and protests against the exploitation of their land by Shell and the Nigerian Government, in 1990 the Ogoni people decided to formally organize themselves into a powerful bargaining group. They issued series of demands in the form of a Bill of Rights otherwise known as the Ogoni Bill of Rights. T. Mbeke – Ekanem,

The people of Ijaw ethnic nationality in the Niger Delta also formed a socio –cultural cum political organization of their own known as the Ijaw National Congress (INC)<sup>491</sup> in 1991. Flowing from this, Ijaw youth formed the youth wing of INC in 1998 named Ijaw Youths Congress (IYC) and issued their position paper otherwise called the Kaiama Declaration<sup>492</sup>. The people of Oron in Akwa-Ibom State equally formed the Oron Peoples Movement (OPM)<sup>493</sup> in 1998 which eventually issued the Oron Bill of Rights in 1999<sup>494</sup>. Other ethnic nationalities in the region also formed similar socio-cultural bodies to pursue their ethnic and socio-cultural rights.

The critical point to be gleaned from these Bills of Rights is that they ultimately served as the catalyst that spurred the people of the region to agitate for self-determination and resource control. It is equally pertinent to note that it was the resultant protests and agitations to compel the Government at the Federal level to implement these bills of rights that dovetailed to the seeming intractable militancy crisis that engulfed the Niger Delta Region for the past 10 years or thereabout<sup>495</sup>.

Kunle Ajayi graphically summed up the devastating effect of the resource control insurgency on the people and communities<sup>496</sup> in the Niger Delta on the one hand, and the multi-national oil companies and the entire Nigerian nation on the other hand. Appraising the impact of the insurgency on the Niger Delta communities, Ajayi noted that ‘...The Joint Task Force (JTF)... with its aim of attaining an elusive peace in the Niger Delta sub-region, launched a

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*Beyond The Execution: (Understanding the Ethnic and Military Politics in Nigeria)* (Capital/Graphic Communications and publishing Co. 2000) Pp92 -93.

<sup>491</sup> ‘The Ijaw National Congress’, <<https://en.wikipedia.org/wiki/ijawnationalcongress>>

<sup>492</sup> Particularly articles 1 and 2 of Kaiama Declaration 1998

<sup>493</sup> A. Etekpe, (n 395) op cit. p114.

<sup>494</sup> *ibid.* p114

<sup>495</sup> G. Ngomba- Roth, ‘Oil in the Niger Delta. Reflections on Militancy and the Challenges of Violence control’ in S. Ibaba, et al (ed) ‘*Trapped in Violence, Niger Delta and the Challenges to Conflict Resolution and Peace Building*’ (University of Port Harcourt Press Ltd, 2013) p114- 136.

<sup>496</sup> K. Ajayi, ‘Beyond Amnesty: The Crisis of Federalism and Conflict of Resource Generation and Value Distribution in the Niger Delta of Nigeria’ in S. Ibaba, et al (ed) ‘*Trapped in Violence: Niger Delta and the Challenges to Conflict Resolution and Peace Building*’ (University of Port Harcourt Press Ltd, 2013) Pp29 – 52.

counter – militancy operation; attacked local communities suspected to be strongholds of the militants, killing and abusing the rights of innocent civilians. Soldiers engaged in indiscriminate arrest and detention of people in the communities and carried out sporadic shootings. They also raped women and at the extreme of their counter-militancy combat operations, houses of people suspected to be militants and their collaborators were burnt, and in addition, several communities were destroyed in the area including Odi and Gbaramatu villages. Apart from these killings, thousands of indigenes became internal refugees. The resort to hostilities by the JTF lacked decorum and civility as it behaved without reference to established war standards<sup>497</sup>.

The activities of JTF as captured in the above passage clearly violate the basic tenets of sustainable development and the sacred provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), particularly the right to life<sup>498</sup>, right to dignity of human person<sup>499</sup> and right to fair hearing – precisely the presumption of innocence.<sup>500</sup> In all, the actions of JTF violated the liberty guaranteed under the Universal Declaration of Human Rights 1948 and the African Charter on Human and Peoples Rights<sup>501</sup> (otherwise known as the Banjul Charter), which has since been domesticated in Nigeria thus forming part of our municipal laws<sup>502</sup>. It is therefore submitted that the affected communities should approach the court for possible redress similar to what Odi Community did against the Federal Government in the case of *Koloindi Aniso & Ors v Federal Republic of Nigeria & Ors* and got ₦37.6 billion as compensation for its destruction by the Nigerian Army<sup>503</sup>.

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<sup>497</sup> *ibid.* Pp43 – 44

<sup>498</sup> Section 33 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>499</sup> Section 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>500</sup> Section 36 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>501</sup> Particularly Article 5 of the African Charter of Human and Peoples Right, 1981.

<sup>502</sup> Section 12 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>503</sup>In *Koloindi Aniso & Ors v Federal Republic of Nigeria & Ors, Suit No. FHC /CP/11/2000* (unreported) Justice Lambo Akanbi of the Federal High Court, Port Harcourt Division, held inter alia that ‘the action of the then Federal Government of Nigeria in destroying Odi Community and killing innocent citizens

Ajayi equally captured the devastating impact the activities of the Niger Delta Militants caused the multi-national oil companies by stating that: ‘the continued disturbances and instability caused by the Niger Delta insurgents also resulted in quantifiable and verifiable losses to both the multi-national oil companies and the Nigerian Government. First, it caused damage to oil infrastructure and pipelines. Major oil companies suffer attacks on their installations and facilities. For instance, Shell Oil, between 1994 and 1999 recorded 1,136 cases of vandalism of its installations. In January 2006, the company had to close down at least four of its facilities in the area. The attacks on oil infrastructure reduced the oil companies’ production capacity and caused shortfall in the country’s total crude oil exports by at least 20 percent. Substantially, the hostilities cost the nation a loss of about 800,000 barrels per day in 2006.

On the average, however, from 1999, the nation losses 300,000 barrels of oil per day to the violence, till 2010 or thereout when Goodluck Jonathan became President. The 300,000 bpd oil loss translates to about \$18 million daily, and totaling to an awesome \$58.3 billion (N7.345 Trillion) in nine years. This annual colossal loss of revenues affected the nation’s Gross Domestic Product (GDP) with a decrease of 2.79 percent. The losses in revenues and reduction in GDP have further implications for the nation’s development projections arising from budget deficits. Damages to gas infrastructure by the militants are responsible for poor electricity power generation in the country. At the corporate level analysis, Shell Oil’s 1,000,000 daily production capacity in 2004 was reduced to 500,000 barrels per day in 2006. Its entire Western Operations in Niger Delta were shut down while it resorted to cautious operations on the Eastern side as a result of the escalating violence. Similarly, the Eastern

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is a brazen violation of the fundamental rights of the victims to movements, life and to own property and live peacefully in their ancestral home’.

Area fields, which produced 115,000 barrels of oil per day, were shut down from February, 2007 due to attacks from MEND militants<sup>504</sup> and the same remained closed till 2011.

The above is a gory picture of violence induced social, economic and environmental hardship visited upon the indigenes of the area, which equally has the capacity of undermining the efforts made at promoting socio-economic growth among the people. Piqued by the degenerating security situation in the Niger Delta and realizing the futility of its counter insurgency approach in quelling the militancy, the Government at the Federal level adopted alternative means of resolving the Niger Delta crisis with the aim of promoting socio-economic growth in the area. As a consequence, a 40-man committee christened the Technical Committee on the Niger Delta (TCDN) was constituted to review existing Niger Delta reports for the purpose of collating same and suggesting best possible ways the Federal Government of Nigeria could resolve the Niger Delta crisis peacefully<sup>505</sup>. Ledum Mittee was nominated chairman of the said committee<sup>506</sup>.

After exhaustive deliberations the committee submitted its report and recommended among other things: an increase in the derivation formula for oil producing states from the current 13% to 25%; appropriation of additional funds dedicated to the execution of new infrastructure and promote socio-economic growth in the area; open trial and bail for accused militant leader – Henry Okah; completion of the East/West road; release of outstanding statutory funds due the NDDC, pursuing a credible Disarmament, Decommissioning and Rehabilitation (DDR) process for Niger Delta youths involved then in militancy<sup>507</sup> etcetera.

Upon receipt of the committee's report, the Federal Executive Council under Yar'Adua's

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<sup>504</sup> K. Ajayi, (n 453) Op cit. p44 - 45

<sup>505</sup> S. E. Abila, et al 'Sustainable Development Issues in the Niger Delta' in F. Emiri et al (ed) '*Law and Petroleum in Nigeria: Current Challenges*' (*Essays in Honour of Justice Kate Abiri*). Lagos Malt House Press Ltd 2009, p272.

<sup>506</sup> *ibid*

<sup>507</sup> G. Elvis – Imo, 'Vindicating Property Rights of the People in the Niger Delta through Interventionists agencies' in F. Emiri, et al (ed) *Law and Petroleum Industry in Nigeria: Current Challenges – Essays in honour of Justice Kate Abiri* (Malthouse Press Ltd, 2009) Pp 324.

government rather than implementing the recommendations of the Technical Committee, announced the creation of a ministry on the 10th of September 2008<sup>508</sup> to tackle the development challenges in the region.

#### **4.2. The Fundamental Objectives as Transformational Tool for Fighting Corruption in Nigeria.**

The Fundamental Objectives and Directive Principles of State Policy are provisions in the Constitution of the Federal Republic of Nigeria 1999. They are found specifically in sections 13-24 of the Constitution otherwise known as Chapter Two thereof. An appraisal of the constitutional development in Nigeria ably shows that the emergence of these Transformational Objectives as a feature in the Nigerian Constitution is relatively novel, given that before the enactment of the 1979 Constitution the provisions bordering on these transformational ideals never existed in any constitution in the country.<sup>509</sup> As a matter of fact, they first appeared as provisions in the 1979 Constitution of the country, after which another attempt was made to incorporate them into the 1989 drafted Constitution of Nigeria, midwived by the Babangida led Military junta but that document never materialized to fruition. Ultimately, they are now enshrined in Chapter Two of the 1999 Constitution of Nigeria.

Apparently, each ideal in Chapter Two of the constitution targets the enhancement of the quality of life Nigerians lead in different socio-economic spheres.<sup>510</sup> These ideals compared with the goals of sustainable development will evidently show that a great nexus exists

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<sup>508</sup> 'Ministry of Niger Delta Affairs Report'. <<http://www.nigerdelta.gov.ng/email-dprs@nigerdelta.gov.ng>, pt> accessed 14 June, 2018.

<sup>509</sup> O. Awolowo, 'Fundamental Objectives and Directive Principles of State Policy as Panacea For National Transformation and Sustainable Development', being a paper published in *Journal of Law, Policy and Globalization* (online) Vol. 65, 2017.

<sup>510</sup> O. Awolowo contended that the philosophical basis for the inclusion of the fundamental objectives in the Constitution was that 'governments in developing countries, have tended to be pre-occupied with power, and its material perquisite with scant regard for political ideals as to how society can be organized and ruled to the best advantage of all'. The rationale is of special relevance to the Nigerian polity whose cardinal features are 'hereto generality of the society, the increasing gap between the rich and the poor, the growing cleavage between the social groups, all of which combine to confuse the nation and bedevil the concerted march to orderly progress'.

between the two. Consequently, many commentators have argued that the fundamental objectives contain very high transformational qualities<sup>511</sup>, including the ability to fight and curb corruption which has wrecked and impeded the sustainable growth of the Nigerian society. As a result, discussing the ways the fundamental objectives can be implemented to curb the menace of corruption in the Nigerian society has become necessary in this research.

As a first step in the assessment of the impact of corruption on the socio economic growth of Nigeria will demand defining what is meant by corruption? The Black's Law Dictionary defines corruption as 'the act of doing something with an intent to gain some advantage over others'.<sup>512</sup> Under Nigerian Municipal law, the Criminal Code Act<sup>513</sup> provides for what constitutes official corruption and abuse of office in the country by stating that the offence of corruption occurs whenever a public officer invites bribe on account of his own action<sup>514</sup>; or when a public officer gives or accepts bribe on account of his own action<sup>515</sup> or where a public officer perpetrates extortion;<sup>516</sup> or where a public officer incorporates his personal interest into public contract.<sup>517</sup>

In *Azie v State*<sup>518</sup> where a senior medical officer in charge of Government General Hospital, Ikeja demanded from patients money before treatment, when in real sense he was not supposed to be paid by patients, he was charged with official corruption contrary to section 98 of the Criminal Code, extortion by public officer contrary to Section 99 of the Criminal Code and demanding gratification with intent to steal contrary to Section 406 of the Criminal Code. The trial and Appeal Courts found the accused guilty and convicted him for corruption.

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<sup>511</sup> L. Stewart, 'Adjudicating Socio-Economic Rights Under a Transformative Constitution', Penn State International Law Review; Vol. 28: No. 3, Articles 13. <<http://elibrary.law.psu.edu/psilr/vol28/iss3/13>>

<sup>512</sup> G.A. Bryan, *Black's Law Dictionary*, 8<sup>th</sup> Edition (West Publishing Co. 1990) p371

<sup>513</sup> Criminal Code Act Cap. C38, LFN 2004

<sup>514</sup> *ibid* Section 98 (2)

<sup>515</sup> *ibid* Section 98 B(1)(a)

<sup>516</sup> *ibid* Section 99

<sup>517</sup> *ibid* Section 101

<sup>518</sup> *Azie v State* (1973) NSCC 162



His conviction was subsequently affirmed by the Supreme Court of Nigeria which states that ‘Section 98 of the Criminal Code...’ envisages the case of a public officer who had received bribe with a view to be swayed or deflected in his course of conduct or action and corruptly embarked upon or takes any action or course of conduct which he would not honestly have done or taken. Further that, it was also held that ‘the section equally envisages the case of a public officer who in consideration for a bribe corruptly omits or fails to do that which he would have done in the honest performance of his duties.

Bribery, in the opinion of Norman,<sup>519</sup> is ‘therefore a form of corruption being a price reward, gift or favour bestowed or promised with a view to preventing the judgment of or influencing the action of a person in a position of trust’. Without contestation, corruption has greatly destroyed the socio-economic fabric and wellbeing of the Nigerian populace as all successive governments that have governed the country have allegedly been involved in one case of corruption or the other. For example, during the Babangida regime from August 1985 to August 1993, the sum of 12.4 billion dollars realized from the Gulf war oil windfall<sup>520</sup> was allegedly embezzled. Abacha’s administration was also engulfed in serious crisis of corruption allegations. Upon his death about \$100 million was found in one of his bank accounts in the US.<sup>521</sup> Another \$1.6 billion belonging to members of Abacha family in banks in Europe was also frozen<sup>522</sup>. Atiku’s bribing of a US Congressman millions of dollars to influence and make sure that TSKJ, a multinational consortium is awarded the contract for the construction of Bonny Liquefied Natural Gas Project valued at 6 billion dollars,<sup>523</sup> remains a serious dent of corruption on the Obasanjo regime.

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<sup>519</sup> P. A. Onamade, ‘Cases and Materials on Criminal Law’, (Philade Co. Ltd, 2008) p592.

<sup>520</sup> ‘Corruption In Nigeria, History and cases’. <<https://en.m.wikipedia.org>> accessed 21 May, 2020.

<sup>521</sup> *ibid* p4

<sup>522</sup> *ibid* p4

<sup>523</sup> *ibid* p5

Under Goodluck, NNPC allegedly failed to remit 20 billion US dollars that accrued to the nation through the sale of oil,<sup>524</sup> while his Aviation Minister allegedly used the sum of 255 million naira to purchase BMW cars for Senior Staff in her Ministry.<sup>525</sup> Even the current Buhari Administration is not free from accusations of corruption. Sani indicted Babachir of awarding an apparently inflated Two Hundred Million naira contract for the clearing of ‘invasive plant species’ in Yobe State to his company – Rholavision Nigeria Limited<sup>526</sup>. In a similar vein, the late Chief of Staff to the President – Abba Kyari allegedly took a N500 million bribe from MTN to help slash the \$5 billion fine the National Assembly slammed it for violating Nigeria’s telecommunication regulations touching on national security.<sup>527</sup> Besides, other corruption cases like those of Maina who embezzled N2 billion pension fund and was detained by the Goodluck’s Administration but the Buhari administration reinstated and gave him double promotion,<sup>528</sup> show how systemic corruption has embedded itself deep in the country.

