

***BEING A KEYNOTE ADDRESS BY MALACHY
UGWUMMADU ESQ. AT A RETREAT FOR
THE DIRECTORATE OF LEGAL
SERVICES, NIGER DELTA
DEVELOPMENT COMMISSION
(NDDC).***

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***THEME: PROMOTING LEGAL SERVICE
EFFICIENCY AND EXCELLENCE
IN THE PUBLIC SECTOR.***

***TOPIC: PROMOTING EFFICIENCY AND
EXCELLENCE IN LEGAL
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Abstract

In the context of a renewed need for more interventionist agencies like the Niger Delta Development Commission (NDDC), across the country, the pivotal place of its Directorate of Legal Services has become even more imperative in the operations of the Commission. This keynote address therefore seeks to highlight the crucial roles of the Legal Service department in the Commission that provides a professional gateway to its engagements. It interrogates the required skill sets, professional knowledge and technical knowhow which its officials must possess with a view to safeguarding and facilitating the attainment of the objectives of the Commission. The address identifies the inadequacies of the applicable legal frameworks and the constraints of their optimal implementations and application. It focuses, nonetheless, on the recommended proposals for organizational reforms and efficiencies.

Introduction:

This address adopts an approach that examines the enabling statute, the **Niger Delta Development Commission (Establishment ETC) 2000** in details and had intermittent recourse to the repealed pioneer **Oil Mineral Producing Areas Development Commission Decree** as well as the extant **Niger Delta Development Commission (NDDC) (Establishment Etc) Amendment Act 2017** in addressing this topic. The address pays attention to the relevant sections of the Act that relates to the specialized schedule and operations of the legal services department hugely needed for an efficient and effective

Commission. The paper emphasizes few judicial authorities in practical demonstration of the knowledge, expertise and skill set expected from drivers of this Directorate. In the event, the address provides some recommendations and innovations towards an enhanced and improved legal service delivery for the Commission.

Both **Andrea A. Ajibade** and **Peter O. Olalere** argued in their well-researched contributions **“Understanding the Legal Landscape of Nigeria Oil and Gas Industry: Enduring Challenges And Emerging Trends”** to a book as follows:

“In Nigeria Eighty-three percent (83%) of total primary energy consumed comes from traditional biomass and waste, the rest is from fossil fuel (16%) and hydropower 1%. Of these sources of energy, the Federal Republic of Nigeria is renowned for its wealth in petroleum resources which dominates the source of energy for all the urban centers of the country. Having produced crude oil in commercial qualities since 1958 and as a leading producer of oil and gas on the African continent and globally, Nigeria is endowed with over 37.2 billion barrels of proven oil services, substantial reserve of associated and non-associated gas (estimated to be in excess of 160 trillion standard cubic feet) and coal reserve estimated to be at least 2 billion metric tons

Oil and gas revenue are important to Nigeria’s economy; the oil sector accounts for 90 percent of federal government revenues and is the mainstay of the Nigerian economy. Thus, a legal framework equipped to address all aspects of Nigeria’s energy

industry is crucial to the nation's ability to function, develop and thrive"¹ Emphasis mine.

The foregoing elaborate quotation of leading legal experts in the energy law sector is deliberate to underscore the huge statistical data of resources that abound in Nigeria and over which any institution or agency that operates in that industry must continually remain conscious of and, in particular, the enormous responsibilities and burden that it bears. NDDC remains one of such agencies which is an interventionist initiative established to respond to the devastation that arose from the arbitrary activities of oil giants and players in the industry. It is no less the case when you find yourself in the Directorate of legal services of such a major interventionist agency.

Brief Historical Context of The NDDC.

