

LAW & ENVIRONMENT

Dr Lanre Fagbohun, associate professor, Faculty of Law, Lagos State University (LASU) and director, Environmental Law Research Institute (ELRI), Lagos takes a critical view of the Niger-Delta environmental and physical conditions. He agrees with the submission of the Willink Committee in 1958 that ...

Nigeria is Africa's most populous country, with an estimated population of about 120 million and more than 350 ethnic groups. Over three times the size of the United Kingdom, Nigeria occupies 15% of Africa and constitutes 56% of its people. Studies indicate that her intensive oil sector provides about 30% of the GDP, 95% of foreign exchange earnings, and 80% of budgetary revenues. The Niger-Delta, though comprises about one-tenth of Nigeria's territory and population, it produces nearly all the country's oil. The Niger-Delta is located in the Southern part of Nigeria stretching from the Nigeria - Cameroon boundary in the east to the Ondo - Ogun states boundary in the west.

The area is bounded in the north by Enugu, Ebonyi, Anambra, Kogi and Ekiti States, with the Atlantic coast forming the general boundary in the south. The geographical area of the Niger-Delta measures about 70,000 square kilometres and is largely populated by the Ijaw ethnic group, sprawling some 1,600 communities. The primary occupation of the people include fishing, farming, forest product gathering and craft, albeit, at subsistence level. Originally, the Niger-Delta composed of about six states, namely, Akwa-Ibom, Bayelsa, Cross-River, Delta, Edo and Rivers. Recent legislation has further extended its frontiers to include Abia, Imo and Ondo States.

Regrettably, important and strategic as the Niger-Delta is to Nigeria, there is global consensus that poverty in the area is widespread. The Niger-Delta has remained pervasively poor and under-developed, lacking virtually all forms of social amenities and infrastructure such as electricity, good roads, shelter, medical facilities, schools and portable water. Unemployment is high and rising, so also are communal conflict, youth restiveness, devastating ecological crises and various other forms of social insecurity.

Admittedly, the Niger-Delta is characterized by wetlands and water bodies with creeks and rivers criss-crossing the region, thus making development of the terrain a difficult and complex challenge, the disturbing irony that has precipitated the quest for fairness is that the oil companies operating within this same environment carry out their activities and operations in splendour: good houses, well tarred roads, uninterrupted power supply, fully equipped and properly staffed clinics, availability of portable water among others. Further tragic is that while the constraint of funds has been the excuse for failure to provide basic infrastructure, crude oil for export is transported to places like Bonny and Forcados through a network of pipelines covering more than 6,000km and costing billions of dollars. The problem of the terrain notwithstanding, these pipelines are laid across farms, waterways, fishing grounds, across communities and sometimes within living quarters.

The following excerpts from the Willink Commission Report well sums up the frustrations anguish and despair of the Niger-Delta people as far back as 1958:

...the needs of these who live in the creeks and swamps of the Niger-Delta are very different from those in the interior... it is not easy for a government or legislature operating from the inland to concern itself or even fully understand the problems of a territory where communications are so scanty in a country which is unlikely ever to be developed...

The Commission concluded:

...we had no doubt that a feeling of neglect and a lack of understanding was widespread in both Regions (Western and Eastern Deltas). We consider that a case has been made out for special treatment of this area. This is a matter that requires special effort because it is poor, backward and neglected...

More recently, a woman leader from the Niger-Delta reflecting on the present state of affairs in the area recalled thus:

When they first came, they told us that God has blessed us abundantly and that they will turn our Community into a paradise in a little while; they said we will be rich and our children will go to school and visit the land of the white people. They asked us to work with them. We gave our hearts, we worked with them. We gave them our food, sometimes we even gave them our foodstuffs for marriage but see what they have done to us. They took the blessings away, instead of paradise they gave us hell, (gas flares), instead of sending our children to school and

The Niger-Delta environment: There's hope amidst chaos! (1)



• Dr Fagbohun

the white man's land they sent them running into the forest with soldiers at the heels. They disdained our land, stole our hearts, disdained our trust Eh Oghene mee (My God). You know, they have offended us, offended God, they have offended our land, someone must pay. I always cry when I remember that some of my people helped them to offend us.

With particular reference to disruption of the ecosystem, the people of Oguagba in Edo State whose joy know no bounds when oil production started in the area in 1968 were later to lament thus:

Our joy have become sorrows because the oil production activities have completely destroyed the ecological systems of our clan. Aquatic life is almost completely destroyed, the soil completely eroded and the fauna and flora badly affected almost to the level of extinction. In addition, oil exploration and production activities have subjected us to devastating erosion and permanent pollution, forcing us against our will to lie permanently in a toxic atmosphere.

The genesis of oil exploration in the Niger Delta starting from the seepage that was first discovered in Araromi now in Ondo State in 1905 and culminating in the involvement of the Nigerian Bitumen Company, (a German Company), the Nigerian Investment Company (a British Company) and then Shell D'Arcy (a Dutch and English interest) has been traced by several commentators. As such, it is not intended in this piece to go back this memory lane. It would suffice to note; however, that as at this moment, over 20 foreign companies and more than 100 indigenous companies are involved in the business of oil exploration and development in the Niger-Delta area.

Grievances against these companies particularly the international companies have accumulated in the communities, and this has in different ways fuelled violence. The violence has escalated in the last few years so much that the Niger Delta is viewed by many observers as one of the most intense conflict areas of the world. Against the background of abuse and violation of human rights of individuals and communities by international oil companies (IOCs), and inaction and repression by the Government, the grievances of these communities have turned into outright antagonism leading to frequent instances of abduction of company officials, sabotage of oil installations and outright violence generally targeting the companies.