Okonjo – Iweala argued that ‘...between November 1993 to June 1998 of Abacha misrule, an estimated \$3 to \$5 billion of Nigeria’s public assets were looted and sent abroad by Abacha, his family and their associates. She insisted that these sums represent a substantial amount of Nigeria’s public assets by different measures; adding that the estimated sums represent 2.6% to 4.3% of the 2006 GDP and 20.6% to 34.4% of the 2006 federal budget. And that at the upper end of the range, the amount stolen is larger than the 2006 education and health federal budgets combined. Using unit cost estimate provide anti-retroviral therapy for 2 – 3 million HIV – AIDS infected persons over a ten years period, or supply insecticide treated bed nets

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<sup>524</sup> *ibid* p5

<sup>525</sup> N. Ogundipe, ‘N255 million bullet proof cars scandal: EFCC to Grill Stella Oduah’. Premium Time Nigeria, 21<sup>st</sup> June, 2017, p5. See also Sahara Reporters. ‘Nigeria’s Minister of Aviation Armored BMW Cars Scandal: Cars Sell for only \$170k in Europe and America’. 16th October, 2013. p8

<sup>526</sup> ‘At last Buhari Sacks Suspended SGF, NIA Boss’. The Punch Newspaper, 30th October. 2017.

<sup>527</sup> ‘Buhari Presented with Evidence, His Chief of Staff Took N500 million to help MTN Bribery Allegations’. Site-admin, 20<sup>th</sup> September, 2016.

<sup>528</sup> ‘Maina has put a Big Question on Buhari’s Integrity’. *Vanguard Newspaper 27 News 21<sup>st</sup> October, 2016.*

for over 200 million pregnant women and children. She averred further that of the amount stolen over \$2.2 billion was largely documented by the Central Bank of Nigeria as stolen from it in truck-loads of cash in foreign currencies, in traveler's checks and other means. Most of these monies were laundered abroad through a complex network of companies, banks, and Shell Petroleum Development Company Ltd's subsidiaries before finding their way into foreign accounts operated by the Abacha family and their cronies. Concluding, she said that at the peak of their activities, over 70 companies and more than 32 banks including some of the world's best known banks, had money laundered through them.<sup>529</sup>

Not only that, corruption has also cast a very serious dent on the international image of the country. As a result, Nigeria is treated as a pariah state at the international level and its citizens are subjected to inhuman and degrading treatments in foreign countries. Uwaifo JSC emphatically captured this essence when he quoted Babalola as having submitted in *AG of Ondo State v AG of the Federation & 32 Ors*<sup>530</sup> that:

In the last 20 years, the pervasiveness of corruption in all its ramification has assumed renewed dimension of cancerous proportions in Nigeria, to an extent that the Germany – based Transparency International a respected independent, universal, non – governmental organization ranked Nigerian in the unenviable position of being the most corrupt nation in the world for a consecutive period of more than 7 years... In foreign countries, Nigerians are regarded and treated as corrupt people. Unlike other nationals, no bank would allow Nigerians to open a bank account as a right. The Nigerian Green Passport is synonymous with corruption. Consequently, at foreign airports, Nigerians with green passports are separated from other nationals. While others are allowed to go freely, Nigerians are subjected to degrading and inhuman treatments and treated as pariahs on the ground that they are Nigerians who hail from the most corrupt country of the world.

Evidently, the cumulative effect of corruption on the sustainable growth of the Nigerian society could best be described as massive and monumental. This is because the funds so

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<sup>529</sup> N. Okonjo-Iweala 'Corruption: Myths and Realities in Developing Country Context'

<<http://www.edgev.org/doc/event%20does/Ngozi9020remark.pdf>> accessed 12 February, 2018.

<sup>530</sup> *AG of Ondo State v AG of the Federation & 32 Ors* (2002) 9NWLR (pt 772) Pp383 – 388 paras D – E.

stolen would have been used to boost agriculture and enhance food production for the masses,<sup>531</sup> build hospitals to provide better health services,<sup>532</sup> construct better schools and provide quality education for Nigerian children<sup>533</sup>, construct quality roads and provide river crafts for easy mobility of Nigerians,<sup>534</sup> built houses to ease the shelter problem facing Nigerians,<sup>535</sup> provide safe drinking water<sup>536</sup> and other essential amenities and services vital for the healthy living of the masses and generally promote sustainable development.

Therefore, upon assumption of office and in order to checkmate the rampant corruption, Obasanjo facilitated the enactment of an Act<sup>537</sup> to curb corruption in Nigeria. As eloquently proclaimed in the Explanatory Memorandum, the purpose of the Act is essentially to create an institution to fight corruption in the country.

The Supreme Court in *AG of Ondo State v AG of the Federation & 32 Ors*<sup>538</sup> elaborately espoused the many transformational benefits Nigeria stands to enjoy from the enactment of the Corrupt Practices and Other Related Offences Act 2000, particularly as it relates to checkmating corruption in the country through the implementation of the ideals contained in Chapter Two of the Nigerian Constitution 1999 (as amended). The essence of enforcing the Fundamental Objectives is made even more compelling because if the economic, moral and social quagmire Nigeria finds itself presently as a result of the high level of corruption is to be effectively addressed, drastic actions that are stern must equally be applied to eradicate corruption from every segment of the Nigerian society.

In view of the aforesaid, law being an instrument for social engineering becomes handy in proffering solutions for curbing the widespread corruption in the country, thereby

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<sup>531</sup> Section 16 (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>532</sup> *ibid* Section 17 (3) (d)

<sup>533</sup> *ibid* Section 178(1) and (3)

<sup>534</sup> *ibid* Section 15 (3) (a)

<sup>535</sup> *ibid* Section 16 (2) (d)

<sup>536</sup> *ibid* Section 20

<sup>537</sup> Cited as the Corrupt Practices and other Related Offences Act No. 5 of 2000

<sup>538</sup> *AG of Ondo State v AG of the Federation & 32 Ors* (n 532) *op cit*.

guaranteeing the flourishing of good governance, peace and order in the Nigerian Society. The National Assembly thus resorted to and invoked section 15(5) and other related provisions in the constitution to enact the anti-corruption Act to fight the virus of corruption in the country. As clear from the crafting of the words in the provision, section 15 (5) is intended to serve as an instrument for combating and eradicating corruption in Nigeria. But by operation of section 6 (6) (c) of the Constitution and as held by the courts in *Morebishe & Ors v Lagos State House of Assembly*<sup>539</sup> and other related cases, section 15 (5) and all other provisions in Chapter Two of the Constitution have been declared non-justiciable thus treated as mere patent constitutional declarations, incapable of being implemented or enforced for the common good of Nigerians.

Nonetheless, the Supreme Court in *AG of Ondo State v AG of the Federation & 32 Ors*<sup>540</sup> held inter – alia that by the combined effect of sections 4 (2) and (4), 15 (5), items 60 (a), 67 and 68 of the Exclusive Legislative List of the second Schedule of the Nigerian Constitution 1999, the National Assembly has power to invoke section 15 (5) of the Constitution which is a provision under Chapter Two of the Constitution, to validly enact the Corrupt Practices and Other Related Offences Act 2000 to combat corruption in Nigeria and by so doing, implement Chapter Two of the Constitution as was decided in the Indian case of *Mangru v Commissioner of Budge Budee Municipal*.<sup>541</sup>

The Corrupt Practices and Other Related Offences Act 2000 as an instrument designed for fighting corruption in the Nigerian society contains seventy – one sections. It creates the Corrupt Practices and Other Related Offences Commission (ICPC) to implement its aims and equally vests the Commission with responsibility of investigating and prosecuting persons

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<sup>539</sup> *Morebishe & Ors v Lagos State House of Assembly* (2003) 3 NWLR 134

<sup>540</sup> *AG of Ondo State v AG of the Federation & 32 Ors* (n 532) op cit.

<sup>541</sup> *Mangru v Commissioner of Budge Budee Municipal* (1951) 87 CLJ 369

who commit the offence of corruption and other related offences under the Act.<sup>542</sup> Besides, it also makes provisions for the protection of anybody who gives information to the Commission in respect of an offence committed or likely to be committed by another person<sup>543</sup>.

Furthermore, the following conducts are listed as offences under the Act: (1) gratification by an official,<sup>544</sup> (2) Corrupt offer to public officers<sup>545</sup>, (3) Corrupt demand by persons,<sup>546</sup> (4) counselling offences relating to corruption,<sup>547</sup> (5) fraudulent acquisition of property,<sup>548</sup> (6) fraudulent receipt of property,<sup>549</sup> (7) offences committed through postal system,<sup>550</sup> (8) deliberate frustration of investigation by the Commission,<sup>551</sup>(9) making false statements or return,<sup>552</sup> (10) gratification by and through agents,<sup>553</sup> (11) bribery of public officer,<sup>554</sup> (12) offences of using offices and positions for gratification,<sup>555</sup> (13) bribery in relation to auctions,<sup>556</sup> (14) bribery for giving assistance in regard to contracts,<sup>557</sup> etcetera.

Other vital provisions in the Act targeted at taming the monster of corruption in Nigeria include those in section 24 which prohibit any person from dealing with, using, holding, receiving or concealing gratification. This section is very expansive in scope, in that it makes any person who, whether within or outside Nigeria, whether directly or indirectly, whether on behalf of himself or on behalf of any other person, enter into, any dealing in relation to any

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<sup>542</sup> The Explanatory Memorandum to the Corruption

<sup>543</sup> *ibid*

<sup>544</sup> Section 8, Corrupt Practices and Other Offences Act, 2000

<sup>545</sup> *ibid* section 9

<sup>546</sup> *ibid* section 10

<sup>547</sup> *ibid* section 11

<sup>548</sup> *ibid* section 12

<sup>549</sup> *ibid* section 13

<sup>550</sup> *ibid* section 14

<sup>551</sup> *ibid* section 15

<sup>552</sup> *ibid* section 16

<sup>553</sup> *ibid* section 17

<sup>554</sup> *ibid* section 18

<sup>555</sup> *ibid* section 19

<sup>556</sup> *ibid* section 21

<sup>557</sup> *ibid* section 22

property, or otherwise uses or causes to be used, or holds, receives or conceals any property or any part thereof which is the subject matter of any offences under the Act shall be guilty of the offence of corruption.

Apart from the fact that any person who contravenes the provisions of the Act shall be guilty of an offence and be punishable with a term of imprisonment, the Act equally provides for the seizure and confiscation of movable or immovable property of any person under investigation for the offence of corruption by the commission, where the investigating ICPC officer has reasonable grounds to suspect that such property was a proceed of a corrupt deal.

It is nevertheless necessary to state that despite the far – reaching provisions in the Act directed at curbing widespread corruption in the Nigerian society, the government of Ondo State through its Attorney General in the celebrated case of *AG of Ondo State v AG of the Federation & 32 Ors*<sup>558</sup>, contested the constitutional validity or otherwise of the Corrupt Practices and Other Related Offences Act 2000, citing the contents of sections 6(a), 26 (3), 28 (1), 29, 34, 35 and 37 (1) thereof as the basis for its disputation of the constitutional validity of the Act. The Supreme Court held the Act to be Constitutionally valid. Adopting the ‘pencil rule’<sup>559</sup> it however declared sections 26 (3) and 35 of the Act void and unconstitutional while relying on the authority of *Belewa v Doherty*<sup>560</sup>. For clarity, section 26 (3) of the Act provides thus:

the ICPC shall conclude its investigation, prosecution and judgement shall be given within 90 working days of its commencement save that the jurisdiction of the court to continue to hear and determine the case shall not be affected where good grounds exists for a delay.

Though section 26 (3) of the Act contemplates expeditious trial and conclusion of corruption cases, the Supreme Court is of the view that the subsection is an attempt by the National

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<sup>558</sup> *AG of Ondo State v AG of the Federation & 32 Ors* (n 532) op cit.

<sup>559</sup> This rule empowers court to strike down offensive provisions in an Act and reserve those that are valid.

<sup>560</sup> *Belewa v Doherty* (1963) 2 SCNLR 256

Assembly to directly interfere with the duties of the judiciary as to when the court should conclude particular matters; holding further that the subsection of the Act infringes on the principles of separation of Power as decided in the case of *AG Abia v AG Federation*<sup>561</sup> and other related cases, therefore unconstitutional, null and void.

In a related vein, section 35 of the Act provides that ‘where the commission is satisfied that a summons directed to a person complained against or any other person has been served and that person does not appear at the time and place appointed in the summons, the commission shall arrest and detain such person until the person complies with the summon. As evident, the powers of the Commission under section 35 of the Act show that it can arrest and detain any person complained against of having committed corruption in Nigeria indefinitely, until such person complies with the summons. The Supreme Court also struck down section 35 of the Act.

Gleaning from the preceding discussion, it is clear that the Federal Government of Nigeria enacted the above Act to fight and where possible, wipe out corruption and pave way for the enhancement of sustainable growth in the country. In fact, the Supreme Court in *AG of Ondo State v AG of the Federation & 32 Ors*<sup>562</sup> held unequivocally that the power to legislate in order to prohibit corrupt practices and abuse of power is concurrent and can be exercised by both the Federal and State Governments. The court nonetheless pronounced that where the Federal power to legislate on a given subject matter conflicts with that of a state, the Federal legislative power will prevail by reason of section 4 (5) of the Constitution. The court, relied on the decision of *Military Governor, Ondo State v Adewumi*<sup>563</sup> in reaching this position

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<sup>561</sup> *AG Abia v AG Federation* (2002) 6 NWLR (part 763) p264

<sup>562</sup> *AG of Ondo State v AG of the Federation & 32 Ors* (n 532) op cit.

<sup>563</sup> *Military Governor, Ondo State v Adewumi* (1988) 3 NWLR (pt. 82) p280 and *AG of Ogun State v Aberuagba*



Obasanjo affirmed this essence while given assent to the Act by asserting that “with corruption, there can be no Sustainable Development or political stability. Determined to realize this objective, the Obasanjo regime also enacted the Economic and Financial Crimes Commission (Establishment) Act 2004<sup>564</sup> and the Money Laundering (Prohibition) Act 2004<sup>565</sup> to curb corruption which has attained a pandemic, endemic and systemic proportion in Nigeria. Ironically, despite the concerted efforts made to combat and eradicate corruption from the socio-economic lives of Nigerians, the realities on ground show that corruption is very much alive, if not gaining more strength and growing faster in the Nigerian society.

### **4.3 Evaluation of the Ministry’s Performance**

Generally speaking, the ministry is an agency aimed at promoting socio-economic growth in the Niger Delta area. This fact is eloquently pronounced in the functions the agency performs and which are to the effect that it shall oversee the implementation of government policies and security; Coordinate the formulation of the development plan for the region; liaise with the relevant government, non-government and private organizations; formulate policies and programmes for youth mobilizations and empowerment in the Niger Delta Region; liaise with host communities for the enhancement of the welfare of the people and the development of the region; facilitate private sector involvement in the development of the region; plan and supervise public enlightenment programmes in the region<sup>566</sup> etcetera.

As seen from the foregoing, the agency is about ‘development’. The Black’s Law dictionary defines development as ‘an activity, action or alteration that changes underdeveloped property into developed property’<sup>567</sup>. By this definition, it is clear that the cardinal objective

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<sup>564</sup> Otherwise referred to as ‘the EFCC Act’

<sup>565</sup> Also known as ‘the Money Laundering Act’

<sup>566</sup> The ‘functions, vision and mission of the Ministry of the Niger Delta Affairs’, <<http://www.facts.ng/nigeria-ministry-niger-delta-affairs>>. accessed 10 June, 2018.

<sup>567</sup> G.A. Bryan *Black’s Law Dictionary Seventh Edition* (Dallas, Texas, West Group 1999) p482.

of the agency is to effect transformational changes in the region by way of implementing programmes and services that could enhance the development of the area.

For the simple fact that the transformational objectives pursued by the agency are directed at bringing about positive developmental change in the area, is enough to argue that the objectives pursued by the Ministry of Niger Delta Affairs are similar with the latent developmental ideals in Chapter Two the Nigeria Constitution 1999 (as amended), which equally embody aspirations aimed at effecting transformational development in the Nigerian society.

The Fundamental objectives and Directive Principles of State Policy contained in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended) clearly set out provisions, the implementation of which will enhance the attainment of good livelihood for the citizens of the country<sup>568</sup>. Okeke thus graphically<sup>569</sup> summed up the viable transformational qualities imbedded in the Fundamental Objectives and how the same, if implemented, could help Nigerians live better lives by stating that;

By the constitutional provisions (the Socio-economic ideals), Nigerians dream<sup>570</sup> about that one day in their soil there will be free mobility<sup>571</sup>, a feeling of belonging and or involvement among the various people of the federation, to that end, loyalty to the nation shall override sectional loyalties<sup>572</sup>, abolition of all corrupt practices and abuse of power<sup>573</sup>, maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity<sup>574</sup>; harnessing and distribution of mineral resources, minimum living wage, and old age care and pension and unemployment, which are provided for all persons<sup>575</sup>;

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<sup>568</sup> Section 13, Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>569</sup> G.N. Okeke, 'Fundamental Objectives and Directive Principles of State Policy; A viable Anti-Corruption tool in Nigeria'.

