LASU Law Journal

Vol. IV Issue 2 (2002) pp. 1-233 ISSN- 11158387

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- [illegible]ectual Property System and Industry Competitiveness: A European [illegible] Perspective
  [illegible]mans
- [illegible]ronic Fund Transfer: Legal Issues Arising
  [illegible]olade Salami
- Bankers' Books Evidence Act - Its use and Abuse by the Nigeria Police
  Emeka Chianu
- The Employer's Right to Dismiss and The Doctrine of Fair Hearing
  Sola Adegoroye
- An Appraisal of The Code of Conduct for Public Officers in Nigeria
  A. A. Idowu
- The Relavance of The Ecclesiastical Charge in The Celebration of Marriage under The Marriage Act in Nigeria
  Chris Ohurogu
- Spousal Immunity for Rape Under The Nigerian Criminal Code: Opening The [illegible] To Criminal Prosecution
  Samson Koyonda
- A New Equity for Unmarried Couples
  Festus Emiri
- Gender Discrimination: Challenges for The Twenty-First Century
  Mosope Fagbongbe

CASE NOTES

- Medical Evidence and Assessment of Compensation: Obasuyi & Sons (Sawmill) Ltd. v. Gabriel Erumiawho in Perspective
  [illegible] Oshio
- Do Lawyers Really Have a Right of Audience in the Sharia Court of Appeal ? [illegible]arimatu & Anor v. Alhaji Paiko & Anor Revisited
  [illegible] A. Oba

[illegible]TUTES REVIEW

- [illegible] Olaguntju
- [illegible] Making the African Trademark System Work: A Proposal for Harmonisation [illegible] Regional Framework
- [illegible] and The OAU Model Law - A Note

Published by the Faculty of Law, Lagos State University.

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LASU Law Journal

Vol. IV Issue 2 January 2002 LASU L.J 1-233. ISSN—1115837

Contents

ARTICLES

The Intellectual Property System and Industry Competitiveness: A European University Perspective 1-14
Paul Torremans

Electronic Fund Transfer: Legal Issues Arising 15-39
A. O. Salami

Bankers' Book Evidence Act - Its Use and Abuse by the Nigerian Police 40-54
Emeka Chianu

The Employer's Right to Dismiss and The Doctrine of Fair Hearing 55-80
Sola Adegoroye

An Appraisal of the Code of Conduct for Public Officers in Nigeria 81-99
A. A. Idowu

The Relevance of the Ecclesiastical Charge in the Celebration of Marriage Under the Marriage Act in Nigeria 100-112
Chris Ohurogu

Spousal Immunity for Rape Under the Nigerian Criminal Code: Opening the Doors to Criminal Prosecution 113-132
Samson O. Koyonda

A New Equity for Unmarried Couple 133-150
Festus Emiri

Gender Discrimination: Challenges for the Twenty-first Century 151-172
Mosope D. Fagbongbe

Medical Evidence and Assessment of Compensation: Obasuyi and Sons (Sawmill) Ltd. v. Gabriel Erumiawho in Perspective 173-182
P. Ehi Oshio

Do Lawyers Really Have a Right of Audience in the Sharia Court of Appeal: Karimatu and Anor. v. Alhaji Paiko and Anor Revisited 183-197
A. A. Oba

Statutes Review 198-209
Debo Olagunju

Towards Making the African Trademark System Work: A Proposal for Harmonisation of the Existing Regional Framework 210-219
Adebambo Adewopo

The Dialectics of Biosphere Protection and the OAU Model Law - A Note 220-233
'Lanre Fagbohun

Published by the Faculty of Law, Lagos State University.

STATUTES REVIEW

Debo Olagunju *

I. NATIONAL MINIMUM WAGE (AMENDMENT) ACT 2000.

This Act further amended Cap. 267 vol. 16 Laws of the Federation of Nigeria (No. 48) of 1990 which is the principal Act dealing with the issue of minimum wage. subsection (1) of Section 1 of the 1990 Act was amended to reflect the new (revised) minimum wage to ₦5,500.00 per Month[1]. This shall be referred to as the National minimum wage and no employer (except as provided for under the Act) is expected to pay any amount less than that amount every Month to his worker.