In the above regard, the militants have consistently maintained that their goal is to stop

...the needs of these who live in the creeks and swamps of the Niger-Delta are very different from those in the interior... it is not easy for a government or legislature operating from the inland to concern itself or even fully understand the problems of a territory where communications are so scanty in a country which is unlikely ever to be developed...

oil supply from the region until their demands for fairness and justice are met. The IOCs on their part have maintained their policies of "divide and rule" in order to weaken antagonism, and to the use of state security forces to whittle down oppositions. Some of the companies have also resorted to awarding security contracts to known militant leaders.

While no firm statistics are available, NGOs estimate that there were nearly 1000 violent deaths in the Niger Delta alone in 2003 and most of these were as a result of intra-communal or inter-communal conflict, and also the result of excessive use of force by security forces or the police force. Since then, militants have become more sophisticated and more violent, thus, increasing the orgy of blood feud.

To be fair to the IOCs, it is not the case that their attitude to improving the plight of communities within their area of operations have been one of indifference. Oil companies have over the years funded several dozen projects of schools, clinics, roads, scholarship awards and provisions of other lofty infrastructure thereby giving the impression that the corporate social responsibility programs of the companies are contrived. The problem, however, is that because there are larger areas within the region to which their activities do not extend, these areas are left without adequate infrastructure. The immediate implication of these is that communities become resentful towards one another. Invariably, a situation of good intention results in causing more harm than good. Another problem has to do with the negative and suspicious motives that have been ascribed to some of these philanthropic activities. Against the background of already embedded distrust, many simply view such funded projects as a ploy to "buy" peace from the communities in order to secure their license to operate, whilst others are of the opinion that the projects do not match the wealth extracted from their land.

What is obvious is that the above conflicting demands and pressures which in no small measure have contributed to the crises of the Niger-Delta are symptoms of certain root problems. Understood in this light, the fundamental question to ask is what are these root problems and what has been the role of law and policy in terms of "justice or injustice" in the administration of the Niger Delta. Here, there is much room for doubt and dispute. We can fairly assume that the response of successive governments will be that the claims of all sections of the Nigerian nation have been impartially considered before legislation, even though in the

result the claims of one section were subordinated to those of others. If this is true, it would of course, satisfy the principle of "for the common good". To the people of the Niger Delta, however, laws and policies are the effective weapons that the Nigerian nation have been using to legitimise an unjust "status quo". How then do we achieve a win-win situation?

This contribution will seek to identify the root problems of the Niger-Delta debacle and the dynamics of law and policy in meeting the challenges posed by these problems. It would also analyze current status of efforts and how sufficiently responsive these may be to alleviating poverty and providing legal means of redress for human rights violation and environmental degradation.

Understanding the threatening structures

It must be acknowledged that there are several issues that rightly can be regarded as threatening and in dire need of rethinking if we are to get the issue of the Niger Delta right. However, for the purpose of our discourse, this write-up will examine them under four broad heads, namely: allocation of revenue; state intervention in distortions; ecological disruptions and the role of IOCs; and the problem of compensation and restoration. These four broad areas will be discussed seriatim.

i) Allocation of revenue

A threshold issue in the Niger-Delta problem is how to ensure that communities in the areas in which exploration and production activities are carried on receive an equitable share of the resulting revenues from such activities. The perceived inability of the Niger-Delta people to receive what they believe is fair and just allocation from such revenue has led to sharp and strident criticism of "Federalism" as is being practiced in Nigeria. It has also caused a shift in the demand of the Niger-Delta people from fair allocation of revenue to the desire to have the right of control of natural resources found in their area. This is expressed in the concept of "resource control". To appreciate the thinking behind this shift, the historical background to revenue allocation becomes apposite.

By the provisions of section 44(3) of the Constitution, the entire property in and control of all minerals, mineral oils and natural gas in Nigeria or in its territorial waters or exclusive economic zone were vested in the federal government. In the same vein, the Petroleum Act vests Nigeria's petroleum resources in "the State". It is by virtue of these laws that the federal government is entitled to royalties on crude oil. The only form of compensation which upstream companies are obliged to pay directly to individuals, communities or other entities whose land is affected by their operations is compensation for surface rights.

The royalties go into the Federation Account together with all other revenues collected by the Federal Government, and it is from here that allocation is subsequently made to the Federal, States and Local Governments. It is noteworthy that since the setting-up of the Phillipson Commission in 1946 to recommend principles for revenue allocation, not less than eight other commissions on revenue allocation have been constituted by successive governments. All the constitution drafting committees and constitutional conference convened since independence have also had to tackle the knotty issue of revenue allocation.

The Phillipson Commission recommended the derivation principle primarily because it was viewed as a way through which a region would benefit in proportion to its contribution to the central revenue, and notwithstanding that it was challenged at the general conference on the view of the Richards Constitution, it was retained. In 1957, the Ransman and Tress Commission argued for a reduction of the fiscal gap between the West and other regions. Consequently, that Commission narrowed the scope of the application of derivation by recommending what became the present day Distributive Pool Account (DPA) into which are paid other taxes not declared regional or federal. The recommendations of the Ransman and Tress Commission formed the basis of revenue allocation in Nigeria until the late 1960s.

• To be continued