<sup>570</sup> Martin Luther King Jnr. 'I have a dream Speech'

<sup>571</sup> Section 15 (3) (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>572</sup> Section 15 (4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>573</sup> Section 16 (1) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>574</sup> Section 16 (2) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>575</sup> Section 17 (2) (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

free university education<sup>576</sup>; and free adult literacy programme<sup>577</sup>.

A critical analysis of Okeke's postulations above ably show that the Fundamental Objectives provide for and enjoin all successive Governments in Nigeria to pursue policies directed at providing good roads for easy mobility of goods and services throughout the Federation, encourage the general feeling of unity and oneness among Nigerians; creation of social services that will encourage maximum welfare; guaranteeing freedom and general happiness of every citizen; equitable management and distribution of the natural resources for the common good of all citizens; provision of suitable and adequate accommodation (shelter); food and payment of stipends as living wage for old age and retirees; payment of sick benefit to disables as welfare; provision of adequate medical care; provision of free, compulsory university education and other programmes targeted at promoting adult literacy in the country.

In other words, the provisions of Chapter Two contemplate a country that is egalitarian in its socio-economic objectives<sup>578</sup> by providing good roads, constructing cities and urban centers, provision of improved health care, medical services and facilities, entronement of enhanced educational growth etcetera, for the common good of all.

Nigerians are nevertheless prevented from reaping the benefits of this lofty socio-economic rights in Chapter Two of the Constitution, because section 6 (6) (c) of the same Constitution forbids them to do so and the courts have repeatedly emphasized that flowing from this constitutional provision, the socio-economic provisions therein are non-justiciable. This is the decision the court reached in *Adamu & Ors v AG Bornu State & Ors*<sup>579</sup>.

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<sup>576</sup> Section 18 (3) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>577</sup> Section 18 (3) (e) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>578</sup> Section 7 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>579</sup> *Adamu & Ors v AG Bornu State & Ors* (1998) 1 NWLR (pt. 427) Pp681 – 687

Nwauzi, relying on the authority of the Supreme Court decision in the case of *Federal Republic of Nigeria v Anache & Ors In Re-Olafisoye*<sup>580</sup>, argued however that the non-justiciability effect of section 6 (6) (c) on the provisions in Chapter Two of the Constitution is not total; insisting that it could be enforced or implemented as shown in the phrase ‘otherwise’ in the same section of the Constitution. He thus cited many instances as exceptional cases when the provisions of Chapter Two of the Constitution can be implemented.

First, when item 60(a) of the Nigerian Constitution 1999 is invoked. Thus, in *AG of Ondo State v AG of the Federation & 32 Ors*<sup>581</sup> the Supreme Court emphatically held that the National Assembly’s enactment of the Anti-Corruption Act based on the combined provisions of section 15(5) and item 60(a) is a valid enactment for the implementation of the provision under the Fundamental Objectives in Chapter Two of the Constitution. Viewed against the foregoing background, it has become convenient to argue that the ministry is designed to execute programmes and policies as a way of translating the latent transformational ideals in Chapter Two of the Constitution and make them a reality as personified by the performances of the ministry in the following areas.

### **Execution of Road Projects in the Region**

The construction of roads is an aspect of development targeted at facilitating free and easy movement in a community or nation. It is one of the components of sustainable development. Section 15 (3) (a) of the Fundamental Objectives in the Nigerian Constitution 1999 (as amended), profusely provides for the provision of services throughout the Federation.

The phrase ‘facilities’ as used in this subsection of the Constitution can be explained to include the construction of roads for easy mobility in a community. The provisions of section

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<sup>580</sup> *F.R.N. v Anache & Ors In Re-Olafisoye* (2004) ALL FWLR ( p 186) 1106 @ 1153

<sup>581</sup> *AG of Ondo State v AG of the Federation & 32 Ors* (n 532) op cit.

15 (3) (a) of the Constitution apparently synchronize with the principal objective of the ministry which is to implement government policies on development and security in the region, including the construction of roads, housing and other related facilities to enhance the socio-economic wellbeing of the people.

The ministry while pursuing the above objectives claimed that it is constructing roads throughout the region. And that while 30 of such roads have being constructed, 32 others roads are at design consultancy stage, the engineering design of another 63 roads are already completed<sup>582</sup>. The Ministry identified the East West Road running from Calabar to Benin as its flagship project. Other roads the ministry listed in its 2018 report that it is constructing in the region include - the Obehie – Akwente Azunmini-Ukanafun road linking Abia and Akwa Ibom state; Orhorho – Odorubuo – Kpakama – Bomadi road in Delta State; Mba – Atai – Ikot – Mkpati – Okuiboku road in Akwa Ibom State; Ofagbe – Orié – Idheze – Ozoro road in Delta State; Agadagba – Akotogbo – Iyasan – Ovia bridge in Ondo State<sup>583</sup> etcetera.

The importance of these roads when completed cannot be overemphasized. Apart from easing transportation mobility for the people, the roads will equally assist in the growth of the local economy in the region because they will avail the people more opportunities for economic interaction, thereby creating wealth and reducing the high poverty rate. This is vital because the concept of sustainable development itself seeks to reduce poverty among humanity<sup>584</sup>.

The sustainable development viability of these roads is however undermined by many fundamental problems. One of such problems is the fact that most of the roads the agency claims to have constructed, only exist on paper and nonexistent on ground. For example, the

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<sup>582</sup> Ministry of Niger Delta Affairs Report, 2018. <<http://www.nigerdelta.gov.ng/email-dprs@nigerdelta.gov.ng>> accessed 4 June, 2018

<sup>583</sup> *ibid*

<sup>584</sup> UNDP document on Agenda 2030 captioned “What are the Sustainable Development Goals” <[http://www.ng.undp.org/content/nigeria/en/home/sustainable-development\\_goals.Html](http://www.ng.undp.org/content/nigeria/en/home/sustainable-development_goals.Html)> accessed 14 June, 2018

Zarama – Okodia – Biseni road the ministry said it has commenced in Bayelsa State is nonexistent; the Ori-Ngodo – Lombard road project at Umunneochi Local Government Area of Abia State has long been abandoned; the Obehie – Akwente Azunmini-Ukanafun road linking Abia and Akwa Ibom State is only 38% completed; the 3 kilometer Okoyong Liberty City road in Oduakpani Local Government Area of Cross River State that was being constructed by the Ministry has also been abandoned long ago<sup>585</sup>.

Besides, most of the roads it claims to have completed are not properly executed or executed with inferior and substandard materials<sup>586</sup> thereby making their period of durability very transient, lacking the desired long life span. The East West road for example, is plagued by these setbacks as portions of the road easily collapse during the rainy season and subject commuters to unnecessary hardship.

Worse of all, the section of the East West Road near Ume junction in Isoko South Local Government Area of Delta State has constantly been submerged by the seasonal flood, so much so that one of its lanes has been cut into two thus becoming impassable to commuters. More so, most of the roads were started long ago by different agencies before the agency inherited them but they still remain uncompleted or their execution stalled for inexplicable reasons. As a result, stakeholders in the region hold the view that the construction of these roads are merely motivated by political considerations designed to garner votes during elections from the Niger Delta people hence their construction has remained endless.

From the totality of the discussion on the roads constructed by the developmental agency, it is convenient to conclude that the roads so constructed lack the requisite capacity of promoting

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<sup>585</sup> M. Gundu, 'Federal Government blames uncompleted projects in Niger Delta on paucity of Funds'. <[http://www.today.ng/news/Nigeria/federal-government-blame-uncompleted\\_projects\\_-\\_niger-delta-paucity-fund](http://www.today.ng/news/Nigeria/federal-government-blame-uncompleted_projects_-_niger-delta-paucity-fund)> accessed 15 July, 2018.

<sup>586</sup> *ibid*

sustainable development. Put differently, the contributions of the roads to the growth of the region is very minimal.

### **Construction of Cities/Urban Centres in the Region**

Urban renewal and construction of new cities/urban centers to provide accommodation for the comfortable living of the people of a given community/society, is one of the goals sustainable development aspires to accomplish<sup>587</sup>. This goal demands that there is need to provide well planned housing schemes comprising of quality buildings with facilities like roads, water supply, well designed sanitary system, electricity and a perimeter fence surrounding it to cater for the accommodation needs of the people in the society<sup>588</sup>. Araujo<sup>589</sup> described this process as urbanization, contending that through urbanization, slumps and shanty areas are renewed and turned to modern cities to uplift the living condition of the people. He added that urbanization encourages the growth of deliberately planned modern cities in rural areas thereby arresting the influx of rural – urban drift.

Owing to the importance of accommodation to the quality of life a people live, some countries have incorporated the goal of providing befitting accommodation for its citizenry into the Constitutions of their countries as a provision therein and make it an actionable socio – economic right. For instance, the South African Constitution provides thus;

Everyone shall have the right of access to adequate housing (accessibility means that the state must create conducive conditions for all its citizens, irrespective of their economic status to access affordable housing)<sup>590</sup>.

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<sup>587</sup> J. C. Nwafor, 'MSc Programme in Natural Resources and Environmental Management (Modules) Sustainable Development Concept Principles and Practices'. (2013/2014 class). University of Port Harcourt, Choba. April 2013. p6

<sup>588</sup> J.D.S. Araujo, 'Ensuring a sustainable level of Population'. In D. S. Araujo, 'Rubber Tapper Council (WCED) Public Hearing, Sao Paulo held on 28 – 29 October, 1985' published in UN Documents Gathering a body of global agreements 'our common future, Chapter Two: Towards Sustainable Development' <<http://www.un-documents.net/04-02>> accessed 10 September, 2018.

<sup>589</sup> *ibid*

<sup>590</sup> Section 26 (1) and 28 (1) (c) of the Constitution of the Republic of South African 1996

Therefore, in the South African case of *Republic of South Africa v Irene Grootboom*<sup>591</sup> wherein the Cape Town Metropolitan Local Government deprived the residents of the council area to temporary shelters, adequate basic nutrition, health care and other social services; the constitutional court of South Africa held that the failure of the Metropolitan Provisional Government to provide temporary shelter for the homeless and destitute is a violation of the obligation placed on it by section 26 (1) and 28 (1) of the South African Constitution.

The Constitution of Nigeria also contains similar provision under the Fundamental Objectives in Chapter Two thereof. Section 7 (3) (a), (b) and (h) of the Nigerian Constitution 1999 supports the argument that, the Government of Nigeria has an obligation to provide befitting accommodation (shelter) for its citizens. Section 17 (3) (a), (b) and (h) of the constitution particularly urges the government to create opportunities for Nigerians to secure adequate livelihood as well as suitable employments.

Granted that section 17 (3) (a), (b) and (h) thereof is not as direct and forceful as section 26 and 28 of the South African Constitution reproduced in the foregoing, the fact that it tends to urge the government to provide accommodation for Nigerians becomes manifest when the expressions ‘adequate means of livelihood’, ‘adequate facilities for leisure’, and ‘for social life and promotion of family life’ as used in the subsection are read together. From the combined reading of the quoted expressions in the foregoing, it is correct to conclude that besides providing befitting employment the section also enjoins the government to build housing schemes to accommodate the citizens of the country with a view to promoting sustainable development. This contention finds expression in the decision of the Indian case of *Olga Tellis v Bombay Municipal Corporation*<sup>592</sup> which held similar provision<sup>593</sup> in the Indian Constitution to include the right to be accommodated and the provision of livelihood.

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<sup>591</sup> *Republic of South Africa v Irene Grootboom* 2000 (11) BLCR 1169 (CC)

<sup>592</sup> *Olga Tellis v Bombay Municipal Corporation* (1985) SCC (3) 545.



The facts of the Olga Tellis case are that some slum and pavement dwellers were told to vacate their abode without being provided with alternative accommodation. They went to court and contended that their eviction would deprive them of their economic livelihood, thereby infringing on their right to life because their shelters were the only place where they could only reside in close proximity to their employment. The supreme court of India held that the right to livelihood includes the right to be accommodated. The decision in Olga Tellis case is in pari materia with that of Grootboom which was based on section 26 and 28 of the South African Constitution.

The important fact is that whereas the socio-economic right to accommodation in both the Indian and the South African Constitutions are actionable, the provisions touching on the access to befitting accommodation which is one of the socio economic benefits under the Fundamental Objectives of the Nigerian Constitution are nonjusticiable; so citizens are foreclosed from taking court actions against the Government of Nigeria for not providing accommodation for them.

This notwithstanding, it is expedient to note that not all the socio-economic rights guaranteed in both the South African and Indian Constitutions are easily implemented. In fact, the courts in South Africa are very skeptical in enforcing the socio-economic rights in the Constitution and as such have turned down most of the applications seeking to enforce the implementation of the socio economic rights as was demonstrated in *Minister of Health & Ors v Treatment Action Campaign (TAC)*<sup>594</sup> and other related cases. The South African Constitutional Court aptly affirmed the complex nature of appropriately adjudicating cases involving the determination of socio-economic rights by the courts, when it acknowledged in the case of

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<sup>593</sup> Article 21 of the Indian Constitution

<sup>594</sup> *Minister of Health & Ors v Treatment Action Campaign* (2002) 5 SA 72 (CC)

*Maziboku & Ors The City of Johannesburg & Ors*<sup>595</sup> which centres on the right of access to sufficient water as contained in section 27 of the South African Constitution, pointing out that ordinarily, it is institutionally inappropriate for a court to determine precisely what the achievement of any particular transformational ideal entails.<sup>596</sup>

The Federal Government of Nigeria being mindful of the limitations in its wholesome implementation of section 17 (3) (a), (b) and (h) of the Nigerian Constitution; deliberately infused the objectives of building modern cities and housing schemes for the citizens of Niger Delta as part of the objectives to be pursued by the developmental agency. Specifically, the Federal Government loudly proclaimed its desire to build new cities and urban centers in the Region during the proclamation of the Amnesty Programme for Niger Delta militants by stating that ‘as part of the measures to develop the Niger Delta, new cities and urban centers would be built in the region’ to take care of the growing overpopulation in notable cities in the region like; Port Harcourt, Warri, Asaba, Uyo, Yenagoa, Calabar etcetera<sup>597</sup>.

In meeting this obligation and in line with its primary objective of building new cities in the region<sup>598</sup>, the developmental institution in its 2018 report, stated that it is building some housing schemes in notable towns and cities in the region which include: (i) forty (40) housing units have been completed in Imo State; (ii) two hundred and fifty (250) units of houses have been completed and shared among Edo, Delta and Ondo States; (iii) thirty (30) units of houses completed in Kurutie in Delta State; (iv) forty (40) housing units completed in upper Sakponba – Edo State; (v) thirty six (36) housing units in Owozza Umuaguo – Imo

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<sup>595</sup> *Maziboku v The City of Johannesburg & Ors* w2008 JOL 21829 (SCA) (S. Afr.) <[www.saflii.org/za/cases/ZAGPHC/2008/106.pdf](http://www.saflii.org/za/cases/ZAGPHC/2008/106.pdf)> accessed 13 June, 2018

<sup>596</sup> *ibid*

<sup>597</sup> A. Etekepe, ‘The Political Economy of Post – Amnesty Management in the Niger Delta; Prospects and challenges’ – Niger Delta Research Digest – A journal of Articles and special reports on the Niger Delta, Vol. III December 2009, p50.

<sup>598</sup> The functions of the Housing and Urban Development Department of Ministry of Niger Delta Affairs Report particularly item No. II thereof which states that the Ministry of Niger Delta supervise the implementation of Housing and building development projects. <<http://www.nigerdelta.gov.ng/email-dprs@nigerdeltagov.ng.pt>> accessed 14 June, 2018.

State; (vi) thirty two (32) housing units in Igbokoba in Ondo State; (vii) twenty (20) housing units in Ikot-Ekpene in Uyo - Akwa Ibom State; (viii) twenty six (26) housing units in Odi – Bayelsa State; and (ix) twenty four (24) units of houses in Kula Asari- Toru Local Government Area – River State<sup>599</sup>. The researcher confirmed the level of development attained by these housing schemes during a visit to most of the project sites listed above.

