

Environment Law and Underdevelopment in the Niger Delta Region

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EMMANUEL DURU, JAN 6 2011

INTRODUCTION

Nigeria is an oil producing country. Its economy depends on revenue derived from the sale of crude oil. This revenue constitutes over 90 percent of total foreign exchange earning required for financing several national development projects (FOS, 1996; Aghalino, 2004).

While the benefits of oil and gas exploration and productions in Nigeria are not in doubt, the consequent environmental impact of oil industry activities cannot be discountenanced. In fact, the environmental cost of oil and gas exploitation and production are said to be inevitable (Coarse, 1990). Apart from the fact that oil and gas exploration and production generate waste and consequently, environmental degradation, exploration and exploitation activities in the oil bearing areas have permanently alienated a large tract of land. Virtually, the entire land and offshore of the Niger Delta region of Nigeria are covered by Oil mining Licence and Oil Prospecting Licences. These Licences entitle the oil firms operating in this region to encroach on peasant land (Alakpodia, 1980:30; Aghalino, 2004:40). By manipulating the Land Use Act, which rested ownership of lands on government, oil companies in Nigeria have cashed in on this legal lee-way to appropriate peasant lands without due and adequate compensation (Ikein, 1990; Ndukwe, 2000). Also, the pollution of the terrestrial, atmospheric and marine environment constitute the worst form of health hazards associated with the oil industry.

In its February, 2008 edition, the TELL Magazine studying 50 years of oil exploration in Nigeria wrote:

Obviously, 50 years of oil exploration and exploitation has occasioned environmental degradation and pollution resulting in excruciating and brutalizing poverty, unemployment, diseases and health hazards and even death among the people living in the region (TELL, February 18, 2008:15).

The magazine goes further to contend that this state of affair in the region has resulted in high level of socio-economic underdevelopment, manifesting in the absence of infrastructural facilities, poor standards of living and the feeling of abandonment, denial and frustration among the people of the region.

In the light of the above, the questions are as follows:

- i) Are there no environmental laws in Nigeria to check the excesses of oil producing companies?
- ii) What are the activities of governmental agencies saddled with the responsibilities of protecting the environment against pollution and degradation?
- iii) If the answer to the questions above is in the affirmative, why is the situation continuing unabated?

This study seeks to provide answers to these questions. In doing this, a close scrutiny of some government environmental regimes are isolated and analyzed. In this study, we assert that there is the need to re-emphasize the

Environment Law and Underdevelopment in the Niger Delta Region

Written by Emmanuel Duru

enforcement of environmental laws in Nigeria in order to curb the excesses of oil producing firms and reducing environmental crisis and its attendant consequences in the Niger Delta region.

ENVIRONMENTAL LAWS AND OIL MNCs IN NIGERIA

Until recently, there was no adequate legal and institutional framework by which the problem of environmental degradation could be tackled. The incessant problem of oil spillage, gas flaring and environmental pollution and the resultant destruction of the ecosystem were never given adequate national attention. Nevertheless, there are some latent laws put in place by the Nigerian government to combat the scourge of pollution and related issues. One of these laws is the Petroleum Act of 1969. The Act, among other things, empowers the Commissioner in charge of Petroleum to make regulation on the prevention of pollution of water courses and the atmosphere. The Decree also requires that in accordance with "good oil field practices", the owner of license and lease takes all practical steps to prevent the escape of petroleum into the water ways and cause little damage as possible to the surface conditions (Aghalino, 2004:44).

The Associated Gas Re-injection Act Cap 26 (Laws of the Federation, 1980) was another one. The Act compels oil and gas producing companies in Nigeria to submit preliminary programme for gas reinjection. Generally, the above laws have neither been effective in curbing ecological damage caused by oil pollution and gas flaring nor have they been able to prevent activities deleterious to the environment. These laws tend to under estimate the long term problems of environmental damage. Indeed, the laws deal with only measures to prevent pollution while they are silent on the consequences that should follow when pollution occurs (Aghalino, 2004:45).

What seemed to be a well articulated policy towards the environment emerged with the enactment of the Harmful Waste (Special Criminal Provision, etc), Decree No. 42 of November, 1988. The Decree prohibits the purchase, sale, importation, transit, transportation and storage of harmful waste in the country. This Decree prescribes life imprisonment for those who contravene its provisions. This legal section was followed a month later by Decree No. 58 of 1988, establishing the Federal Environmental Protection Agency (FEPA). FEPA was charged with the stringent responsibility of protection and development of the environment in general (Ndukwe, 2000; Ikein, 1990). It was also to initiate policy in relation to environmental research and technology. Its functions include establishing standard for water quality, air quality, atmospheric protection, noise and hazardous substance (Aghalino, 2004:45).