The NDDC is a Federal Government agency constituted in year 2000 during the administration of President Olusegun Obasanjo. It was essentially a response to the demands of ethnic agitations and advocacy groups in the Niger Delta region of Nigeria to the extensive environmental degradation and pollution occasioned by decades of oil and gas exploration and exploitation against established international standards of best practices requiring, thereby, serious environmental remediation measures to tackle the massive destructions, devastations underdevelopment and poverty ravaging the region. In 2008, former President Musa Yar'Adua created the Ministry of the Niger Delta with a substantive Minister of the Niger Delta Affairs to give practical effect to the central objective of massive development and growths. By law and through policies, the NDDC took off with an ambitious vision which was to offer lasting solutions to socio-economic difficulties in the

¹ A Review Of Contemporary Legal Trends In Nigeria Law: Eds Dr. Babtunde Ajibade, John Onyide, Olayinka Olasewere And Oluwabukola Iji; Pub Lexis Nexis; Pages 309 -310

Niger Delta region of Nigeria. The mission was no less ambitious which was and remains the mission of facilitating rapid and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable, commercially regenerative and politically peaceful. In the strategy of its operations, the Commission was therefore positioned to actualize its objectives through the following thematic areas of involvements and interventions:

- Enhancing infrastructure in the Niger Delta
- Improving access to healthcare for the people
- Empowering communities through education, skills and jobs
- Sustainable environmental management of the Niger Delta environment and resources.
- Facilitating agricultural development and supporting agro-allied industries.
- Fostering social welfare programs for all the people of the region².

Interrogating the legal frameworks and Related Instruments.

Central to the theme of this retreat is the legal instruments and framework regulating the activities of the Directorate of Legal Services of the NDDC. In no particular order, it is noted that the following legislations and statutes have direct or, at the least, tangential application(s) to the Commission. They include but not limited to the following:

- **The Petroleum Act³**
- **The Petroleum (Production and Drilling) Regulation Of The Oil Pipeline Act⁴**

² See NDDC – official Website @ www.nddc.gov.ng

³ Cap. P. 10 Laws Of The Federation Of Nigeria, 2004

⁴ Cap. O 7, Laws Of The Federation Of Nigeria, 2004

- **The Petroleum Profit Tax Act⁵**
- **The Oil In Navigable Water Act**
- **Nigeria Oil And Gas Industry Content Act⁶**
- **The Oil Mineral Producing Areas Development Commission Act⁷**
- **The Niger Delta Development Commission (Establishment ETC) Act⁸**
- **The Niger Delta Development Commission (Establishment ETC) (Amendment) Act⁹**
- **The Petroleum Industry Act¹⁰**
- **Nigeria Liquified Natural Gas Limited Act¹¹**

Both the Oil Mineral Producing Areas Development Commission Act and the Petroleum Act have been repealed by the Niger Delta Development Commission Act and the Petroleum Industry Act respectively.

Critical Examination Of The Enabling Legislation.

For the purpose of this exercise, we shall focus on the relevant provisions of the Niger Delta Development Commission (Establishment etc) Act as Amended in 2017 and we shall take them *in seriatim*.

1. On capacity to sue and be sued, we reference

S. 1(2) of the Act which provides thus:

(2) The Commission –

a) shall be a body corporate with perpetual succession and a common seal;

⁵ Cap. 354, Laws Of The Federation Of Nigeria, 1990

⁶ 2010, No. 2

⁷ 1988 And Repealed By The NDDC Act 2000

⁸ No. 6, 2000; Cap. N86 LFN 2004

⁹ Act No. 23, 2017

¹⁰ 2021

¹¹ Cap. N87 LFN, 2004

b) may sue and be sued in its corporate name.

This subject is quite elementary but a consequential red flag on the general question of capacity to sue and be sued. Plethora of judicial authorities have been decided on this issue to wit:

Carlen (Nig) Ltd Vs. Unijos & Anor¹²

Fawehinmi Vs. NBA & Ors (No 2)¹³

Malachy Ugwummadu Vs. University Of Nigeria Nsukka¹⁴

AG Federation Vs. ANPP & Ors¹⁵

2. On the Mode of Appointment of the Chairman and Members of Board of the Commission. S. 2(2) of the Act¹⁶

Granted that the repealed Oil Mineral Producing Areas Development Commission Act 1998 was promulgated during military rule in Nigeria when appointments were usually the exclusive prerogative of the Commander - In - Chief of the Nigerian Armed Force¹⁷, yet it should be observed that chairman and members of the Board of the Commission are to be appointed by the President, subject to the confirmation of the Senate and in **consultation with the House of Representatives**. You will however observe that most appointments into statutory departments and agencies and even envoys are usually by the President and upon the confirmation of the Senate. Thus the additional requirement of "consultation" with the House of Representatives should be indicative of the seriousness attached to