The exceptions are as follows:[2]

1. An establishment in which less than fifty workers are employed;
2. An establishment in which workers are employed on part – time basis;
3. An establishment at which workers are paid on commission or on piece-rate basis;
4. Workers in seasonal employment such as agriculture; and
5. Any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply.

Comments.

One of the very first gains of democracy in Nigeria is the upward review of minimum wage and the enactment of same into law. Before now the issue (even crucial as it is) had always been left to the whims and caprices of military dictators in Nigeria. It is important to mention that the last time a legislative enactment was made on the subject was in 1981 during the second republic[3] From then on, it was not a question of right for the Nigerian worker to earn a commensurate pay to the level of inflation that keeps rising astronomically due to the instability of the Naira as a result of our mounting external debts. The military rulers only believed in amassing wealth for themselves, their families and cohorts under the guise of capital projects, which were inn fact not felt by the masses. The class structure was destroyed so much so

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1. Note that the last amendment to the Act was by a military decree under general Abubakar to ₦3,500.00 per month sometimes in 1998 shortly before the hand over of power to a democratic government.
2. These are contained in the principal Act.
3. Cap. 267. There had been some amendments here and there with military decrees.

that all we had in Nigeria was the super *noveu riche* and the lower echelon. This in itself largely contributed to corruption, which nearly became an epidemic feature in the Nigeria society during the military era. Corruption in the sense that many people no longer believed in honest labour as a means of being comfortable. You have to cut corners. It was indeed a destruction of the moral psyche of the average Nigeria worker – especially the Government workers found everywhere in the public service. And yet, this period produced the largest number of military millionaires who became the comprador bourgeoisie of the day[4] Hope however seem to appear on the horizon with the pronouncement of general Abdusalami Abubakaar who succeeded general Abacha, in 1998 when he announced an increment in the minimum wage. Partly implemented, a lot of impediments were however placed on its way until the present democratic dispensation brought succour to the people with the present amendment passed on the subject giving it all the legality it deserves.

It is against background that one views the action/pronouncements of some of the Governors in the states on the subject largely unacceptable arguing that their capital projects will suffer it they have to pay wages. All over the world the issue of wages is very crucial because it is central to the issue of standard of living of the people.

Under the appropriate United Nations conventions, every human being is entitled to a minimum standard of living. And that is why even for those who cannot be gainfully employed in the advanced countries, the social security allowance is created. No amount of capital project can be appreciated by the people unless it transforms into something in their pockets. It is submitted that the capital project syndromes is a relic of the military era to divert considerable funds to private purses. We must not sacrifice hunger at the alter of projects-be it capital or otherwise, after all they say – 'a labourer deserves his wages'. On a general observation, it is noted that the bill was passed by the senate and the House of Representatives on 10th and 31st of May, 2000 respectively. While the president gave his assent on the 7th of June, 2000 thereby becoming law (an Act of the National Assembly) on that day. It is instrumental to point out however that the implementation of the amendment started from 1st of May, 2000. This was precisely about a month and six days before it actually became law.

What is the implication of this? To my mind it means that the action of Government (at least the executive arm) could not be supported by law during the period mentioned (i.e. the whole of May and Six days in June). Although it must be mentioned that the commencement date cited on the Act itself reads 1st May, 2000, this runs contra to

4. It is on record that about $600,000,000 + was recovered by the Obasanjo Government from the late Abacha who ruled from 1993 – 1998. Many of his likes are still enjoying their loot up till today.

the actual day assent was given to it. It appears therefore that the act was made to apply retroactively. Also a relic of the military experience.

Against future background, care must be taken not to allow this kind of situation to arise again otherwise it may give our nascent democracy a bad name. In fact it portrays both the executive and the legislature as lackadaisical in their approached to passages of laws. This time around, thee may be no hues and cries over this lapse, there ma y be no suit challenging the validity of the Act because of obvious reasons - it boarders on public policy, it is populist. But let the legislature (and the executive) remember that not everyone is capable of jettison proper procedures at the alter of populism. Carefulness, diligence and dispatch are the watchwords.