The FEPA Decree as amended by Decree No. 59 of 1992 accorded the Agency virtually unlimited powers and functions for the protection of the Nigerian environment. The emphatic provisions in Sections 4 and 5, dealing with functions and responsibilities of the Agency are un-mistaken. It was in the realization of its mandate that FEPA has issued about eight Guidelines and Regulations dealing with different aspects of the Nigerian environment.

The FEPA Decree which is the boldest and most comprehensive attempt at giving legal teeth to the protection and sustainable development of the Nigerian environment has not fared very well. For example, FEPA has not carried out an initial baseline ecological audit of the oil-bearing enclave of the Niger Delta without which, it is impossible to monitor the impact of oil and gas exploration and production over time (Ayaegbunam, 1998; Aghalino, 2004). It is also worth noting that despite the enormous powers conferred on FEPA, it has not been able to apply legal sanctions on any defaulting oil firms in Nigeria.

With the coming of the civilian administration in May, 1999, the Federal Ministry of Environment was established and FEPA was absorbed into it. The decision to create a full -fledged ministry of environment was informed by the need to bring together all activities within the government machinery that are related to environmental and sustainable development and also to give environmental matters top priority attention in the development agenda of the civilian administration and to properly harness the activities of government and avoid over-lap of functions. The relevant department and units of some Federal Ministries were transferred to complement the activities of the newly created ministry. The new ministry guided by a policy thrust predicated upon Environmental Renewal and Development

Environment Law and Underdevelopment in the Niger Delta Region

Written by Emmanuel Duru

Initiative (ERDI) was to take full inventory of the nation's resources, assess the level of environmental damage and design and implement restoration measures (The Guardian, Wednesday, February 16, 2000).

More than ten years of its inception, the Federal Ministry of Environment has been witnessing the pollution and degradation of the Nigerian environment especially in the Niger Delta region by oil multinationals.

According to Nigerian laws, in the event of spill emanating from sabotage, oil firms are not liable to pay compensations but are enjoined to clean up the environment where such spills occurred (Etikerentse, 1985). Oil companies in Nigeria have taken advantage of this sabotage alibi and absence of effective regulations to perpetrate irresponsible practices and adopt production methods which maximize profit and minimize investment in environmental safety. The oil companies in Nigeria adopt the most direct and inexpensive methods of waste disposal. These according to Aghalino (2004:42) include indiscriminate dumping of drilling mud, drill cuttings, and dumping of sludge, practices which differ from stringent environmental regulations in the metropolitan countries of the oil majors (TELL, August 18, 1997).

In theory, therefore, the effectiveness of Nigeria's environmental policies and laws could be asserted from the comprehensiveness of its environmental regimes, but in practice, the effective enforcement of such rules and policies do not look promising. For instance, a careful reading of the amended FEPA Decree will show that the enforcement power of the Agency is bedeviled by so many constraining factors which include paucity of qualified hands to handle many of the scientific matters relating to environmental protection (World Bank, 2000).

While the dearth of qualified staff is a plausible explanation for the ineptitude of FEPA, it is however, more reasonable to hazard hypotheses that its inefficiency and that of the Federal Ministry of Environment is not unconnected with the lack of the political will on the part of government functionaries to take actions that may cause economic dislocation or even lead to total closure of the oil firms. It is the thinking in government circles that the closures of any defaulting oil multinationals would inevitably put many Nigerians out of works, reduce government revenue and probably discourage foreign investment.

HUMAN AND SOCIO-ECONOMIC DEVELOPMENT OF THE NIGER DELTA

If underdevelopment as Ekanem (2001:53) has defined is;

"inability, failure, refusal or structural prevention of a people to use existing mental, physical and material resources available to society at a given time and space to bring about qualitative and quantitative improvement standard of their lives".

Then the Niger Delta region of Nigeria is underdeveloped, socially and economically. This is because a recent UNDP assessment of the Human Development Index (HDI) of the area reported that "widespread poverty is prevalent in the region" (Vanguard, April 6, 2008). The report also noted that this region which is home to Nigeria's oil wealth remains the most impoverished community in the nation lacking in basic infrastructure – good road network, health care facilities, good schools and potable water. Consequently, the report continued, there is low life expectancy, high infant mortality rate, high level of illiteracy and unemployment among the people of the region.

Following environmental pollution and degradation caused by oil spills and gas flaring, farming activities and fishing which are the major occupations of the people have been adversely affected. This has resulted in poor income revenue to the people, thereby engendering abject poverty and underdevelopment.