Without more, the essence of building these housing units is to actualize the laudable provisions contained in section 17 (3) (a), (b) and (h) of the Nigerian Constitution in the Niger Delta and promote sustainable development in the Region. More so, the 2018 report of the Ministry made it clear that the houses in these schemes upon completion will definitely be shared and occupied by the people in the locality where the houses are located. Further that, the report states that the beneficiaries of the houses should be poor and indigents people in the communities, such as; people displaced by flood, widows, aged, disabled<sup>600</sup>. Above all, the report states that the allocation of the houses shall be done in direct consultation with stakeholders to work out the modalities for picking the allottees. On the face of it, the motive for building the houses as outlined in the above report is in tandem with the demands of modern housing facilities for the population of a country or society as contemplated under the concept of Sustainable Development. However, the unanswered question is, as promised, will these houses be actually allocated to the poor and indigent people when eventually completed? This rhetorical question is important because public administrators in Nigeria, particularly the political class is fond of saying one thing and doing the opposite.

One striking feature in the cities wherein the housing schemes of the Ministry are sited shows that majority of them had suffered serious security crisis in the hands of security agents in the past. For instance, Kurutie community in Delta State was bombarded and destroyed

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<sup>599</sup> Ministry of Niger Delta Affairs Report (n 576) op cit.

<sup>600</sup> Section 16 (2) (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

completely by the Nigerian Army during the resource control agitation. Odi community in Bayelsa State was also completely destroyed in 2000 and about 1000 of its citizens killed during the invasion.<sup>601</sup> In the same vein, Kula community in Rivers State had also been attacked and destroyed by the Nigerian Army during the resource control crisis. It is majorly communities that have suffered military invasion in the Region in past that the Ministry sited its housing schemes by way of rehabilitating them.

Ironically, the researcher's visit to some of the housing units claimed to have been built, reveal a different picture on ground. For instance, the housing units in Odi community are haphazardly built, uncompleted, no clearly mapped out roads, no electricity and no functional water scheme. It is unfenced and generally covered with overgrown weeds. In Kurutie community where the temporary campus of the Maritime University is located, the housing units are relatively completed with concrete roads and the buildings occupied by people. Notwithstanding the aforesaid, it is necessary to state that few partially completed houses in some of the above mentioned housing units to wit, Kula in River State, Owozza Umuaguo in Imo State and Kurutie in Delta State built by the Ministry of Niger Delta Affairs are occupied by persons who apparently took possession of the vacant properties through self-help and not duly allocated. This is the common method used by homeless people in the Region to forcefully occupy every partially completed but vacant housing scheme or buildings owned by the State Governments or interventionist agencies in the region.

Fundamentally, majority of the houses in the aforementioned locations are abandoned and taken over by weeds, reptiles and miscreants. The totality of all these is that sustainable development relating to the provision of befitting accommodation for the citizens of the Niger Delta is defeated and the same will continue to remain a mirage, until the government

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<sup>601</sup> Etekpe, A. *'The politics and conflict over oil and gas in the Niger Delta Region: The Bayelsa State experience'*, (Tower Gate Resources, 2012) Pp149 – 160

reviews the activities of the Ministry and make it become more functional for the realization of the socio-economic needs of the people in the region.

### **Pursuing Improved Health Care Services in the Region**

Nwafor contended that ‘making primary health care more accessible for the citizens’<sup>602</sup> constitutes one of the cardinal objectives the Brundtland report<sup>603</sup> identified for the attainment of sustainable development under the social dimension of the concept. He emphasized that improved health care is vital for stabilizing the population of a country by virtue of the fact that it is a necessary condition for sustainable growth. Extrapolating the benefits derivable from improved health care and population growth, Ouma<sup>604</sup> in his contribution to the public hearing of Brundtland commission’s report argued that ‘many factors can increase life expectancy and reduce mortality rates but that two of such factors are outstanding’.

First, he said ‘although generally speaking national wealth buys national health, some relatively poor nations and areas such as Sri Lanka and the India State of Karala have achieved remarkable success in lowering infant mortality and improved health through increase in education, especially for women; the establishment of primary health clinics, and other health care programmes. Secondly, he maintained that reduction in mortality rates in industrialized world came about due to improved health programmes, particularly for the control of communicable diseases’. The bottom-line is that improved health care is a veritable index for promoting Sustainable Development in a society.

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<sup>602</sup> J.C. Nwafor, (n 600) op cit.

<sup>603</sup> Nwafor, maintained that the world Commission on Environment and Development (WCED) otherwise called the Brundtland Commission published its report in 1987, titled ‘Our Common Future’ which defined the term sustainable Development as “the development that meets the needs of the present without compromising the ability of future generations to meet their own needs. J.C. Nwafor, ‘MSc Programme in Natural Resources and Environmental Management (Modules) Sustainable Development concept Principles and Practice’. (2013/2014 class handout). University of Port Harcourt, Choba. April

<sup>604</sup> J. Ouma, ‘Managing Population Growth’ being his contribution at the WCED public hearing, Nairobi, 23 Sept. 1986 in UN Documents–Gathering a body of global agreement, chapter four.

Gold Smith further explicated the meaning of ‘good health’ by contending that as conceived in the Brundtland Commission Report, good health encompasses the provision and availability of health facilities like hospitals, clinics, food production, safe water supply, housing scheme, improved sanitary condition and other social variables that form the basic necessity for the safeguard of the people’s health and hygiene<sup>605</sup>. In other words, good health transcends the mere provision of curative or preventive medicine or giving attention to public health. It is an integration of many factors which include health, nutrition and environmental consideration, realizing that the availability of these attributes of improved health care are *sine qua non* for the attainment of Sustainable Development in a society.

Due to the position good health occupies in the life of a people as the foundation of human welfare and productivity, some countries have made accessibility to good health and medical services a constitutional issue. Interestingly, in most of such countries the right to good health and services is actionable whenever an individual feels the government has failed in meeting its constitutional obligation of providing the needed medical treatment or safe health services for the individual. Thus, in *Van Biljon v Minister of Correctional Services*<sup>606</sup> which was based on section 27 of the South African Constitution, some South African citizens who are prisoners infested with HIV sought to exercise their constitutional right to adequate medical treatment as provided in the South African constitution. The grouse of the prisoners is that they should be provided with the expensive anti-retroviral medication. The minister of correctional services declined the prisoners’ demand, insisting that prison authorities could not provide the anti-retroviral drugs for the treatment of the prisoners. The constitutional court of South Africa held that lack of funds could not be the answer to a prisoner’s

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<sup>605</sup> B. Gold Smith, ‘Improving Health’ being a paper presented at the Public Hearing of the Brundtland Commission of the UN world Commission on the Environment and Development Report in Ottawa, Canada, 26 – 27, May, 1986.

<sup>606</sup> *Van Biljon v Minister of Correctional Services* (1997) (6) BCLR (c)

constitutional claim to adequate medical treatment, maintaining that the prisoners have the constitutional right to adequate medical treatment.

Similar provision directing the government to provide basic health and medical facilities for Nigerians is also provided in Section 17 (3) (c) and (d) of the Nigerian Constitution 1999.

In *Socio-Economic Rights and Accountability Project (SERAP) v Republic of Nigeria*<sup>607</sup>, the ECOWAS court held that the meaning of the phrase ‘adequate medical and health facilities’ include the right to food, to work, to health, to shelter, to water, to life and human dignity and the right to clean and healthy environment. Therefore the need for government to provide adequate food, hospitals, clinics, health centers, portable drinking water, industry for the people to be employed and work in order to promote their life and human dignity as contemplated in the decision of the SERAP<sup>608</sup> has become imperative. Unfortunately, two factors have conspired to make the realization of the noble objectives in the region as contained in section 17 (3) (c) and (d) of the Nigerian Constitution 1999 an illusion. First, as earlier said the provisions in Chapter Two including section 17 (3) (c) and (d) thereof are nonjusticiable. Further that, the objective to pursue and provide health facilities and medical services is not expressly contained in the functions of the Ministry of the developmental institution.

Despite the shortcomings as it relates to its lack of power to pursue improved health and medical facilities in the region, the Ministry in the implementation of its overall development objectives formed collaboration with other governmental and non-governmental agencies to bring about development in the region. As such it formed a very strong synergy with NDDC, and the Millennium Development /Sustainable Development Goals (MDGs/SDGs) to pursue

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<sup>607</sup> *Socio-Economic Rights and Accountability Project (SERAP) v Republic of Nigeria* ECW/CCJ/APP/08/09 delivered by Hon. Justice M. Benflecto Ramos and other four judges of the ECOWAS Court on the 10th of December, 2010.

<sup>608</sup> *ibid*

the growth of health schemes and medical services in the region. To this end, the NDDC, MDGs/SDGs has collaborated with the Ministry to build numerous health facilities aimed at providing functional health care and medical services in the region.

Example of such projects built by Millennium Development Goals (MDGs) in the region include the renovation of existing public health facilities and the distribution of health equipment like ambulances, drugs, hospital beds and staff quarters in Obulu, Olodu, Ogbeinawa, Ayakoromo, Abraka, Okpara, Mojoga, Boboruku and other communities in Delta State<sup>609</sup>. Available records show that the NDDC built specialist hospitals, general hospitals, primary health care centres, cottage hospitals, health posts, dispensaries in rural areas and cities in the Niger Delta which include Ikot-Odo, Ossiom and Idong communities in Akwa Ibom State; Otuabagi and Akaibiri in Bayelsa State; Eziosu and Mgbola in Imo State; and Mgbom, Okpare and Enwhe in Delta State etcetera<sup>610</sup>. The MDGs also built health centers in Bomoudi, Amarata, Famgbe, Igbedi, Opokuma, Sanpou, Sabagreia, Okigbene and Azagbene and other communities and equipped them in Bayelsa state. The same was done in other Niger Delta States like Abia, Imo, Cross River, Edo and Ondo State<sup>611</sup>. Expectedly, these projects are functioning smoothly and helping the communities where they are situated for now, though stakeholders in these communities complain that there are no adequate and functional means guaranteed to repair these buildings in case of any mishap or repair any machine in the health centers if they develop fault.

To conclude this discussion on how the objectives to provide improved health care and medical services in the region could be achieved, it is vital to note that the Ministry suffers

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<sup>609</sup> *MDGs Compendium of Projects Implemented in the Niger Delta Region from 2012 – 2015: 'some Health Related Projects' Implemented in Bayelsa, Delta and Rivers State.* Pp103 – 157. Also the 2011 CGS to 113 LGAs COMPREHENSIVE PROJECT IMPLEMENTATION REPORT, August, 2013.

<sup>610</sup> 'Master Plan Goals in the Context of International and National Development Goals' in NDDC Regional Development Master Plan, p152.

<sup>611</sup> MDGs Compendium of Project (n 623) op. cit



some pitfalls in achieving its set goals. As earlier pointed out, the provision of health care and medical services is clearly not contained in the functions the Ministry is designed to pursue and achieve in the region. All the health facilities and medical services available in the region to promote good health care and medical services are either provided by the Federal or State Governments or interventionist agencies like the NDDC or MDGs. No notable hospital, clinic or health centre built by the Ministry exists in the region. Apart from that, it is appalling to note that on ground, even the health facilities put in place by the MDGs and or the NDDC in the region are fast becoming dilapidated because of lack effective maintenance to service same from time to time.

In fact, in rural communities where health centres are built and equipped, due to the absence of electricity to power the machines or security personnel to guard the facilities against thieves and vandals, the facilities are easily vandalized and rendered nonfunctional by thieves and vandals. Another major setback in this regard is that the interventionist agencies are not doing enough to tackle the increasing spread of infectious diseases like HIV/AIDS in the Region. It is important to maintain that currently the region is rated with the highest number of HIV/AIDS cases in Nigeria<sup>612</sup>. As a consequence, it is hereby submitted that the purpose of using the Ministry or NDDC or nongovernmental agencies like MDGs to provide health facilities and improved medical services for the people of the Niger Delta is fast becoming an illusion, thereby defeating the government's aspiration of achieving sustainable development through the provision of efficient health facilities and medical services in the region.

### **Educational Growth in the Region**

Ouma while appraising the role education plays in bringing about sustainable development in a community maintained that 'education is a key dimension of population quality, adding that

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<sup>612</sup> Niger Delta Regional Development Master Plan (n 221) op cit. Pp95 – 96.

the past decades have seen a great expansion of educational facilities in virtually all countries'. In terms of school enrolment, literacy rates, the growth in technical education, and the development of scientific skills, much progress has been achieved<sup>613</sup>. In his contribution to the public hearing of the World on Commission Environmental Development (WCED) report, Ailton Krenak stressed that education should also be geared towards making people more capable of dealing with problems of overcrowding and excessive population densities, and better able to improve what could be called 'social carry capacity'. This is essentially to prevent raptures in social fabrics, and school, should enhance the levels of tolerance and empathy required for living in a crowded world, emphasizing that improved living conditions will depend on greater literacy, social and civic responsibilities. Concluding, he said education can induce all the above sustainable development indices and can enhance a society's ability to overcome poverty, increase income, improve health and nutrition, and reduce family size'.<sup>614</sup> Evidently, education, as seen from the foregoing expository appraisal has the capacity of uplifting the quality of human life hence national governments the world over have redoubled their efforts at investing in the educational growth of their respective population through the formulation of expansive educational policies. Though declared nonjusticiable by the court, the Nigerian Constitution 1999 (as amended) elaborately provides that the government shall provide equal and adequate educational opportunities for all Nigerian citizens. Section 18 (1), (2) and (3) thereof categorically provides that there should be university education and free adult literacy programmes at all times for all citizens of Nigerian.

Certainly the reproduced portion of section 18 of the Nigerian Constitution contained some Sustainable Development Goals. First, the prescription that all Nigerians shall have equal

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<sup>613</sup> J. Ouma, (n 618) Op cit.

<sup>614</sup> A. Krenak, 'Broadening Education' being a paper presented at the WCED Public Hearing in Sao Paulo from 28 – 29<sup>th</sup> October, 1985. Accessed from the web on 13<sup>th</sup> August, 2018.

educational opportunities presupposes that the Federal Government of Nigeria shall create unimpeded and equal opportunities for every Nigerian to attain whatever level of education he/she desires in the country. On the basis of this fact, it is argued that the Nigerian Constitution, by advocating for every Nigerian citizen to have equal opportunities contemplates Nigeria to be an egalitarian state<sup>615</sup> which is a sustainable development index. That apart, the content of section 18 of the Constitution demonstrates a commitment on the part of the government to ensure that illiteracy is eradicated from the Nigerian population by envisaging that whenever it becomes practicable, the Nigerian Government shall pursue an educational policy that is directed at ensuring at the primary level; free education and free literacy programmes for adults. Besides the aforesaid, it is expedient to note that government's desire to eradicate illiteracy from the population is also a Sustainable Development Goal<sup>616</sup>.

The lofty intendments in the Nigerian Constitution in the foregoing notwithstanding, it is imperative to maintain at this point that most of the ideals contained in section 18 cannot be realized easily in practical sense. For instance, guaranteeing free education opportunities for all in this country as provided in section 18 (1) of the Constitution demands enormous resources and the interplay of various socio-economic and political factors, which could possibly trigger-off crises that will impact negatively on the educational sector of the country. Asides from that, perhaps the most devastating blow dealt to the implementation of the educational objectives in section 18 of the constitution of the country is the provisions in section 6(6) (c) which foreclose Nigerians from compelling the government to implement the ideals in Chapter Two of the Constitution through the court. This was the position the court reached in the case of *Adamu v AG Bornu State*<sup>617</sup>.

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<sup>615</sup> Section 17 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>616</sup> J. C. Nwafor, (n 600)) op cit.

<sup>617</sup> *Adamu & Ors v AG Bornu State & Ors* (1998) 1 NWLR (pt. 427) pp681 – 687.

The facts of Adamu's case were that Adamu and other Christian pupils in primary schools in Gwoza Local Government Area of Bornu State were educationally and socially discriminated against on the ground that they are Christians. Adamu and other affected pupils thus approached the court for a declaration that the action of Bornu State Government is unconstitutional and void, by reason that it violates their rights as contained in section 18 (1) and (3), 35 and 39 of the Nigerian Constitution 1979, which guarantees Nigerians the rights to education and freedom against discrimination. The Maiduguri High Court held that its jurisdiction to entertain the matter which borders on the implementation of the educational right of a citizen in Chapter Two of the Nigerian Constitution 1979 has been eroded away by the provisions of the same Constitution.