Finally, we cannot over emphasized that this law (amendment) is a right in the right direction and at the right time. Sociological jurisprudence, according to Roscoe Pound the American Jurist, should ensure that the making, interpretation and application of laws take account of social facts[5]. This law I believe fits into pound's theory. We are gradually of course seeing/witnessing the hitherto destroyed middle-class emerging again out of the doldrums and I believe that this will go along way at eradicating (or at least minimizing) corruption and other social vices in the Nigeria system. To whom much is given, much is expected.

II. Corrupt Practices and other Related Offences act, 2000.

This Act, which came into force on the 13th of June, 2000 prohibits and prescribes punishment for several corrupt practices in Nigeria. Tagged the Anti-corruption Law, it is an attempt by the present Government to redeem the already battered image of the Country which got its climax during military dictatorship that spanned an unbroken twenty years (1979 – 1999) save for a three Months interim period (August – November 1993) during which period a temporary Government (not elected) held forth in Nigeria.[6]

The act comprises seventy-one sections with an explanatory or memorandum, and a schedule. It was passed by the national Assembly (Senate and House of Representatives) on 31st May, 2000 and 1st June 2000 respectively, and assented to by the president on 13th June, 2000 thereby becoming law on that day.

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5. Pound, 'A Survey of Social Interests' (1943 – 44) 57 Harvard Law Review 1, and pound on Jurisprudence.
6. This Government was later declared illegal by a High Court in Lagos (per Justice Dolapo Akinsanya) on the 23rd of November, 1993 in a landmark judgment.

Apart from the several provisions, Act also establishes the Independent corrupt practices and other related offences commission (hereinafter referred to as the corrupt practices commission) vesting it with the power to investigate and prosecute offenders under the Act.[7]

Section 8 to 26 spelt out specific offences covered by the Act and the penalties attached to them. Such offences include:

> *"Accepting of gratification (either directly or through an agent); fraudulent acquisition of property; fraudulent receipt of property; frustration of investigation by the commission of any document be it manual or electronic; making of false statements or returns by any person in respect of any money or property received by him or entrusted to his care, or the balance of any such money or property in his possession or under his control; demanding of bribe or gratification by public officer to procure vote or the performance of an act (e.g. contract or the gaining of undue advantage over others etc.) and the offering of same; using of office or position by public officer for gratification; bribery relating to auctions, bribery for giving assistance, etc. in regard to contracts etc."*

Section 23 confers duty on any public officer to whom any gratification has been offered, given or promised to report the offerer together with his identity to the nearest officer of the commission or police office. In the same vein, the section also provides that any person from whom gratification has been solicited or obtained or obtained should at the earliest opportunity report to the nearest officer of the commission or a police officer.

Section 26 makes provision in respect of attempt and conspiracy in relation to any of the offences listed above and makes them equally punishable. The section vests the power to prosecute under the Act on the Attorney General of the Federal or any person to whom he delegates that authority.

Section 27 to 42 deal with the power of the corrupt practices commission to investigate report made to it, summon persons and examine them, serve summons, and punish for evasion of service. The commission may also obtain court to enter and search premises of suspected persons while conducting investigation. The commission is also empowered to seize any movable or immovable property, which is suspected to be connected with any offence under the Act.

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7. See S. 3 – 7 of the Act.

Section 43 to 52 confer certain powers on the chairman of the corrupt practices commission concerning investigation, obtaining of information, seizure of movable property in the bank, order of surrendering of travel documents of person under investigation etc.

Section 53 and 61 and 61 to 64 deal with evidence and procedures to be adopted in the prosecution of offences under the Act. Of note is section 53 which states that once it is proved that a gratification has been accepted, then it is presumed that such is corruptly accepted until the contrary is proved.