In general, the available social development indicators in the Niger Delta region point to inadequate, unavailable and poor quality infrastructure and social services, from water to telecommunication. According to NDHDR (2006:27), the historical neglect of the region's development poses a steep barrier to attaining socio-economic transformation and poverty alleviation.

Environment Law and Underdevelopment in the Niger Delta Region

Written by Emmanuel Duru

1. WATER SUPPLY

Data from the Federal Office of Statistics, now National Bureau of Statistics (2005), reveal that water in the majority of Niger Delta states comes from unsafe supply facilities, including rivers, lakes or ponds, unprotected well and boreholes. The Bureau classifies available sources of potable water for household consumptions as: pipe borne, untreated pipe, borehole, protected well, unprotected well, river/lake/pond, vendor trucks and other categories in five of the nine states of the region; Akwa Ibom, Bayelsa, Cross River, Ondo and Imo, water problems are very acute and result in supplies of unsafe water in more than 50 percent of the cases. Poor access to adequate drinking water has had serious implications for the general health, environment, economic activities and sustainable livelihoods in the Niger Delta region (NDHDR, 2006).

2. TRANSPORT

According to the UNDP's Niger Delta Human Development Report, NDHDR, (2006:29), the Niger Delta roads are mostly bad. Efforts by local government authorities to repair the roads have worsened them and left the local people with more hardship. Although urban road transportation development has been accorded some priority (See NDDC Project File, 2003:95), less regard has been shown for rural transportation, especially water transport, which the majority of the rural populace depend on. Analysts refer to transportation and communication in the area as a source of misery.

3. EDUCATION

Statistical estimates have but the proportion of children attending primary school at 80 percent (which compares favourably with the estimated national average of 54 percent) (NDHDR, 2006:32). But across the region, nearly all school facilities are in a state of extreme disrepair requiring major rehabilitation. The secondary school system has been seriously afflicted by shortages of quality teachers; a regional pattern that is becoming increasingly acute due in large part to discordance between investments in infrastructure outside a well – coordinated planning process.

Revealing the immense challenge to development and provision of social amenities for sustainable livelihoods, an NDES Report (2003) noted that in some of the Niger Delta states, covering some 30,000 square kilometers and an estimated eight million people, there were only 2,169 primary schools. This implied one primary school per 3,700 people serving an area of 14 square kilometers, and one school for every two settlements. For secondary schools, the ratio is one school per 14,679 people serving an average of 55 square kilometers, and one for school every seven settlements.

4. HEALTH AND HEALTH CARE SERVICE DELIVERY

Dismal health and health service delivery, hospitals, clinics and primary health centres; and a lack of effective operational plan for holistic health management. The majority of Niger Delta communities living in isolated areas lack the most basic modern medical care, including first aid, giving the absence of formal health services in much of the hinterlands (see the NDDC Regional Master Plan, 2003/2004, Chapter One, pp. 1-19).

According to an NDES (2003) Report on primary health care, there is a ratio of only one health care facility for every 9,805 people, with the average facility serving an area of 44 square kilometers. There is only one facility for every 131,174 people serving an area of 583 square kilometers. A single facility services an average of 48 settlements. Poor access to health care reduces people's quality of life and increases their poverty.

Given the social and economic conditions described above, it is of interest considerably to see how the Niger Delta region fares on the human development indices. These include the Human Development Index (HDI), the Human

Environment Law and Underdevelopment in the Niger Delta Region

Written by Emmanuel Duru

Poverty Index (HPI), Gender Empowerment Measures (GEM) and Gender – related Development Index (GDI).

The incidence of poverty in the Niger Delta region has been on the increase since 1980 (see table 1 below). Except for Rivers and Bayelsa States, where poverty incidence seems to have stabilized at about 44 percent after an initial jump from 7 percent, the poverty level increased between 1980 and 1996, but declined between 1996 and 2004 in line with the national estimate.

Table 1: Incidence of Poverty in the Niger Delta, 1980 – 2004

States	1980	1985	1992	1996	2004
Edo/Delta	19.8	52.4	33.9	56.1	Delta 45.35 Edo 33.09
Cross River	10.2	41.9	45.5	66.9	41.61
Imo / Aba	14.4	33.1	49.9	56.2	Imo 27.39 22.27
Ondo	24.9	47.3	46.6	71.6	42.15
Bayelsa/Rivers	7.2	44.4	43.4	44.3	Rivers 29.09 Bayelsa 19.98
Nigeria	28.1	46.3	42.7	65.6	54.40

Source: National Bureau of Statistics, 2005

The human development indices have been calculated for the nine states of the Niger Delta as well as for the 185 local government areas. In interpreting the results, it is important to note that the human development situation in Nigeria as a whole is deplorable as tables 2, 3 and 4 below show.