The critical legal point to note in Adamu's case is that the access to education in the Constitution Adamu relied on to pursue his case is contained in Chapter Two of the Nigerian Constitution 1979, the legal power to enforce which has been ousted by section 6 (6) (c) thereof. The right to education, conversely is not provided for in Chapter Four of the same Constitution which is justiciable. Little doubt, Adamu's action was caught up by the non – justiciability web enveloping Chapter Two of the Constitution. The bottom line of the entire debate as shown in the foregoing is that constitutionally the right to education in Nigerian, like all other provisions in Chapter Two of the Constitution is non – justiciable and therefore cannot be enforced, except a legislation enacted categorically authorizing that an item or provision in Chapter Two be enforced<sup>618</sup>.

It is however necessary to point out that the decision in Adamu's case is in sharp contrast with that of the South African case of *Khosa v Ministry of Social Development*

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<sup>618</sup> Item 60 (a), second schedule, pt. I, Exclusive Legislative list of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

*Legislation*<sup>619</sup>, given that the facts of the two cases border on socio-economic rights. Both of them also contain elements of the right to personal<sup>620</sup> freedom from discrimination<sup>621</sup> which are fundamental rights that are sacrosanct and actionable under both the Nigerian and South African Constitutions. Interestingly, in Khosa's case the South African Constitutional Court gave consideration to the fundamental human right element embedded in the socioeconomic right in the South African Constitution<sup>622</sup> and held that the discrimination against the children and depriving them of their socio-economic right under the South African Constitution was null and void, because it violates the provision of the South African Constitution<sup>623</sup>.

The Nigerian court, on the other hand, not minding the fact that Adamu pleaded section 39 of the Nigerian Constitution 1979 which is a provision in Chapter Four ignored same and went on to declare the case non justiciable. Perhaps, it is in appreciation of the high utility value and benefit derivable from implementation of the socio-economic rights contained in Chapter Two of the Nigerian Constitution that prompted Uwaifo JSC, in the case of *AG of Ondo State v AG of the Federation & 32 Ors*<sup>624</sup>, to admonish the National Assembly to also legislate on other provisions in Chapter Two of the Constitution and make them enforceable for the common good of all Nigerians.

The above discussion notwithstanding, it is necessary to emphasize that the ECOWAS court in *SERAP v President of Federal Republic of Nigeria and Universal Basic Education Commission*<sup>625</sup>, relied on the provisions of the African Charter which is an International

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<sup>619</sup> *Khosa v Ministry of Social Development Legislation* 2004 (6) BCLR 569 (CC) (S.Afr)

<sup>620</sup> Section 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>621</sup> Section 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>622</sup> Sections 27 (1) and 9 (3) of the South African Constitution 1996.

<sup>623</sup> *ibid*

<sup>624</sup> *AG of Ondo State v AG of the Federation & 32 Ors* (n 532) *op cit*.

<sup>625</sup> *Registered Trustees of the Socio Economic Rights and Accountability Project (SERAP) v President of Federal Republic of Nigeria and Universal Basic Education Commission* (Suit No. ECW/CCJ/APP/08/08) ruling delivered on the 27th October, 2009 available @ <[www.courtecowas.org](http://www.courtecowas.org)> accessed 14 October, 2009.

Treaty signed, ratified and domesticated by Nigeria according to section 12 of its Constitution 1999, which empowers Nigeria to enforce the educational rights.<sup>626</sup>

Pertaining to the state of education in the Region, there is no denial that the educational growth of Niger Delta is in dire straits as there are inadequate educational infrastructures in the region. A survey carried out by the NDDC in 2005 indicated ‘that 82% of pupils attend schools owned by the government while 10% attend privately owned schools. Community owned school’s cater for 2% of the total pupils that attend school, while 1% attend schools owned by religious organizations. The government education sector in the region is burdened with serious structural problems and these have accelerated the proliferation of private schools and withdrawals of children from public primary schools’.

‘The quality of education which has been declining for years also compound youth unemployment, conflict and other socio-economic challenges’.<sup>627</sup> Perhaps it was in acknowledgement of the above realities that the Nigerian Government deliberately included objectives that would enhance accelerated educational growth in the Region among the functions pursued by the Ministry of Niger Delta Affairs, particularly the one which provides that ... ‘the Community Development and Education Department of the Ministry is to oversee the education and human capacity development, community enlightenment and social services in the region.’<sup>628</sup> The desire to boost the educational growth of the region is further reaffirmed in the educational objectives set forth in the NDDC handbook and pursued by the Commission in the region and which are to the effect that it shall-

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<sup>626</sup> *Abacha v Fawehinmi* (2000) 6 NWLR (pt 660) p228

<sup>627</sup> NDDC Niger Delta Regional Development Master Plan 2001, p87.

<sup>628</sup> The objectives of the Department of Community Development and Education (CDE) of the Ministry of Niger Delta Affairs (MNDA) profile, <<http://www.nigerdelta.gov.ng/e-mail:dprs@nigerdelta.gov.ng>> accessed 18 June, 2018.

- i. provide comprehensive science education facilities for the production of post – secondary school graduates with solid education background in order to redress the acute deficiency in the area in the NDDC states;
- ii. assist the children of these communities to obtain better post – primary results geared towards arts and technical education at higher levels;
- iii. produce a crop of senior secondary school leavers with advanced professional degrees and certificates for better employment opportunities in scientific and technical field;
- iv. confirm the commission’s beliefs that human development is a primary and critical factor in developmental process.<sup>629</sup>

Amplifying the above NDDC objectives, the Ministry in its annual performance score-sheet stated that its community development and education department among other achievements has successfully completed baseline needs assessment survey in the region, which has assisted the Ministry to determine areas of intervention and plan for the needs of the communities. Basically, the areas covered by the said survey and which the Ministry is working to promote development in the region include the provision of educational facilities in the region. Consequently, in meeting its mandate which is to collaborate with other relevant agencies of government to provide facilities for the improvement of the quality of life in the region; the Ministry has formed a strong synergy with the NDDC to promote the educational growth of the region. This is clearly confirmed in the Commission’s 2010 annual report wherein it is affirmed that in order to meet the educational needs of the people, the NDDC has accomplished the following educational milestones<sup>630</sup> in the region:

- (a) The Commission provided accommodation for both staff and students as a result, many classroom blocks and staff quarters were rehabilitated, and several new ones built in various

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<sup>629</sup> ‘NDDC concepts and guidelines Manual for implementing the Quick Impact Project of the Niger Delta Regional Development Master Plan’ (NDRDMP) (2001), p19.

<sup>630</sup> NDDC Annual Report 2010, p26

communities in the region. (b) Beyond these, the Commission also commenced the construction of standard lecture halls and hostels in 14 universities within the region, essentially to improve the standard of education in the Region. For example, NDDC constructed lecture halls and hostels in many universities in the region amongst which are – University of Port Harcourt; Niger Delta University, Wilberforce Island; University of Benin; Delta State University, Abraka, Sites 1, 2 & 3; Akwa Ibom State University, Uyo; University of Calabar; Edwin Clark University, Kiagbodo etcetera.

As evident in the above, NDDC in order to boost the educational upliftment of the region deliberately extended the provision of its educational facilities to privately owned universities in the Niger Delta as well. Besides, in concert with the Ministry, NDDC is equally undertaking the following functions to boost the educational growth of the region, to wit, (i) provide furniture, science equipment and other facilities for educational institutions across the Niger Delta Region; (ii) donation of computer, high technical equipment and other audio visual aids to tertiary institutions with a view to enhancing teaching and learning. (iii) improving and completing the capacity building of 3000 secondary school core subject teachers selected from the nine states of the region. Specifically, selected mathematics, English language, physics, chemistry, biology, ICT teachers are picked randomly from secondary schools in the Niger Delta States and sponsored by the NDDC to undergo further training to enhance their professional skills; and (iv) award of post graduate foreign scholarship for M.sc and Ph.D. to 200 students to study medicine, engineering, ICT, Geoscience, Environmental science, etcetera.

Although as gleaned from the preceding discussion there is apparent growth in the educational investment and school enrolment which have signaled progressive sustainable educational upliftment in the region within the past decades, it is nonetheless worthy to note that there are still some major problems undermining the firm attainment of sustainable



development in the educational sector of the region. First, despite the efforts of the Ministry and the Commission in providing educational facilities like classrooms, desks, lockers, blackboards, hostels, staff quarters and other instructional materials that are essential for effective teaching and learning; majority of the schools are still lacking these vital educational amenities in the region. This problem is further compounded by the dearth of qualified teachers to work in rural or community schools for multiple reasons which include absence of accessible means of communication, the lack of electricity, safe drinking water and other essential amenities for worthy living. Besides, the increasing violence, hostilities and kidnaping in the region also constitute a major setback in the educational growth of the region.

Furthermore, the sustainable value of man's education is predicated on the assumption that the learning he has acquired should be able to guarantee the sustenance of his family and himself. In that sense, the general expectation is that such educated man should be employed and be wage earning. But where he is unemployed and redundant, the essence of his education is defeated and he becomes a liability to his family and the society. This is the vivid picture most graduates in the Region suffer. The resultant effect of the monumental graduate unemployment in the region is that most of them ultimately end up as social misfits such as militants, kidnappers, self-declared freedom fighters and trouble makers. This tendency, no doubt, defeats the noble aspirations of sustainable development particularly as it borders manpower growth in the region.

That apart, a general presumption exists that whatever that qualifies as a component of sustainable development in the society, must be serviced and sustained to ensure its preservation overtime. Viewed against this background, the educational facilities built and/or installed in the schools in the Region like classroom blocks, water system, instructional materials, computers, laboratory equipment, power generating sets and other educational

facilities provided by the Ministry and the NDDC ought to be provided with a system that can effectively service them periodically. However, this is not the case and the educational facilities jointly provided by the Ministry and the Commission in the Region are left to rot away because of the absence of a viable and well-defined maintenance culture.

Above all, contractors after collecting mobilization fees abandon the projects designed to promote educational growth in the region, citing hostility in the area or vandalism or excessive cases of stealing of building materials in the region as the reason for such abandonment. Although these claims are germane on ground, the implication of abandoning development projects for inexplicable reasons or flimsy excuses defeats the essence of attaining sustainable growth.

#### **4.4 Non-Implementation of the Environmental Objectives: A Major Setback to the Sustainable Growth of the Region**

The phrase ‘environment’ has been described to include ‘water, air, land and all plant and human beings or animals living therein and the relationship which exists among these or any of them<sup>631</sup>. The environmental objectives are contained in Chapter Two of the Nigerian Constitution 1999 (as amended). These provisions are also referred to as socio-economic rights, which by their very nature are aimed at advancing the socio-economic wellbeing of the people in the society essentially to uplift their living conditions and human dignity<sup>632</sup>. The environmental objectives therefore, by implication, are socio-economic rights entitling the people of a country to enjoy clean environment and healthy living. For emphasis, section 20 of the Constitution of Nigeria 1999 (as amended) provides for the right to clean environment

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<sup>631</sup> Section 37 of the National Environmental Standards and Regulations Enforcement Agency (Establishment Act), 2007

<sup>632</sup> S. Liebenberg, ‘South Africa’s Evolving Jurisprudence on Socio-Economic Rights: An Effective Tool to Challenging Poverty?’ (2002) 2 *law, Democracy & Development* Pp 159 – 191

and healthy living, and which provision states that the government shall protect and improve the environment.

Stewart while analyzing the South African case *Mazibuko v City of Johannesburg*,<sup>633</sup> which bordered on the provisions of the South African Constitution on the right to drinking water for the citizens of that country; maintained that the right to clean and healthy environment means living in an environment free of pollution and ecological degradation, but rich in sustainable agricultural growth, availability of pure drinking water and other natural resources vital for their Sustainable Development and healthy living.

The lofty benefits derivable from enforcing the right to clean environment in a Constitution of a country as postulated by Stewart above when placed against the provisions of section 20 of the Nigerian Constitution 1999, would mean that the Nigerian government is under an obligation to formulate environmental policies directed at eliminating and safeguarding shortage of water for domestic and agricultural purposes; clean air, land and forest free of pollution for the common good of Nigerians and by extension, wild life.

Though the noble benefits Nigerians can derive from the implementation of the right to clean environment and healthy living are numerous as explained in the foregoing, but by operation of a provision in the same Nigerian Constitution and as decided by the courts in case of *Olubunmi v Attorney General of Lagos State*<sup>634</sup> and other related cases, section 20 and all other provisions in Chapter Two of the Constitution have been declared non-justiciable therefore the right of Nigerians to benefit from the socio-economic right of access to clean environment and healthy living as enunciated in the Constitution has been foreclosed.

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<sup>633</sup> *Mazibuko v City of Johannesburg* w2008 JOL 21829 (SCA) (S. Afri.), available at <<http://www.saflii.org/za/cases/ZAGPHC/2008/106.pdf>>; *city of Johannesburg v Mazibuko* 2009 (3) SA 592 (SCA) at 17 (S. Afr.), available at <<http://www.saflii.org/za/cases/ZAGPHC/2009/20.pdf>>

<sup>634</sup> *Olubunmi v Attorney General of Lagos State* (1981) 2 NCLR 350

The critical problem to appraise then is, how does the non-implementation of the environmental provisions the in the Nigerian Constitution affect the attainment of sustainable growth and healthy living of Nigerians, particularly the people of Niger Delta Region? The truth is that the non-implementation of the environmental objectives under the fundamental objectives of the Constitution has caused monumental existential hardship for Nigerians. First, it has impaired their right to adequate standard of living. This contention finds expression in the realization that the availability of food, drinking water, fertile land for agriculture and other natural resources in a community determines the level of sustainable growth of its population. This is so because a people ravaged by hunger, diseases and poverty cannot lay claim to clean environment and healthy living.

This is clearly what is obtainable in the area under investigation the provisions touching on the environmental rights in the Constitution are not justiciable, the people cannot compel government to provide their socio-economic needs to better their lives, unlike what is obtainable in South African where socio-economic rights are justiciable as decided in plethora of cases cited in the foregoing.

The ECOWAS court however held in the case of *Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria & Ors*<sup>635</sup> that the violation of the Niger Delta peoples' socio-economic right to clean environment and healthy living, 'is a violation of their right to life which include their right to food, work, wealth, water, life and human dignity, clean and healthy environment; and economic and social development'. And that Nigeria being a signatory to the ECOWAS Treaty and having domesticated same is bound by the treaty therefore, the socio-economic right to clean environment and healthy living is enforceable under the Treaty in Nigeria.

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<sup>635</sup> *Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria & Ors* (n 621) op cit.

Another critical setback the nonenforcement of the environmental rights in the Constitution of Nigeria has caused the people of Niger Delta is the inadequate payment or outright nonpayment of compensation as a result of oil pollution to their environment. It would be recalled that when pollution in form of spillage or blowout occurs it affects the rivers, creeks, farmlands, aquatic life, fishing rights, and other means of self-sustenance and livelihood of the people. Ordinarily, the law demands that when tortious liabilities of this sort bordering on negligence, nuisance, trespass, etcetera occur; the party that suffers damages is entitled to compensation. Thus, the court in the case of *San Kpede v Shell-BP LTD*<sup>636</sup> emphatically affirmed the difficulty the people of Niger Delta face in their attempt to claim adequate compensation for damages caused them by oil spillage through the courts. In the words of the court;

Oil spill has affected third party rights in form of property, farmlands, economic and profitable trees, swamps, creeks, streams, rivers, wells, and homes are damaged; maintaining however that the courts have rendered the concept of fair and adequate compensation as provided in the statutes in the Country illusory.<sup>637</sup>

This, no doubt, constitutes a big setback to the attainment of sustainable development through clean environment and healthy living which are components of ‘the right to life’<sup>638</sup> in Chapter Two of the Constitution of Nigerian 1999. This was the position the court reached in the case of *Gbemre v SPDC & then Nigerian National Petroleum Corporation*<sup>639</sup>.

The facts of Gbemre’s case are that Mr. Jonah Gbemre of Iwherekan Community in Delta State of Nigeria filed this case in the Federal High Court, Benin Division, in representative capacity for himself and the people of Iwherekan Community against Shell Petroleum

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<sup>636</sup> *San Kpede v Shell-BP Petroleum Development Company of Nigeria LTD* (1973) M.W.S.J. (i.e. selected judgements of the High Court of Mid-Western State) p88.

<sup>637</sup> *ibid* p88

<sup>638</sup> Section 33 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>639</sup> *Gbemre v Shell Petroleum Development Company & the Nigerian National Petroleum Corporation* (2005) AHRLR (151) (NgHC 2005)

Development Company Limited, Nigerian National Petroleum Corporation citing the underlisted issues as the legal bases for his action.