¹² (1994) LPELR – 832 (SC);

¹³ 12 (1989) 2 NWLR (PT 105) 558

¹⁴ (2000) 13 WRN Pg. 181 and Nigeria Courts And Students Rights; Committee For The Defence Of Human Rights Ed. Jiti Ogunye P. 715

¹⁵ (2003) LPELR – 630 (SC)

¹⁶ S. 2 of the NDDC Act 2000 (As Amended)

¹⁷ S. 3(2) of OMPADC Act

this processes designed to be as inclusive as possible. It's also assumed that their removal would take such tripartite route being appointments with statutory flavour, subject however, to express provisions of **S. 5 of the Act** dealing with ceasation of membership of the board etc.

3. Functions And Power Of The Commission

The entire **Section 7(1)(2)(3) of the Act** should be instructive and of particular interests to officials of the Directorate of Legal Service. It is indeed, this section that encapsulates the vires, scope and purview of the powers that the Commission can exercise. It covers a wide range of thematic areas including:

- Formulation of policies and guidelines for the development of the Niger Delta.
- Conception, plans, implementation strategies of programmes and projects towards a sustainable development with emphasis on roads, jetties and waterways, transportations, health, education, employment, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunication – quite a handful capable of dispensing with the need for a government if properly pursued and implemented.
- Adequate and effective survey of the entire Niger Area and utilizing the measurement for physical and socio-economic development.
- Master plans and schemes for appropriate physical development and assessed cost implications.
- Strategic developmental collaboration with the Federal Government and member States of the Commission.
- Formulation and implementation of solution-driven policies aimed at tackling inhibiting factors of development, through sound resource management in the Niger Delta.

- Continuous monitoring and reporting mechanisms of projects undertaken by oil and gas companies with a view to ensuring accountability and value for disbursed funds.
- Solving ecological and environmental problems arising from exploration of oil mineral in the Niger Delta but also focusing and advising the Federal government on preventions and control of oil spillages, gas flaring and environmental pollution.
- Collaboration with reputable oil mineral and gas prospecting and producing companies on all matters of pollution, prevention and control.

In many respects, this last function of the Commission is particularly important because it appears to have a direct bearing with the intrigues that played out in the celebrated case of **NDDC VS. NLNG**¹⁸ where the trial and intermediate courts found that there was no relief by the Appellant, NDDC to declare Paragraph 3 of the 2nd Schedule of the NLNG Act as unconstitutional, null and void. In that event, the courts held that the Respondent NLNG was not obligated to make statutory payment or remit fund being three percent (3%) of their annual budget as a processing company (even though they denied being a processing but a gas transporting company) and accordingly not caught by the requirement under **S. 14 (2)(b) of the NDDC Act**. The point I seek to establish here is that if this function of effective collaboration and professional networking are properly coordinated and harnessed, it could guarantee high level delivery systems approximating international best practices. It surely would engender some healthy competitions and introduce peer review interactions towards greater efficiencies in legal service delivery.

¹⁸ 2010 LPELR 4596 (CA)

Similarly in **NDDC vs. Precision Associates Ltd**¹⁹, both the Appellant and Respondent moved forth and back in relation to sundry applications first, for joinder through an ex parte application by OMPADEC and subsequently for amendment, without leave of court, by the Respondent respectively. As a result and before the hearing of the application, the Appellant brought an application to dismiss the appeal of the Respondent for being incompetent. It was a narrow escape because the court was minded to hear the matter on its merit and do substantial justice in the matter. In dismissing the appeal the court did not hesitate in emphasizing the point that:

“the court is obliged to assist an applicant who has an application which is capable of breathing life into an incompetent process. Accordingly, where there is a defect in proceedings which can be corrected and no miscarriage of justice would occasion to the opposing party, and there is another motion seeking to nullify the proceeding, the court in doing substantial justice considers the application which seeks to correct the defeat²⁰.