Table 2: HDI for the Niger Delta States, 2005

States	Life Expectancy	Education Index	GDP Index	HDI
Abia	0.492	0.578	0.560	0.543
Akwa Ibom	0.506	0.683	0.540	0.576
Bayelsa	0.455	0.523	0.520	0.499
Cross River	0.556	0.630	0.565	0.584
Delta	0.587	0.636	0.621	0.615
Edo	0.579	0.602	0.600	0.594
Imo	0.503	0.546	0.591	0.547
Ondo	0.501	0.575	0.512	0.529
Rivers	0.563	0.590	0.620	0.591
Niger Delta	0.527	0.596	0.570	0.564

Source: Niger Delta Human Development Report, 2006.

Table 3: HDI – 1 Index and its Parameters for the Niger Delta

States	Probability at birth not surviving to age 40	Adult illiteracy rate	Unweighted Average HDI – 1
Abia	26	34	29.169
Akwa Ibom	27	28	35.5
Bayelsa	30	31	39
Cross River	26	28	33
Delta	20	18	27
Edo	22	18	28
Imo	25	29	32
Ondo	30	31	42.5
Rivers	24	24	30.5
Niger Delta	25.556	25.889	33.4
			28.847

Source: Niger Delta Human Development Report, 2006.

Table 4: GDI for the Niger Delta States, 2006

States	Equally Distributed Life Expectancy Index	Equally Distributed Educational Index	Equally Distributed Income Index	GDI
Abia	0.443	0.492	0.339	0.425
Akwa Ibom	0.504	0.518	0.151	0.391
Bayelsa	0.450	0.652	0.227	0.443
Cross River	0.480	0.621	0.342	0.481
Delta	0.530	0.614	0.168	0.437
Edo	0.486	0.682	0.301	0.490
Imo	0.503	0.615	0.162	0.427
Ondo	0.462	0.568	0.327	0.452
Rivers	0.480	0.609	0.273	0.454
Niger Delta	0.482	0.597	0.254	0.444

Source: Niger Delta Human Development Report, 2006.

Conclusion

This study has x-rayed problem of environmental degradation and pollution in the Niger Delta region of Nigeria that is occasioned by oil mineral exploitation and exploration. We have in this study pointed out that oil multinationals have

Environment Law and Underdevelopment in the Niger Delta Region

Written by Emmanuel Duru

taken advantage of the lack of the political will on the part of the government to enforce environmental laws in Nigeria and punish defaulting firms to perpetuate unacceptable and sub-standard practices as it concerns environmental safety. We have also pointed out that this environmental crisis has over the years engendered unprecedented level of poverty among the people of the region and a general underdevelopment of the region.

By way of conclusion, we recommend as follows:

- i) that government at all levels should reassert a stringent enforcement of environmental laws in Nigeria with the aim of punishing adequately all defaulting firms;
- ii) that all existing environmental laws should be reviewed with the aim of filling existing legal lacuna and loopholes which the oil producing firms have taken advantage of to continue to perpetuate sub-standard environmental safety practices;
- iii) that all agencies like FEPA and the Federal Ministry of Environment who are saddled with the responsibilities of enforcing environmental laws in Nigeria should be adequately funded, humanly and materially equipped and legally empowered to do their duties effectively.

However, the environmental crisis and the underdevelopment of the Niger Delta region highlight more profound national challenges with which Nigeria will have to contend, most notably, issues of fiscal federalism, law enforcement and security, minority rights, resource allocation and poverty alleviation.

The Niger Delta issue is a serious matter that requires serious and urgent policy, committed and courageous political leadership to resolve. It is the submission of this paper that the proper implementation of true fiscal federalism in Nigeria would provide a lasting solution to the crisis of environment and underdevelopment in the Niger Delta Region.

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Environment Law and Underdevelopment in the Niger Delta Region

Written by Emmanuel Duru

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APPENDIX

RANGE OF VALUES USED IN RANKING HUMAN DEVELOPMENT INDICATORS

Index High Range Medium Range Low Range HDI 0.463 – 0.579 0.462 – 0.347 0.346 – 0.299 HPI – 1 14.03 – 20.594 20.595 – 27.158 27.159 – 33.722 GDI 0.470 – 0.556 0.469 – 0.383 0.382 – 0.295 Life Expectancy 0.520 – 0.600 0.519 – 0.440 0.439 – 0.358 Equally Distributed Life Expectancy 0.513 – 0.592 0.512 – 0.434 0.433 – 0.353 GDP Index 0.600 – 0.899 0.599 – 0.301 0.000 – 0.300 Educational Index 0.371 – 0.443 0.370 – 0.299 0.298 – 0.225

Source: Niger Delta Human Development Report, 2006

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