- a) That by virtue of sections 33(1) and 34(1) of the Constitution of Nigeria, 1999 (as amended) they have a fundamental right to life.
- b) That by articles 4, 16 and 24 of the African Charter on Human and People's Right they are entitled to healthy life in a healthy environment;
- c) That no environmental impact assessment was carried out by the 1<sup>st</sup> and 2<sup>nd</sup> respondents concerning their gas flaring activities in the applicant's community as required by section 2(2) of the Environmental Impact Assessment Act, Cap E12 vol 6, LFN 2004.
- d) That no valid ministerial gas flaring certificates were obtained by any of the 1st and 2nd respondents authorizing the gas flaring in the applicant's said community in violation of section 3(2) of the Associated Gas Re-Injection Act, Cap A25.
- e) That the provision of section 3(2) of the Associated Gas Re-Injection Act, Cap A25, of the Associated Re-Injection (Continued Flaring of Gas) Regulations 43 of 1984 are unconstitutional, null and void.

Based on the foregoing, Gbemre as applicant in the case, prayed the court to grant him the following reliefs;

1. A declaration that the constitutionally guaranteed fundamental rights to life and dignity of human person provided in section 33(1) of the Constitution of Nigeria, 1999 (as amended) and Article 4 of the African Charter guarantees the right to clean, poison-free and healthy environment.
2. A declaration that the failure of the 1st and 2nd respondents to carry out environmental impact assessment in the applicant's community concerning the effects of their gas flaring activities is a violation of section 2(2) of the Environment Impact

Assessment Act, Cap E12 vol 6 Laws of the Federation of Nigeria, 2004 and contributes to the violation of the applicant's said fundamental rights to life and dignity of human person.

3. A declaration that the provisions of section 3(2)(a), (b) of the Associated Gas Re-Injection Act, Cap A25, vol 1, Laws of the Federation of Nigeria, 2004 and Section 1 of the Associated Gas Re-Injection (continued flaring of gas) Regulations are inconsistent with the provisions of Section 33(1) and 34(1) of the Constitution of Nigeria, 1999 (as amended) and articles 4, 16 and 24 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 vol 1, Laws of the Federation of Nigeria, 2004 and are therefore unconstitutional, null and void by virtue of section 1(13) of the same Constitution.

The presiding judge, Justice Nwokorie upon hearing and thorough evaluation of all the processes, submission and judicial authority cited by all parties to the suit held among others that;

1. That these constitutionally guaranteed rights include the right to clean, poison-free, pollution-free healthy environment.
2. The actions of the 1st and 2nd respondents in continuing to flare gas in the course of their oil exploration and production activities in the applicants' community is a gross violation of the applicant's fundamental right to life (including healthy environment) and dignity of human person.

Instructively, the defendants in this case failed to appeal against the final judgement but merely appealed against the ruling of the court which dismissed their preliminary objection.

The Court of Appeal equally upheld the decision of the lower court and threw out the defendant's appeal on their preliminary objection. Flowing from this, it is argued that the decision in Gbemre's case, remains the extant position of the law.

The difficulty in litigating environmental issues arising from the violation of the constitutional provision in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended) also played itself out in *Oronto Douglas v Shell Petroleum Development Co. Ltd*<sup>640</sup>, where the plaintiff sought among others a court order compelling the defendant to comply with the provisions of the Impact Assessment Act in respect of the construction of the Liquefied Natural Gas Project in Brass area. It was held that the plaintiff has shown no prima facie evidence that his right was affected nor any direct injury caused to him; and that no personal right of his has been infringed nor has he shown that he suffered any injury or anything more than other members of the public.

The decision in Oronto's case unarguably raises the question of locus standi in environmental claims. It is however pointed out that if Oronto Douglas had founded his action on Fundamental Human rights Enforcement, claiming on behalf of the communities impacted negatively by the activities of Shell Petroleum Development Company Limited as was done by the applicant in Gbemre's case, his action would not have been defeated by his lack of locus standi.<sup>641</sup>

Furthermore, the demand by the courts that victims in cases bordering on tortuous liabilities like nuisance, negligence, trespass to land etcetera, meet the required burden and standard of proof while pursuing their cases also act as a clog in the plaintiff's desire to ventilate their environmental rights. For example, in *Seismograph Services v Mark*<sup>642</sup> where the Plaintiff claimed compensation for damages from the Defendant because the Defendant's boat destroyed his fishing nets, but he failed to prove that the company acted negligently at the trial, the Court of Appeal held that the oil company did not breach any right of the plaintiff notwithstanding the fact that the Defendant's boat tore the plaintiff's fishing nets. This is

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<sup>640</sup> *Oronto Douglas v Shell Petroleum Development Co. Ltd* (1999) 2 NWLR (pt 591) 466; 13.

<sup>641</sup> Section 3 (e) of the Fundamental Rights (Enforcement Procedure) Rules 2009.

<sup>642</sup> *Seismograph Services v Mark* (1993) 7 NWLR (pt. 203) p15



because the plaintiff, an old and illiterate traditional fisherman failed to provide the technical details of the breach therefore his case was dismissed, pointing out that the allegation that the seismic boat tore through and carried away floaters and other parts of his fishing net, though established at the trial, is not by itself suggestive of excessive speed or negligence.

Closely related to the foregoing is the bottleneck associated with claiming damages arising from noise pollution, heat wave and vibration suffered by the people of the Region due to the activities of oil companies. In *Chinda & Ors v Shell BP Pet Co Nigeria*<sup>643</sup> the plaintiff filed a case of heat wave, noise pollution and vibration against the defendant insisting that it was the negligent flare-set used during gas flaring operations by the Defendant's company that resulted in the monumental damage caused the plaintiff's property. The court held that the plaintiff failed to prove any wrong arising from the Defendant's use of the flare-set. Other legal issues impeding the smooth payment of compensation and claims for damage to the people of Niger Delta Region include: (i) the issue of pre-action notice (ii) limitation of time, (iii) amount of compensation to be awarded and paid, (iv) denial of grant of injunction to restrain oil companies, (v) delays in the prosecution of case by the court, etcetera.

Further that, provisions designating certain activities of oil companies as criminal conducts are also guaranteed in various environmental protection laws in the country, albeit that the amount of money levied against oil companies for defaulting these laws as fines are too minimal to serve as a deterrent to defaulting oil companies.

However, the Nigerian Government being mindful of these setbacks and determined to frontally tackle them has categorically inserted a provision in the functions of the interventionist Ministry which is to the effect that 'the Ministry shall Liaise with oil

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<sup>643</sup> *Chinda & Ors v Shell BP Pet Co Nigeria* (1974) 2R.S. LR p1

companies in the region to ensure environmental protection and pollution control'.<sup>644</sup> Nonetheless, judging from the annual report posted by the Ministry in its website, the only environmental protection projects it is pursuing in the region since 2010 are canalization, shoreline protection, land reclamation, erosion control and rehabilitation<sup>645</sup>. It is however noted that majority of these projects are fraught with allegations of financial misappropriation thus abandoned midway. The truth is that little or nothing has been done in respect of liaising with the oil companies to curb pollution and gas flaring which constitute the main environmental challenges in the region and which the Ministry is enjoined to tackle.

Worse still, even the Ogoni clean-up programme which foundation laying was done since June 2, 2016 and which is the only visible environmental protection project currently pursued by Federal Government in the region has not taken off effectively till date<sup>646</sup>. Stakeholders in the region are thus forced to hold the opinion that the Ogoni clean – up programme has become a political weapon targeted at garnering votes for the ruling party and not directed at promoting environmental sanity in the region.<sup>647</sup> Besides that, although many other spill sites in the region begging for clean-up still exist, the Ministry has not deemed it necessary to liaise with oil companies operating in the area or engage non –governmental agencies<sup>648</sup> to start the clean-up of other sites affected by pollution. It has therefore become safe to conclude that the Ministry has completely failed in its responsibility of stemming the increasing cases of environmental pollution being one of the functions it is created to discharge.

#### **4.5 Exploring the Vistas for Sustainable Development Beyond the Non-justiciability Principle of the Fundamental Objectives**

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<sup>644</sup> The 'Functions, vision and mission of The Ministry of Niger Delta Affairs', <<http://www.facts.ng/ministry-of-niger-delta-affairs>> accessed 10 June, 2018

<sup>645</sup> *ibid* p25 – 28

<sup>646</sup> 'Ogoni Clean up Begins in two weeks'. *Punch Newspaper* May 1, 2019. online. <<https://punching.Com>ogoniclean.>> accessed 10 June, 2018

<sup>647</sup> *Vanguard Newspaper Online*, January 15, 2019. <<https://www.vanguard.com>> accessed 15 June, 2018

<sup>648</sup> 'The Functions and Policy Focus of the Ministry of Niger Delta Affairs'. (n 662) *Op cit*.

The socio-economic rights as ably established in the preceding discussion are designed to avail Nigerians with easy access to free mobility in the entire federation, abolition of all forms of corrupt practices and abuse of power, equal opportunities, for all persons, free and compulsory universal primary education, and many other rights<sup>649</sup>. As a result, they have been described as the ideological foundation of governance in Nigeria<sup>650</sup>.

In all intent and purposes, the objectives in Chapter Two of the Constitution are very laudable in scope hence every organ of public administration, is enjoined to conform, observe and apply it in the discharge of their duties<sup>651</sup>. However, by operation of section 6 (6) (c) of the same Constitution, the Courts have repeatedly held that they lack the power to entertain matters bordering on Chapter Two of the Constitution. This is the decision the court reached in *Ehinmare v Government of Lagos State*<sup>652</sup> and other related cases.

The fundamental legal question worth resolving here is whether the non-justiciability of Chapter Two is total and final in Nigerian jurisprudence? An exploration of the general attitude of the courts on the non-justiciability or otherwise of the fundamental objectives in Chapter Two robustly show that the non-justiciability of Chapter Two is not total. The Supreme Court reached this decision in *Anachie & Ors v FRN In Re-Olafisoye*<sup>653</sup> where it proffered instances, the principle of non-justiciability can be set aside and the provisions of Chapter Two of the Nigerian Constitution, 1999 (as amended) implemented for the enhancement of socio-economic transformation and sustainable development in the country.

In the opinion of the supreme court in the aforementioned case, the fundamental objectives could be implemented or made justiciable whenever the National Assembly makes any

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<sup>649</sup> Section 16 (2) (d) of the Constitution of the Federal Republic of Nigeria

<sup>650</sup> A. T. Shehu, 'The Enforcement of social and Economic Rights in Africa: The Nigerian Experience' Afe Babalola University, Journal of Sustainable Development and Policy, vol. 2 Iss1, (2013), p102.

<sup>651</sup> Section 13 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>652</sup> *Ehinmare v Government of Lagos State* (1981) NCLR 166. Also, the case of *Kaegbu v AG Imo State*. SC/83/1983 of 30/3/83 SC.

<sup>653</sup> *F.R.N v Anachie & Ors In Re-Olafisoye* (2007) ALL FWLR (pt. 186) 1106 @ 1153

legislation for the implementation of any item in Chapter Two of the Constitution. The implication of this position is that it makes section 6 (6) (c) subject to the legislative power of the National Assembly with respect to enforcement of the socio-economic rights in the Nigerian Constitution, 1999 (as amended). The Supreme Court in *AG of Ondo State v AG of the Federation & 32 Ors*<sup>654</sup> elaborately espoused this position when it held that by the combined reading of sections 15 (5), items 60 (a), 67 and 68 of Part I of the second schedule to the Nigerian Constitution 1999, the National Assembly has powers to enact the anti-corruption legislation, to enforce the provisions of section 15 in Chapter Two of the Constitution, to combat corruption and promote sustainable development in the Nigerian society. As a result, the agency designated to enforce the ICPC Act, has arrested, prosecuted and sentenced many corrupt public officers to various terms of imprisonment to sanitize the Nigerian society of corruption. Closely related to this is the case of *Jolly Nyame v FRN*<sup>655</sup> where the trial court's decision sentencing Jolly Nyame, former Governor of Taraba State to 14 years imprisonment for embezzling N1.64 billion while in office as governor of that state was affirmed by the Supreme Court. This clearly attests to the fact that law can be used as an effective weapon to fight against corruption and promote socio-economic development in a country.

Another instance where the courts can declare the fundamental objectives justiciable is when the right allegedly breached in Chapter Two also touch on a provision under Chapter Four (i.e. the fundamental rights) or any other provision that is justiciable on its own. Thus, in *Adewale v Jakande*<sup>656</sup>, the Lagos State High Court while interpreting sections 16, 18 and 36 of the 1979 Constitution, categorically held that if the breach of Chapter Two also constitute a breach of Chapter Four (i.e. the fundamental rights), such breach makes the provision in

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<sup>654</sup> *AG of Ondo State v AG of the Federation & 32 Ors* (n 532) op cit.

<sup>655</sup> *Jolly Nyame v FRN* (2010) 7NWLR (pt. 1193) p344 also (2010) JELR 56428 SC.

<sup>656</sup> *Adewale v Jakande* (1981) 1 NCLR, p262

Chapter Two of the Constitution justiciable. In a similar vein, the court while considering the environmental rights in section 20 of the Constitution in the case of *Gbemre v SPDC & Ors*<sup>657</sup> held that the fundamental right to life in the Constitution includes the right to clean and healthy environment, therefore justiciable. The decision in Gbemre's case is that there cannot be a right to life without the ancillary right of access to food, clean water and good environment. It is further added that in view of previous judgements of the courts which declared the environmental right in section 20 of the Nigerian Constitution non-justiciable, the judge in Gbemre's case demonstrated a great deal of judicial activism by declaring that the rights to clean environment and healthy living being components of the right to life in Chapter Four of the Constitution are justiciable.

The same principle of law was applied in *Adamu & Ors v AG Bornu*<sup>658</sup> which bordered on the educational, religious and social discrimination and deprivation perpetrated against Adamu and other Christian pupils in Gwoza, Bornu State. Adamu founded his case on sections 18 (1) and (3), 35 and 39 of the 1979 Constitution of Nigeria, praying the court to declare that the deprivation of their constitutional rights was illegal, unconstitutional, null and void. Although the court held that section 6 (6) (c) of the 1979 Constitution of Nigeria ousts the powers of the Courts to question whether or not any authority or person is in breach of Chapter Two, it however added that when a local authority as in Adamu's case, while implementing the Fundamental Objectives of State Policy adopts a system which infringes on the citizens fundamental right on ground of religion, sex and tribe, that breach of citizen's fundamental right is justiciable.

Nevertheless, the aspect of the court's judgement in Adamu's case which states that '*where a local authority in implementing the fundamental objectives of state policy adopts a system*

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<sup>657</sup> *Gbemre v Shell Petroleum Development Company & the Nigerian National Petroleum Corporation* (n 654) op cit.

<sup>658</sup> *Adamu & Ors v AG Bornu* (n 631) op cit.

*that infringes on citizen's fundamental right, that breach of the citizen's right is justiciable*'; has attracted severe criticisms from scholars and legal commentators. Esavwede, for example, contends that the justiciability intended by the court in its judgment in Adamu's case only relates to the fundamental rights in Chapter Four, but does not extend to cover the fundamental objective provisions in Chapter Two of the Constitution<sup>659</sup>. It is nonetheless argued in disagreement with Esavwede that when the postulations of Oliver Wendell Holmes that *'the prophesies of what the courts will do in fact and nothing more pretentious, are what I mean by the law'*<sup>660</sup> is taken into consideration, it becomes apparent that what the court said in Adamu's case is a general limitation on the effect of the non-justiciability restrictions placed on the entire provisions in Chapter Two. After all, commentators now cite the court's position in Adamu's case as one of the exceptions to the non-justiciability rule covering Chapter Two of the Nigerian Constitution<sup>661</sup>. Another instance where the fundamental objectives could indirectly become enforceable is when the plaintiff found his action on the provisions of the African Charter, which Nigeria has domesticated and now forming part of the domestic laws of the country<sup>662</sup>. Briefly, some socio-economic rights similar to those in Chapter Two of the Nigerian Constitution 1999 (as amended) which border on the right to health, right to education, family right, right to economic, social and cultural development, satisfactory environment etcetera, are also provided for and guaranteed citizens of member states. These rights are enforceable under the Charter, hence in *SERAC and Centre for Economic and Social Right v Nigeria*,<sup>663</sup> the Nigerian Government was held liable by the Commission for the violation of the rights to freedom from discrimination, right to property,

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<sup>659</sup> J.P. Esavwede, 'Problems of the Nigerian environment and constitutional response' in F. O. Emiri, et al (ed) *'Law and Petroleum Industry in Nigeria: Current Challenges'*, (Essays in Honour of Justice Kate Abiri). (Malthouse Press Ltd 2009) Pp133 – 138

<sup>660</sup> J.M. Elegido, *'Jurisprudence, a text book for Nigerian students'*, (Spectrum books limited, 1994) p97.