Section 55 speaks on the admissibility of the evidence of accomplice and agent provocateur. In the case of an accomplice, once the person in question has, before the completion of the offence reported the acts constituting the offence to the commission, he shall cease to be an accomplice and his evidence shall be admissible at the trial as a witness. In the case of agent provocateur, no such person shall be presumed to be unworthy of credit as a witness only by reason of having abetted, aided or encouraged the commission of an offence for the sole purpose of securing evidence against another person. This section is very important in view of the fact that the offence of bribery is hardly committed alone. It takes two to tango. One person must give, the other must accept. And so along the line, it could be that one was actually "playing along" with the other who actually had the motive of committing the offence. To consummate the offence therefore an agent provocateur may become necessary.

Section 60 appears to deal with the "Kola" syndrome, which is disguised bribe in the form of appreciation. The section prohibits the admissibility of any evidence tending to prove as a defence that a gratification is customary in any profession, trade, vocation, and calling or on a social occasion. Section 61 is a saving provision in the sense that it prosecution under the Act shall not undermine the right or authority of any other person to prosecute offenders under any other law on the subject. Under the same section the High Courts of a state and that of the Federal Capital Territory are empowered to try cases under the Act when so designated by the chief judge of the state or the FCT as appropriate.

Finally, section 65 to 70 contain general provisions relating to protection of officers of the corrupt practice commission, service of any prosecution under the Act on the commission and power of the chairman of the commission to make rules regarding the form of notice, order, declaration, service of notice, direction, instruction etc. Lastly, section 71 provides for the right of Appeal for any person convicted under the Actor a similar in accordance with the provisions of the constitution.

Comments

It must be noted from the onset of this comment that the corrupt practices and other related offences Act is not is not creating a new law regarding the offence of corruption in Nigeria. The Act only redefined the scope of the law in that regard. Under the various criminal laws in Nigeria, the offence had always been in existence with punishment prescribed. For example the criminal code cap 42 makes provision for the offence in its section 98 –112, 114-115, 404 and 494. Basically, there appears to be a difference between "official" and "judicial" corruption according to the code. Official corruption is sometimes categories into bribery and extortion, although as pointed out by Okonkwo and Naish, the distinction is of little or no legal significance.[8] Perhaps it is this kind of distinction and sometimes the difficult wording of the section that led to passing of the present Anti-corruption law under one umbrella in a separate and distinct legislation. Under the code for example many perceived clear offenders are let off the hook merely because they were under the wrong section. In acknowledging the cumbersomeness of some of these sections the court in *Amaechi v. C.O.P.* said.[9]

> "*We would only add and repeat what has been said in the past that the law relating to official corruption and kindred offences is not easy and that the advice of the law officers should be sought, whenever possible, before proceeding are taken*"

Even in spite of consultation sometimes with law officers the difficulty still remains as evidenced by the following observation by the learned authors of Criminal law in Nigeria, when they said.[10]

> "*In fairness to prosecutors it should be added that the courts themselves have been involved in difficulties and disputes when faced with the interpretation of the array of complex sections relating to corruption which are scattered in the code*".

It was perhaps in yielding to the kind of advice in Amaechi's case,[11] that the duty of prosecuting cases under the new anti-corruption law invested in the Attorney-General who is regarded as the chief law officer of the state.[12] Hitherto this was left in the

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8. Criminal Law in Nigeria, Okonkwo and Naish (2nd ed.) p. 356.
9. (1958) N.R.N.L.R 123.
10. op. cit. also at p. 356.
11. Supra.
12. See again S. 26(2) and 61(1) of the Act.

hands of the police and at the magistrates court. There was a feeling that this also largely contributed to the slipshod manner in which most of the cases concerning the issue of corruption were handled considering the antecedents of these two law enforcement agencies. Section 26(2) of the corrupt practices and other related offences Act directly took the power out of their hands when it stated categorically that:

> *"Prosecution for an offence under this Act shall be initiated by the Attorney-General of the Federation, or any person or authority to whom he shall delegate his authority, in any superior court of record so designated ... and every prosecution for an offence under this Act or any other law prohibiting bribery, corruption, fraud or any other related offences shall be deemed to be initiated by the Attorney-General of the Federation."*[13]