4. Establishment Of Directorates. S. 9(h)

It is very evident that the Commission operationalizes its duties and objectives through the eleven strategic Directorates it has with the possibility of an addition by the Board subject to the approval of the President. It is instructive to note that in other enabling legislations particularly the repealed OMPADEC Act, there was no directorate for legal services under the same **S. 9**. This was very curious because, as an interventionist agency of government, with such huge mandates and operations, it was inconceivable that the Commission could function without an effective gateway in the

¹⁹ (2006) 16 NWLR (Pt. 1006) 527

²⁰ P. 557, Paras E - F

manner of a legal department to vet, advise, recommend and engage at the appropriate times.

5. Niger Delta Development Advisory Committee

Under **S. 11 of the Act**, Governors of the member States are to be constituted into an Advisory Committee. As the name goes, their responsibility is advisory to the Board and monitoring the activities of the Commission with powers to make rules relating to its own proceedings.

6. Appointment Of Managing Director.

The appointment of Managing Director and two Executive Directors under **S. 12 of the Act** must take into account the origin of the candidate as an indigene of an oil producing area and reflective of the member States with the highest production rate of oil in that order.

7. Funding Of The Commission.

Funding of the Commission is exclusively provided for under **S. 14 of the Act** comprising the sources, percentage contribution of the Federal Government at 15%; three 3% percent from the annual budgets of oil producing company operating onshore and offshore in the Niger Delta including gas processing companies; fifty (50) percent monies due to member States of the Commission from the ecological fund and other sources including grants, loans, deposits, grant-in-aid, testamentary donations and proceeds from all other assets.

8. Limitation Of Suits Against The Commission.

By S. 24 of the Act, the Managing Director, members of the board, officers and employees of the Commission enjoy the same protection that public officers enjoy under **S. 2 of the Public**

Officers Protection Act including the fact that no suit can successfully be instituted against them three months after the act, negligence or default complained of.

9. Restriction On Execution Against Property Of The Commission.

Further protection in favour of the Commission is provided for under **S. 26(1) of the Act** relating to execution or attachment of processes which are expressly prohibited.

Protective as the provision seems, it is evidently conflicted and at variance with **Sections 21, 22** and in particular **S. 26(a)** of the **Sheriffs and Civil Process Act**²¹ which make elaborate provisions for execution of judgements of Courts. It is curious that both legislations are Acts of the National Assembly with the NDDC Act under review being a subsequent and later legislation.

Conclusions/Recommendations

The keynote address has highlighted the very important roles of the Commission in driving the growth and development of the Niger Delta areas and its people. The fundamental idea of the reclamation efforts is borne out of the massive resources available in that region, but reinforced by the knowledge of this fact by the people of the region vis-a-vis what they have lost and had been deprived of. In many respects therefore, a properly structured interventionist body such as NDDC, with an efficient legal services Directorate, to drive the process and actualize the objectives, could turn the tide of their parlous circumstances and change their fortunes.

²¹ Cap. 56 LFN 2004

The detailed analysis of the functions of the Commission under **Section 7 of the Act** provided greater insights and perspectives to the needs and operations of the Commission. In view of the decided authorities examined, the position of the laws became clearer on some of the recondite areas of controversies applicable to the Commission and, in particular, the Directorate of legal services. In the event, the following proposals are submitted, with profound respect, as my recommendations moving forward:

1. A functional and structured system of partnership, consultation and collaboration with the National Assembly in all the processes of legislations, amendments and reviews that affect the Commission.
2. Procurement of cutting edge and state of the art infrastructure and technology to fast-track outputs and improved productivity.
3. Effective coordination of the activities of this Directorate to enhance information dissemination and avoid actions at cross purposes.
4. Training, retraining to enhance efficiency and specialization.
5. Regular domestic and international outreach programmes designed to expose practitioners in the Directorate to international best practices through sustainable peer-review mechanisms.
6. Improved remunerations and reward systems
7. Discipline, determinable and measured output and control at workplace

Thank you very much!