<sup>661</sup> L. Nwauzi, (n 593) op. cit.

<sup>662</sup> ibid

<sup>663</sup> *Socio-Economic Rights Action Centre (SERAC) and Centre for Economic and Social Right v Nigeria* 2001 AHRLR60 Communication No. 155/96/2001, available at <[www.umn.edu/africa/compases](http://www.umn.edu/africa/compases)> accessed 28 August, 2018

right to housing, right to food, right to freely dispose off their wealth and resources and the right to safe environment provided under the Charter<sup>664</sup>.

Furthermore, the fundamental objectives in Chapter Two of the Nigerian Constitution are enforceable when filed in a case before the ECOWAS Court. This is because its jurisdiction is governed by the provisions of the African Charter and Peoples Right. Thus in the case of *The Registered Trustees of SERAP v President and another*,<sup>665</sup> the ECOWAS court held that the right to education guaranteed Nigerian citizens under the Charter is justiciable, maintaining that every Nigerian has the right to be educated.

Perhaps the most pungent confirmation that the provisions in Chapter Two of the Nigerian Constitution are justiciable is made more explicit in the decision reached by the ECOWAS Court in *SERAP v Federal Republic of Nigeria*.<sup>666</sup> In that case the plaintiffs, a civil society organization, in form of a public interest filed a case in the ECOWAS Community Court against the Government of Nigeria and others, wherein they urged the court to declare that the decades of oil spills and environmental degradation, which destroy crops and damaged the quality and productivity of soil communities used for fishing, drinking and other domestic and economic purposes in the region is a violation of the peoples' right to adequate and standard living, including the right to food, to work, to water, to life and human dignity, to economic and social development.

The plaintiffs in pursuing this case at the ECOWAS Court relied on International Covenants, on Economic, Social and Political Rights. Importantly, by operation of section 12 of the Nigerian Constitution 1999 (as amended), any of these treaties Nigeria is a signatory to and

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<sup>664</sup> Articles 4, 16,18 and 24 of the African Charter on Human and Peoples Right.

<sup>665</sup> *The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria*, Suit No: ECW/CCJ/APP/0808 decided in the ECOWAS Court presided over by Justice Hansine N. Donli on 27th October, 2009.

<sup>666</sup> *SERAP v Federal Republic of Nigeria*, Suit No. ECW/CC/08/09 decided by the ECOWAS Court presided over by Justice M. Benfecto Ramos on 10th December, 2010.

has domesticated, forms part of its municipal laws and as such must be obeyed in the country, for example, the African Charter on Human and Peoples Right<sup>667</sup>.

The Nigeria Government objected to the plaintiffs' claim insisting that the ECOWAS court lacks jurisdiction to entertain the matter because the economic and social rights the plaintiffs are pursuing before the ECOWAS Court occur in Chapter Two of the Nigerian Constitution 1999 (as amended), which the courts in the country have declared non-justiciable by reason of section 6 (6) (c) of its Constitution. The ECOWAS Court declined to accept the Federal Government's argument and gave judgment in favour of the plaintiffs maintaining inter alia that:

... the sources of law that the court takes into consideration in performing its mandate of protecting Human Rights are not the Constitutions of Member States, but rather the international instruments to which these states voluntarily bound themselves at the international level, including the Universal Political and Peoples' Rights... as was held by this court in the case of *SERAP v Nigerian Government and Universal Basic Education Commission* on the 27<sup>th</sup> of October, 2009; adding that once the concerned right for which the protection is sought before the court is enshrined in an international instrument that is binding on member states, the domestic legislation of that state cannot prevail on the international treaty or covenant, even if it is its own constitution... It is thus evident that the Government of Nigeria cannot invoke the non-justiciability or enforceability of Chapter Two of its Constitution as a means for shirking its responsibility in ensuring the protection and guarantee for its citizens within the framework of the commitment it has made to the body of ECOWAS<sup>668</sup>.

The totality of the foregoing argument points to one cogent conclusion which is that the notion that Chapter Two of the Nigerian Constitution 1999 (as amended) is completely non-justiciable is not entirely correct. Apart from the fact that Chapter Two serves as a vessel for energizing the full realization of the fundamental rights in Chapter Four of the Nigerian Constitution; occasions exist when the court will declare the provisions of Chapter Two

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<sup>667</sup> (2001) vol. 77, Law Reports of Courts of Nigeria, Pp1254 – 1401 *Abacha v Gani Fawehinmi*

<sup>668</sup> The ECOWAS Court decision on the case of *SERAP v Federal Republic of Nigeria (ECW/CC/08/09)*



justiciable as clearly shown in the foregoing. The openings where the fundamental objectives can be declared justiciable by the courts if meticulously pursued and implemented by the appropriate government will, doubtlessly, help in the realization of the laudable sustainable development ideals in Chapter Two of the Nigerian Constitution 1999 (as amended) and enhance the quality of life Nigerians lead.

Despite the aforesaid, it is worthy to point out that enforcing the decisions of International Courts on Socio-economic rights in Nigeria its not easy but fraught with monumental challenges. This is because the governments in Nigeria either at the Federal or state levels are reluctant or outrightly unwilling to implement the decisions of the International Courts demanding the enforcement of any provision under the fundamental objectives. This, in the long run, renders the productivity of such judgements nugatory. Smhos.org

#### **4.6 The Challenges Undermining the Developmental Efforts of the Ministry**

As elaborately shown in the foregoing discussion, reasonable efforts at actualizing the sustainable development objectives embedded in Chapter Two of the Nigerian Constitution 1999 has been made, which include, promoting the educational growth of the region, improving the quality of transportation, Housing development, provision of electricity, potable water, improved health services and other social amenities in the area. This notwithstanding, it is expedient to note that the challenges discussed hereunder constitute some of the problems undermining the full performance of the ministry in the region.

##### **i. Seeming Duplicity of Functions Performed by the Ministry and NDDC in the Region.**

The lack of properly defined scope of responsibilities between the two developmental agencies, to wit, the ministry and the NDDC constitute a major issue that has attracted severe criticism from stakeholders in the region and by extension, the entire Nigerian population. As

a result, the generality of stakeholders in the region hold the view that both agencies are one and the same, in that both of them are Federal Government Agencies aimed at providing the same infrastructure and social services for the development of the region. That is to say that any developmental project executed in their domains by NDDC is equally a project of the ministry and vice versa.

This is a complete misconception and does not represent the true fact of things on ground. The truth is that a marked difference occurs between the functions, objectives, composition of boards and tenure of officers in each of them. Administratively, the ministry is one of the Federal Ministries presided over by a Minister, Minister of State and a permanent secretary with various departments headed by directors and other top civil servants in the Federal Civil Service. Being a ministry, it is entitled to annual budgetary allocation with definite projects to be executed in the region every year.

In terms of objectives, the ministry is basically designed to perform the following functions:

1. Oversee the implementation of government policies on the development and security of the region;
2. Liaise with the private organizations and formulate policies/programme for the development of the region;
3. Facilitate private sector involvement in the development of the region;
4. Plan and supervise public education/enlightenment programmes.
5. Corporate with companies operating in the region to ensure environmental protection and pollution control;
6. Organize human capacity development as well as skill acquisition programmes for youths and women; and

7. Take adequate measures to ensure peace, stability and security with a view to enhancing the development of the region.<sup>669</sup>

The NDDC, on the other hand, is clearly mandated to perform the following functions<sup>670</sup>:

- i. Formulate, conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for water ways, health, education, housing and urban development, water supply, electricity and telecommunication in the region;
- ii. Cause the Niger Delta Area to be surveyed in order to ascertain measures necessary for its development;
- iii. Prepare master plan and the estimates of the costs of implementing such master plans and schemes;
- iv. Identify factors inhibiting the development of the region.
- v. Assess and report the progress of work on development projects executed in the Niger Delta Area by mineral producing companies and agencies, ensuring that the projects are properly funded and according to specification.
- vi. Tackle problems arising from exploration and exploitation of oil minerals in the Niger Delta Region and advise the necessary tier of government on best possible way of controlling oil spillages.
- vii. Execute such other works which in the opinion of the commission is necessary for the development of the region and its policies.

A detailed analysis of the above functions clearly show that the ministry is designed to perform more of advisory and supervisory role on how to develop the region. In effect the role of the ministry in the region is similar to that performed by the defunct Niger Delta Development Board of 1961. By the functions it is expected to perform, the ministry is not

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<sup>669</sup> 'The Specific Functions of the Ministry of Niger Delta Affairs', <<https://www.facts.ng/nigerian-ministries/ministry-niger-delta-affairs>> accessed 10th June, 20

<sup>670</sup> Section 7, of the Niger Delta Development Commission (Establishment, etc) Act, 2000

seised with the responsibility of constructing capital projects like construction of roads, building of housing schemes, embarking on shore protection, connecting electricity to rural and urban communities, constructing canals, bridges, etcetera in the region.

Its primary duty is ‘to oversee, coordinate and supervise the execution of Federal projects executed by any Federal Ministry, agency or non-governmental agencies in the Region’. For instance, if the Federal Ministry of Work or Education or Housing or Environment etcetera is executing any project in the Region, it is the ministry’s duty to oversee, coordinate or supervise the smooth implementation of these projects and ensure that they are executed according to the Federal Government’s developmental policy. Better still, where necessary, it would advise the Federal Government on the best possible way the project(s) could be executed in the region. This was how it became seised with the supervision of the East-West road constructed by the Federal Ministry of works.

The NDDC on the other hand, is an interventionist agency purposely designed to effect accelerated development in the region. Administratively, the NDDC has a board headed by a Chairman but the Managing Director presides over the day to day administration of the Commission. It has eleven (11) directorates, each headed by a director and targeted at pursuing the achievement of a specific goal.

The functions of the NDDC are very clear and unambiguous. It is designed primarily to: ‘formulate, conceive, plan and implement, programmes for the growth and improvement of water ways, health, education, telecommunication and implement all major development projects in the region’<sup>671</sup>, etcetera.

In pursuit of its primary functions cited in the foregoing, although the NDDC has now been incorporated as an agency of the ministry; it is constructing roads, jetties and waters ways,

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<sup>671</sup> *ibid*

health, educational and telecommunication facilities in the region, the increasing allegations of corruption against it notwithstanding.

As seen from the foregoing explanations, whereas the functions of NDDC vest on it the responsibility of constructing different infrastructure and creating social services to develop the region. Instructively, the ministry's functions are devoid of constructing roads or housing schemes, educational facilities, water supply etcetera, but merely advisory in scope. Curiously however, the ministry later jettisoned its advisory role and started to embark on the construction of roads and other infrastructure similar to those performed by the NDDC in the region.

As a first step in this direction, it took over the construction of the East-West road from the Federal Ministry of works in 2011 and initiated 63 other roads in the region. In the educational sector, it initiated the building of multi-billion-naira skill acquisition centers in various locations in the region. For instance, the ministry constructed a 2.4 billion naira skill acquisition center at Otuoke but was unable to put it into effective use and ultimately, the Federal University of Otuoke incorporated it as part of the facilities of the University. Similarly, the Ministry also initiated the 2.6 billion naira abandoned skill acquisition center in Tuomo, Burutu Local Governmental Area of Delta State. The abandoned roads and housing schemes initiated by the ministry in the region cited in the foregoing also point to the failed attempt by the ministry to double as an institution seised with the power to build or construct developmental infrastructures in the region.

Consequently, the allegation that the ministry and the NDDC are duplicating the same projects is caused by the ministry's penchant to also execute developmental infrastructures that are similar to those pursued by NDDC in the region. However, judging from the functions of the ministry as outlined in the preceding discussion, it is therefore argued that its incursion into constructing developmental projects like roads, housing schemes, electricity,

educational and health facilities etcetera in the region is completely outside its scope of operation and mandate.

In the long run, it has become necessary that in order to erase the misgivings the public hold that both the ministry and NDDC are duplicating the same projects, an Act be enacted to clearly define the functions and scope of area each of the developmental agency should operate upon. This, surely remains the way forward for the resolution of the seeming conflict in the roles performed by the Ministry and the interventionist agency.

## **ii. Inadequate Funding and Abandoned Projects of the Ministry**

Lack of adequate funds to effectively execute projects remains one of the major problems confronting the developmental efforts of the ministry. For instance, the delay in completing the East/West road dualization has repeatedly been attributed to the paucity of funds.<sup>672</sup> Similarly, the failure of the Ministry to complete its N2.6 billion Skill Acquisition Centre in Tuomo, Delta State, designed to produce over 4,000 skilled youths in underwater welding, small machine tool fabrication for agriculture, oil and gas machines as well as e – marketing and Information Communication Technology, has been attributed to the non – availability of funds.<sup>673</sup> Furthermore, paucity of funds has also been cited as the reason for the stoppage of work on the 50 kilometer Obhie – Akwente – Azunmmi – Ukanafun road, connecting Abia and Akwa Ibom States in the region.<sup>674</sup> In fact, there is a legion of projects been executed by the ministry that are suffering the same fate in the region.

This constraint, doubtlessly, has occasioned the abandonment of several Ministry of Delta Affairs projects such as roads, housing estates, water schemes and educational facilities

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<sup>672</sup> M. Gundu, ‘Federal Government Blames Uncompleted Projects in Niger Delta on Paucity of Funds’. <<https://www.today.ng/news/nigeria/federal-government-blames-uncompleted-projects-niger-delta-paucity-funds-118128>> accessed 24 November, 2017.

<sup>673</sup> T. Alasoadura, ‘Stop Surcharging Nigerians, Senate Committee on Niger Delta Warns Contractors’. <<http://www.nigerdelta.gov.ng/index.php/news/200-stop-surcharging-nigerians-senate-committee-on-niger-delta-warns-contractors>> accessed 24 November, 2017.

<sup>674</sup> M. Gundu, (n 598) op cit.

designed to boost the quality of life and promote development of the region.<sup>675</sup> This, no doubt, is antithetical to the noble aspirations enunciated by the concept of sustainable development.

### **iii. Other Problems Undermining the Ministry's Efforts to Develop the Region**

Asides from the problems discussed in the foregoing, there are still myriads of other issues undermining the ministry's efforts to develop the region. Perhaps the greatest of such problems is the frequent change of the Ministry's Leadership. This is evident when viewed against the backdrop that reckoning from when the ministry was created in 2008 till date, different ministers to wit, Ufot Ekaette, Peter Godsdan Orubebe, Usani Uguru and now Godswill Akpabio have manned the position of minister of Niger Delta Affairs, which position entitles him to oversee and supervise the affairs of the ministry together with the NDDC.<sup>676</sup> The implication of these frequent changes of leadership in the ministry is that they have caused corresponding change in the development policies pursued by the ministry in the region. Fundamentally, it has resulted to the complete alteration of existing policies or the abrupt stoppage of ongoing projects initiated by the ministry, particularly if the new minister is a member of a hitherto opposition party.

This situation is further aggravated by allegations corruption on the part of principal officers of the Ministry, poor financial allocation and non-release of funds to the ministry. For instance, in 2008 Yar'Adua allocated N64.5 billion to the ministry as its annual budget but out of this sum only N19.5 billion was set aside and eventually released for the execution of projects in the region, while the rest was allocated to the servicing of the Presidential Amnesty Project<sup>677</sup>. Worse still, arising from bureaucratic bottlenecks, even from the balance of the N64.5 billion budgetary allocation to the ministry, only a tiny fraction was further

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<sup>675</sup> 'Ministry of Niger Delta Affairs (n 662) op cit.

<sup>676</sup> *ibid* p1

<sup>677</sup> *ibid* p1

released as funds to development the region by the Ministry, which was grossly inadequate to execute reasonable development projects in the region. Besides, serious allegations of corruption and financial recklessness are being levelled against top functionaries of the Ministry. A clear example of such allegation is the affirmation made by the ministry in its March, 2012 report that

‘only a relatively little percentage of its objectives had been accomplished in the first four years. Projects designed to improve roads, build skill acquisition centers and improve water and electricity supplies were far behind schedule. Large amounts had been budgeted and spent for projects related to waterfront development but nothing had been done...’<sup>678</sup>

The bottom line is that sustainable development cannot thrive under the hostile conditions discussed above.

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<sup>678</sup> *ibid* p1



## CHAPTER FIVE

### CONCLUSION

#### 5.1 Summary

In concluding this research work, it has become necessary to summarise the foregoing discussions by way of recapitulating the central issues that constitute this investigation. As affirmed in the preliminary chapters of this research work, the study herein is basically ‘an examination of the legal and institutional framework for the promotion of sustainable development in the Niger Delta Region’. In so doing, the conceptual, legal and institutional meaning of key words in the title of the research like ‘Niger Delta Region’ and ‘Sustainable Development’ are elaborately explained.