The Act did not stop at that, even the power of investigation has been taken out of the police hand with the setting up of the Independent Corrupt Practices and Other Related Offences Commission whose duty it shall be to investigate cases of corruption and in appropriate cases under the direction of the Attorney-General prosecute offenders under the Act.[14] The Commission's duties, quite apart from the past role of the police with regard to corruption is quite expansive. Under section 6 of the Act, the Commission is also saddled with the responsibility to: examine the practices, systems and procedures of public bodies and where in the opinion of the Commission such practices, system and procedures aid or facilitate fraud or corruption, to direct and supervise review of them; instruct, advice and assist any officer, agency or parastatals on ways of minimising or eliminating fraud or corruption; advise heads of public bodies of any changes in practice, systems or procedures compatible with the effective discharge of the duties of such bodies which in the view of the commission may reduce the likelihood or incidence of bribery, corruption, and related offences; educate the public on and against bribery, corruption and related offences; and enlist and foster public support in combating corruption.

In view of the provision of section 23 which enjoins any one from whom gratification has been demanded or offered, to report to the nearest officer of the Commission or a police officer, it needs to be clarified that although it looks like an overlap but there is none. It is expected that once such report is made to the police officer, he would

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13. Underlining mine for emphasis.
14. The Commission has since been constituted and headed by Justice Mustapha Akanbi and on October 3rd 2001 arraigned the Chairman of Dawakin-Kudu Local Council in Kano State as the first council chief to be so arraigned. See The Guardian 22-11-2001 (infra).

in turn inform the Commission which is the appropriate authority to investigate, about it. The provision of section 6 (a) is very clear on the issue of investigation and even also prosecution under the Act.

We may also note that this Act applies to all forms and manner of persons whether in the public or private capacity. It is in connection with this that the provisions of section 52 of the Act is commendable which removes any concept of "tin-goddism" or the treatment of sacred cow on even the highest authority in the land by providing for the investigation of the President, his Vice, the State Governor and his Deputy where there is an allegation of corruption against them, such allegation shall be brought by an application on notice with all the supporting facts before the Chief Justice of the Federation who if satisfied shall authorise an independent counsel (a lawyer of not less than 15 years) to investigate the allegation and report back to the National Assembly as the case may be. In this regard, the corruption practices commission is enjoined to give its full cooperation to such independent counsel and provide all necessary facilities to perform this function.

The searchlight has already been turned to three Governors (yet undisclosed) under this provision. According to a statement signed by the Commission's Assistant Director of Public Enlightenment and Education,[15] quoting the Chairman of the Commission:

> *"At the conclusion of investigations against the suspects, the Commission will, by virtue of section 52 of the Anti-Corruption law, send the report to the Chief Justice of Nigeria who, if satisfied "that an offence is disclosed, shall appoint an independent counsel to conduct further investigation into the allegations made against the suspects. Such independent counsel shall thereafter make a report of his findings to the state or National Assembly as the case may be."*[16]

Finally, we may conclude that looking at all the cases of corruption under the criminal code, offenders are often times acquitted under various guises, which are sometimes hardly understandable. Most of them on technical grounds such as that the accused was brought under one section of the law when he ought to have been brought under another etc. One hopes that this kind of judicial cog will not be allowed to disturb the turn of the wheel of administration of justice under the corrupt practices and other related offences Act.

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15. Mr. Kalu Otisi.
16. See The Guardian, "Anti-graft Commission Probes three governors" Thursday, November 22, 2001, p. 1-2.

III. Niger-Delta Development Commission (Establishment, etc) Act, 2000

The Niger-Delta Development Commission (Establishment etc) Act 2000 was passed on the 12th day of July, 2000 in accordance with section 58(5) of the 1999 Constitution having being signed by the Speaker of the House of Representatives on the 11th of July, 2000 and the Senate President on the 12th of July, 2000. That section (S. 55[5]) in combination with section 58(4) provide that where a bill is presented to the president for assent he shall within thirty days signify his assent or withhold same. Where the latter is the case, and the bill is again passed by two-thirds majority of each House,[17] the bill shall become law and the assent of the president shall be dispensed with.