However, for purposes of emphasis, it is hereby re-iterated that two legal definitions of the Niger Delta Region are unearthed in this thesis, the historical and new Niger Delta Region. As established in the preliminary chapters of the research, the historical Niger Delta Region is solely based on the recommendations of the Willink’s Report of 1958 which was gazetted in Legal Notice No. 192 of August 25, 1959 by the then Governor General of Nigeria – Sir James Robertson. The contents of the 1959 gazette were subsequently incorporated as a provision in section 14 of the Constitution of Nigeria 1960. Essentially, the geographical area that form the historical Niger Delta Region as defined in the Legal Notice of 1959 is currently occupied by Bayelsa, Delta and River States in Nigeria.

The new Niger Delta Region, on the other hand, is defined in section 30 of the Niger Delta Development Commission (Establishment, etc) Act 2000, which defines the concept of Niger Delta based on oil producing States. As such, the new Niger Delta Region is made up of nine (9) out of the thirty six (36) States of the Federal Republic of Nigeria. Therefore, the States forming the new Niger Delta Region according to the Niger Delta Development Commission

(Establishment, etc) Act 2000, are- Akwa-Ibom, Bayelsa, Cross River, Delta, Edo, Abia, Imo, Ondo and Rivers States.

It is however worthy to note that notwithstanding the different nomenclatures used to describe the Niger Delta Region, both the historical and new Niger Delta Region refer to one and the same geographical area except that the area covered by the historical Niger Delta is smaller in size than that of the new Niger Delta Region which, in addition to the six states that form the South-South geo- political zone, now also include states from the South – West and South – East geo-political zones. The important point is that the concept of Niger Delta Region as conceived and applied in this thesis is based on the area contained in the Niger Delta Development Commission (Establishment, etc) Act 2000, though emphasis is placed more on the states occupying the area defined by Legal Notice No. 192 of 1959 as Niger Delta that is, Bayelsa, Delta and Rivers States.

The concept of sustainable development as generally explained by Brundtland Commission is *‘the development that meets the needs of the present without compromising the ability of future generations to meet their own needs’*. But it would be emphasized that as shown from the totality of the discussions in the preceding chapters, the term sustainable development as used in this research leans more to the socio-economic dimension of the concept which largely deals with the aspirations of the people to meet their daily needs for adequate standard of living and guarantee their access to food supply, work, health care and medical services, life and human dignity, accommodation, potable drinking water, clean and healthy environment, good roads for easy mobility etcetera, as decided in plethora of cases cited in the foregoing.

In course of the research it was discovered that the pursuit of providing programmes and services for the socio -economic benefit of the people of the Niger Delta Region, essentially

to enable them live a worthy and befitting life that can pass as standard and sustainable living, is undertaking by specific agencies the Federal Government of Nigeria created for that purpose. Such agencies include the Niger Delta Development Commission created through the enactment of the Niger Delta Development Commission (Establishment, etc) Act 2000; the proclamation of the Presidential Amnesty Programme (PAP) for Ex-Niger Delta militants in 2009 established through the invocation of section 175 of the Constitution of Federal Republic of Nigeria 1999 (as amended); and the creation of the Ministry of Niger Delta Affairs in 2008 through an Executive Order.

Without doubt, these agencies are pursuing socio- economic activities and services aimed at enhancing the living standard of the people of Niger Delta Region. Precisely, the projects and services the Niger Delta Development Commission provides for the people of the region to promote sustainable development form the content of Chapter Two of the research. First, the socio-economic objectives in Chapter Two of the Constitution and those pursued by the Niger Delta Development Commission are juxtaposed side by side and elaborately discussed in Chapter Two of the thesis in order to establish the similarity between them.

Principally, the research elucidates the fact that NDDC is striving to achieve poverty alleviation, unemployment reduction, economic growth and general infrastructural development in the region like the construction of roads for easy mobility and transportation, construction of low-cost houses for accommodation etcetera; which are identical with the latent developmental objectives aimed at promoting the social and economic growth of the Nigerian society contained in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Effectively, the concerted efforts made by the Commission attest to the fact that it is determined to transform the lives of the people of the region and enhance their standard of living.

The Presidential Amnesty Programme (PAP) for Ex-Niger Delta militants is contained and discussed in Chapter Three of the thesis. As stated earlier, the primary function of the Presidential Amnesty Programme is the reduction of conflict with a view to promoting peace and sustainable development in the region. To this end, the research explored and exposed conflict as the cause of unsustainable development in the region. Further that, the factors that have continue to instigate the escalation of violence in the region are also examined. Prominent among these factors are: the skewed and lopsided revenue allocation formula which places the Niger Delta Region in gross disadvantage; the absence of befitting and corresponding infrastructural development; the seeming inferior and second class citizen status conferred on the people of the Niger Delta by the majority ethnic nationalities at the National level; the draconian laws of the Federal Republic of Nigeria that erode the proprietary rights of the people of the region to manage and control the mineral resources in their territories, etcetera.

In order to stem the increasing insecurity in the Niger Delta region, the Federal Government of Nigeria proclaimed the granting of amnesty to all Niger Delta militants on 24th June, 2009, the main objectives of which as espoused in this research include the following; (i) to cause the cessation of hostilities by the militants thereby bringing peace to the region, realizing that the presence of peace is a *sine qua non*<sup>679</sup> for the thriving of sustainable development in any environment; (ii) to cause a corresponding upsurge in economic activities in the region which will lead to the general growth of the regional and national economies; (iii) to serve as a vehicle for accelerated human capital development in the region; (iv) to encourage monumental educational growth in the region; (v) to cause the inflow of large sums of money into the region outside the statutory allocations coming to the Niger Delta States to service the programmes under amnesty; (vi) to reinforce and place the issue of

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<sup>679</sup> 'Sine qua non' - An essential or indispensable element, condition or ingredient. G. A. Bryan, Black's Dictionary, Seventh Edition (1999). p1390

enhanced infrastructural development in the region at the front burner of national discourse in the country.

Another vital institution created by the Federal Government of Nigeria to promote sustainable development in the Niger Delta Region is the Ministry of Niger Delta Affairs. Chapter Four of the thesis discusses the developmental objectives the Ministry of Niger Delta Affairs seeks to realize in the region which projects and programmes could easily pass as an actualization of the latent transformational objectives imbedded in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Prominently, sections 16, 17,18 and 20 under the Fundamental Objectives and Directive Principles of State Policy in Chapter Two of the Constitution have been declared as socio-economic provisions by several commentators. Although, these and other provisions in Chapter Two of the Constitution have been declared non-justiciable by the Constitution itself and the courts in the country, a juxtaposition of the socio-economic ideals in Chapter Two of the Constitution against the developmental objectives the Ministry of Niger Delta Affairs aspires to achieve on ground in the region, ably confirm that the Ministry desires to actualize the developmental objectives in Chapter Two of the Constitution in the Niger Delta Region.

Consequently, the transformational activities of the Ministry of Niger Delta Affairs such as the construction of roads, building of housing schemes, promotion of agricultural growth, provision of health facilities, building schools for educational growth, etcetera, to develop the region constitute the principal issues discussed in Chapter Four. Other critical areas of transformation the implementation of the fundamental objectives in Chapter Two of the Constitution can contribute to the development of the Niger Delta and by extension the entire country is also discussed in Chapter Four of the thesis. Such transformational issues include an elaborate consideration of how the fundamental objectives in Chapter Two of the

constitution can be implemented as tool for fighting and curbing corruption in Nigeria as demonstrated in the case of *AG of Ondo State v AG of the Federation & 32 Ors*.<sup>680</sup>

Aside from that, the implications of the non-implementation of the environmental objectives in section 20 of the Constitution of the Federal Republic of Nigeria as a major setback to the realization of sustainable growth in the country, particularly when viewed against the decision of the court in the case of *Gbemre v Shell Petroleum Development Company & the Nigerian National Petroleum Corporation*<sup>681</sup> and other related cases, is also discussed in Chapter Four of the thesis.

Most importantly, on the basis of the Supreme Court's decision in the case of *Federal Republic of Nigeria v Anache in Re-Olafisoye*,<sup>682</sup>, Chapter Four of the thesis equally discussed how the vistas beyond the non-justiciability principle clothing Chapter Two of the Constitution can be explored to enhance sustainable development in the Niger Delta Region.

## 5.2 Findings

The researcher while conducting the research unearthed the findings hereunder:

- (i) The NDDC, the Presidential Amnesty Programme for ex-Niger Delta militants and the Ministry of Niger Delta Affairs were created to mainly pursue and indeed achieving some level of sustainable growth and better standard of living for the people in the region as evident in the various roads, health and educational facilities, housing units, human capital development schemes, and general infrastructures undertaken by these agencies on ground in the region;

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<sup>680</sup> *AG of Ondo State v AG of the Federation & 32 Ors* (2002) 9NWLR, (pt. 772) P.222

<sup>681</sup> *Gbemre v Shell Petroleum Development Company & the Nigerian National Petroleum Corporation* (2005) AHRLR (15) NgHC 2005

<sup>682</sup> *F. R.N v Anache in Re-Olafisoye* (2004) ALL FWLR (pt 186) 1106 @ 1153

- (ii) Many projects awarded by the agencies to promote sustainable development are abandoned midway or not started at all in the Niger Delta Region by reason of the following factors: (a) poor statutory funding, (b) systemic corruption on the part of managers of the agencies, (c) politicization of appointment of managers/administrators, (d) award of contracts in the agencies to political lackeys and cronies to those in the corridors of power, (e) poor and difficult terrain of the region and (f) increased militancy and youth restiveness which has occasioned insecurity in the region, etcetera.
- (iii) There is absence of clearly defined legal framework enabling some of the agencies and/or no guidelines for the award of contracts executed by the agencies. Similarly, the procedure for monitoring projects awarded and executed by the agencies in the region is opaque and unclear. The situation whereby the Presidency<sup>683</sup> in Abuja is the organ seised with the responsibility of monitoring projects executed by these agencies in the Niger Delta grossly falls short of effective monitoring.
- (iv) By the combined effect of the decisions of the courts in *Socio-economic Rights and Accountability Project (SERAP) v Republic of Nigeria*<sup>684</sup> and *Gbemre v Shell Petroleum Development Company (SPDC) & Nigerian National Petroleum Corporation (NNPC)*<sup>685</sup> as expounded in the foregoing, it is clear that the non-justiciability clog placed over the provisions of Chapter Two of the Constitution of Federal Republic of Nigeria 1999 is not final. Occasions occur

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<sup>683</sup> Section 21 of the NDDC Act 2000

<sup>684</sup> *Socio-economic Rights and Accountability Project (SERAP) v Republic of Nigeria* Suit no: ECW/CC/08/09 delivered by Hon. Justice M. Benfecto Ramos and four other Judges of the ECOWAS Court on the 10th of December, 2010.

<sup>685</sup> *Gbemre v Shell Petroleum Development Company (SPDC) & Nigerian National Petroleum Corporation (NNPC)* (n 654) op cit.

when some of the provisions in Chapter Two of the Constitution, particularly sections 16, 17, 18 and 20 thereof could be implemented;

- (v) That contrary to the general position that projects designed to promote sustainable development in the community should emanate from the community at the bottom to the top, almost all the projects executed by these agencies originate from the Presidency or Ministerial level for the benefit of the communities in the Niger Delta Region. The implication is that inputs from the stakeholders in the Niger Delta communities as to the designing, planning and implementation of almost all the projects executed by the agencies in the Niger Delta Region are excluded.
- (vi) The areas lying deep in the creeks of Niger Delta Region where accessibility is very difficult like – Patani, Bomadi, Burutu, Warri North and Warri South West LGAs of Delta State; Sagbama, Ekeremor, Kolokuma/Opokuma, Yenagoa, Southern Ijaw, Ogbia, Nembe and Brass LGAs of Bayelsa State; Asari-toru, Akuku-toru, Bonny, Andoni, Ogu/Bolo, Okrika and Opobo/Nkoro LGAs of Rivers State; Ese-Odo and Ilaji LGAs of Ondo State; Ibeno and Ikot Abasi LGAs of Akwa Ibom State together with Ovia South West LGA of Edo State; suffer more serious sustainable development challenges.

### **5.3 Recommendations**

In view of the foregoing discussions particularly the findings, the researcher proffers the following recommendations:

- i. The areas that appear defective in the law(s) enabling the institutions charged with the responsibility of promoting sustainable development in the region should urgently be reviewed or amended to guarantee greater productivity. For example, sections 175 and 212 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) should be altered to expressly provide for the power to grant



amnesty either by the President of the Country or the Governor of a State. Alternatively, the National Assembly should enact an Act backing the establishment of the Presidential Amnesty Programme for ex-Niger Delta Militants.

- ii. In a similar vein, section 4 of the NDDC Act be equally amended to expressly provide for the mode the chairman and managing director should be rotated among the member States of the Commission, in order to avoid friction among the NDDC states as to whose turn it is to produce the managing director.
- iii. Most importantly, the laws enabling the developmental institutions should be amended to provide for the appointment of technocrats as board members, managers and administrators with a view to checkmating the numerous allegations of corruption/embezzlement of funds meant for development and the many cases bordering on abuse of office.
- iv. The whole supervisory power vested on the President under the Niger Delta Development Commission (Establishment, etc) Act 2000, should be reviewed as this has resulted in lack of effective supervision.
- v. The Supreme Court's decision in *AG of Ondo State v AG of the Federation & 32 Ors*<sup>686</sup> manifestly is to encourage the National Assembly to enact similar legislation to implement section 16 (2) (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Therefore, in order to effect sustainable growth and improve the living standards of the people of Nigeria, particularly those living in the Niger Delta area; the National Assembly should equally invoke section 16 (2) (d) and other similar provisions in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and enact Acts aimed at

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<sup>686</sup> *AG of Ondo State v AG of the Federation & 32 Ors* (n 532) op cit.

enhancing the sustainable development aspirations of the people of the Niger Delta Region.

- vi. The courts while hearing cases dealing with issues bordering on the provisions in Chapter Two of the Constitution of the Federal Republic of Nigeria 1999 (as amended), are enjoined to adopt a liberal approach in interpreting the effect of section 6 (6) (c) of the Constitution, paying more attention to the transformational values embedded in the Fundamental Objectives and Directive Principles of State Policy; similar to what is obtainable under the South African 1996 and Ghanaian Constitutions of 1992. This is necessary because laws are enacted basically to enhance the well-being of the people and not to compound their existential problems.
- vii. The Federal Government of Nigeria should review the implementation of the Presidential Amnesty Programme (PAP) for ex-Niger Delta militants and ensure that it goes beyond the level of mere payment of stipends to repentant Niger Delta militants. In so doing, the Federal Government is urged to provide employment for ex-militants who have completed their education or skill acquisition programme. This will enable them fend for themselves and their families.
- viii. The Federal Government should create a separate and special agency to monitor the contracts awarded by the developmental institutions established to promote sustainable development in the Niger Delta Region.

## 5.4 Contributions to Knowledge

This Ph.D study contributes to knowledge in the following ways:

- i. The study has shown the need for the socio-economic provisions in Chapter Two of the Nigerian constitution to be made justiciable for the promotion of sustainable development in the Niger Delta Region;
- ii. The study establishes the fact that through Acts of the National Assembly the provisions of Chapter Two of the Nigerian Constitution 1999, particularly section 16 (2) (d) thereof could be implemented for the general wellbeing of the people of the Niger Delta Region
- iii. The study reveals that there is every need for the courts in Nigeria to be bold and exercise judicial activism when interpreting issues bordering on the implementation of socio-economic rights as was demonstrated in the Nigerian case of *Gbemre v Shell Petroleum Development Company (SPDC) & Nigerian National Petroleum Corporation (NNPC)*<sup>687</sup> and the decisions of the South Africa courts, which could pass as a judicial intervention for the promotion of sustainable development for the wellbeing of the people of these countries.
- iv. The study equally shows that the lack of effective sustainable growth in the Niger Delta Region of Nigeria is caused by the monumental corruption on the part of the managers of interventionist agencies in the region, absence of clear mechanism for punishing persons who divert or embezzles funds meant for the development of the region and the overreliance of the courts on the non-justiciability of the socio-economic rights in Chapter Two of the Constitution of the Federal Republic of Nigerian 1999 (as amended).

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<sup>687</sup> *Gbemre v Shell Petroleum Development Company (SPDC) & Nigerian National Petroleum Corporation (NNPC)* (n 654) op cit.

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