The Act is divided into six parts, which contains thirty-one sections, one schedule, and an explanatory note or memorandum explaining the purpose of the Act.

Part one contains six sections and makes provision for the establishment of the Niger-Delta Development Commission (hereinafter called "Commission), which shall be a body corporate with perpetual succession and head office in Port Harcourt, Rivers State. There is also the establishment of a Governing Board for the Commission Comprising of: The Chairman; one person who shall be an indigene of an oil producing area representing each of the following member states i.e. Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo, and Rivers State. Three persons representing non-oil mineral producing states drawn from the remaining geo-political zones which are not represented in the Commission. One representative of oil producing companies in the Niger-Delta nominated by the oil producing companies. One person representing the Federal Ministry of Finance; one person representing the Federal Ministry of Environment; the Managing Director of the Commission; and two executive directors. The office of the Chairman shall be rotated amongst the member stats of the Commission in alphabetical order as listed above.

The part also provides for the criteria for appointing the persons aforementioned. It says they shall be appointed by the President and Commander-In-Chief subject to confirmation of the Senate, and shall be persons of proven integrity and ability. The tenure and allowances of members are also covered in this part.

Part two spells out the functions and powers of the Commission. The Commission is charged with formulating policies and guidelines for overall development of the Niger-Delta area. It shall among others: implement all the measures approved for the development of the Niger-Delta area by the Federal Government and the member

17. Note that the bill was first passed by both houses (House of Reps. and Senate) on 1st June, and 6th June, 2000 respectively.

States of the Commission; tackle ecological and environmental problems that arise from the exploration of oil mineral 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; and perform such other functions required for the sustainable development of the Niger-Delta area and its people.

This part also spelt out the powers of the board which shall include among others: the managing and supervising of the affairs of the Commission; making rules and regulations for carrying out the functions of the Commission; paying the staff of the Commission such remuneration and allowances as appropriate etc.

Part three deals with the structure of the Commission, which consists of about eleven directorates, a management Committee, and the Niger-Delta Development Advisory Committee.

Part four deals with the appointment of the managing director and all the other staff of the commission. As for the managing director, he shall be appointed by the president and confirmed by the Senate in consultation with the House of Representatives. The other employees are employed by the Board. The managing director who is the chief executive and chief accounting officer is responsible for the day-to-day administration of the Commission. He is vested with responsibility of keeping the books and proper records of the proceedings of the Board; administration of the secretariat of the board; and the general direction and control of all other employees of the Commission.

Part five contains the financial provisions for the running of the Commission. It says that the Commission shall establish and maintain a fund from which all expenditures incurred shall be defrayed. Into this fund, the Federal Government is expected to pay the equivalent of 15 per cent of the total Monthly Statutory allocations due to member states of the Commission from the Federation account. Also into this fund, every oil producing company operating in the Niger-Delta (including gas processing companies) whether on shore or off shore, is expected to contribute 3 per cent of its total annual budget. All member stated of the Commission are also expected to contribute 50 per cent of monies due to them from the ecological fund. Finally all such monies that the Commission may receive either by way of grant, gift, dispositions etc are to be kept in the fund.

The power of the Commission to borrow is contained in section 17 of the Act. This can only be done with the consent of the president.

Part six of the Act contains the miscellaneous provisions. Under that part, section 21 provides for the establishment of a monitoring committee, which shall monitor the management of the funds of the Commission and the implementation of the projects

of the Commission. It shall also have access to the books of account and other records of the Commission and make periodic reports to the president. Section 24 makes the provisions of the Public officers Protection Act apply to the Commission in relation to any suit instituted against any of its officer or employee. Section 28 repealed the former Oil Mineral Producing Areas Development Commission (OMPADEC) set up by Decree No. 41 of 1998 and vest its assets, rights, liabilities, interests and obligations on the Niger-Delta Development Commission.

Comments

This Act is a very important one just like the one it repealed (OMPADEC Decree) in that it attempts to focus on the exploitative and ecological problems arising form the exploration of oil (and other related minerals) by the Government and the foreign oil companies in the Niger-Delta area. The long title to the Act sums it all up when it provides that it is:

> *"A bill for an Act to provide for the repeal of the Oil Mineral Producing Areas Commission Decree 1998 and among other things, establish a new commission with a reorganized management and administrative structure for more effectiveness and for the use of the sums received from the allocation of the federation account for tackling ecological problems which arise from the exploration of oil minerals in the Niger Delta area."*

It is perhaps instrumental to remind ourselves that before the passing of the 1998 Decree itself series of agitations had arisen in the Niger-Delta area over the depletion and pollution of that environment by the activities of the oil companies carrying on exploration in the area. So many groups sprang up in the area to fight and resist this perceived injustice. In fact it was not uncommon to see and hear reports of oil pipelines and equipment of some of these companies vandalized and destroyed on a daily basis in retaliation by some of these groups. The agitation came to a head sometimes in 1995 when one of these groups – Movement for the Survival of the Ogoni People (MOSOP) led a violent revolt against some of its perceived sell-out members. In the ensuing fratricidal fracas four prominent Ogonis died. In swift response the Federal Military Government of General Sani Abacha got the leaders of MOSOP arrested and tried in suspicious circumstances. This trial culminated in the hanging on November 10th of the same year, of another nine Ogoni leaders,[18] which some have perceived (including this writer) as more of reprisal on the part of the Government at that time, than the execution of justice in order to curb or suppress these agitations.

18. Ken Saro Wiwa and eight others.

The above nevertheless made it drawn on Government that the problem of the Niger-Delta can no longer be glossed over or passed under the table. It was thus in an attempt to assuage the feelings of the people in that area that the OMPADEC Decree was passed in 1998. As a result of the criticisms levelled against the management structure, and the organisation of the commission under the Decree the need for the present Act arose in order to reorganize the commission and create a more effective administrative structure. Expressing his hope in the new commission President Olusegun Obasanjo stated:

> *"I believe in the potential of the NDDC to offer a lasting solution to the socio-economic difficulties of the Niger-Delta region."*[19]

The Commission has since been constituted and has swung into action embarking on various developmental projects. According to the Chairman of the Commission,[20] over 560 projects in the areas of health, water supply, rural electrification and school buildings are being embarked upon presently.[21]

It was the Chairman's views that laudable as these projects are, they are not the real issue. The real issue in the region according to him is to develop an organizational framework for an enabling environment for a lasting sustainable development. Mr. Mark Tomlinson World Bank's representative in Nigeria,[22] argues that one of the problems confronting the Niger-Delta is how to use the enormous resources from the area to develop the community. He posited further that failed initiatives in the past contributed to the slow (or rather lack of) development in the area. He counselled finally, that a spirit of reconciliation is necessary for any progress to be made. Professor Mbaya Kwakwenda,[23] representing the UNDP in the region argues that success of the NDDC will not be for the Niger-Delta area only but will also be appreciated and felt in the entire West African sub region as what the area produces affects not only Nigeria, but the entire region and the world.

It is hoped that with time the Commission will be able to live up to the hopes and aspirations of the people in that area and fulfil the role for which it was set up by the Government.

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19. See The Comet, Monday, November 26, 2001, p. 36.
20. The first chairman of the Commission is Chief Onyema Ugochukwu while the managing director is Engineer Godwin Omene.
21. At a dinner/reception recently held in both Lagos (Golden Gate Restaurant) and Abuja (Sheraton Hotel and Towers) on the 26th and 27th of November 2001, respectively for Donor Agencies and Stakeholders towards an International Conference organized by the Commission in conjunction with the United Nations Development Programme (UNDP) with theme as: Creating an Enabling Environment for the Sustainable Development of the Niger-Delta Region.
22. Also at the occasion of the Dinner/Reception.
23. Also at the same Dinner/Reception.