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## MITIGATING THE EFFECTS OF ENVIRONMENTAL DEGRADATION IN THE OIL INDUSTRY: AN ASSESSMENT OF GOVERNMENT COMPENSATION SCHEME IN NIGERIA

Osamuyimen Enabulele

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# 1

## INTRODUCTION

Nigeria's oil and gas production primarily takes place in the Niger Delta Region (NDR) but this region's communities hardly benefit from the huge oil income.<sup>1</sup> However, these communities continue to bear the persistent large-scale negative environmental and socio-economic impacts of oil production<sup>2</sup> while they are also being deprived of their traditional means of livelihood such as fishing and farming.<sup>3</sup> These adverse social, economic and environmental impacts and the underdevelopment of the NDR have allegedly led to the indigenes' perennial protests over marginalisation.<sup>4</sup> In addressing the alleged marginalisation and negative

impacts of oil operations on the NDR communities, the Nigerian government established the Niger Delta Development Commission (NDDC) in 2000 as a form of government compensation scheme. Yet, no empirical studies have examined this institution as a compensation scheme.

Thus, this paper seeks to problematise the NDDC as a government compensation scheme (GCS)<sup>5</sup> aimed at mitigating the impacts of environmental degradation on the NDR. More specifically, the paper will assess the extent this GCS has performed its mandate and been constrained. To address the research problem, this paper adopts a mixed method (qualitative and quantitative) approach.<sup>6</sup> It draws on survey and interviews to provide quantitative and qualitative empirical evidence respectively to gain insight into the extent the functions of the NDDC fits with the GCS. Following the empirical findings, the paper concludes that the GCS methodology focusing on environmental remediation potentially offers a better succour to the Niger Delta people than human capital and infrastructural development focuses would offer.

The remainder of this paper is organised as follows. Section 2 conceptualises GCS as a tool for environmental management, while section 3 discusses

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1 Lawrence A Atsegbua, Vincent Akpotaire and Folarin Dimowo, *Environmental Law in Nigeria, Theory and Practice* (2nd edn, Ambik Press 2010) 94-95.

2 Yinka Omorogbe, 'Regulation of Oil Industry Pollution in Nigeria' in Epiphany Azinge (ed), *New Frontiers in Law* (Oliz Publishers 1993) 148; Osamuyimen Enabulele, Mahdi Zahra and Franklin N Ngwu, 'Addressing Climate Change Due to Emission of Greenhouse Gases Associated with the Oil and Gas Industry: Market-Based Regulation to the Rescue' in Maria A Gonzalez-Perez and Liam Leonard (eds), *Climate Change and the 2030 Corporate Agenda for Sustainable Development* (Emerald Group Publishing Limited 2016) 56.

3 Legborsi S Pyagbara, 'The Adverse Impacts of Oil Pollution on the Environment and Wellbeing of a Local Indigenous Community: The Experience of the Ogoni People of Nigeria' (International Expert Group Meeting on Indigenous People and Protection of Environment, Khabarovsk, Russian, August 2007) 9; Ikenna V Ejiba, Simeon C Onya and Oluwadamilola K Adams, 'Impact of Oil Pollution on Livelihood: Evidence from the Niger Delta Region of Nigeria' (2016) 12(5) *Journal of Scientific Research & Reports* 1, 4; and Z A Elum, K Mopipi and A Henri-Ukoha, 'Oil Exploitation and its Socioeconomic Effects on the Niger Delta Region of Nigeria' (2016) 23(13) *Environmental Science and Pollution Research* 12889.

4 Nelson E Ojukwu-Ogba, 'Legal and Regulatory Instruments on Environmental Pollution in Nigeria: Much Talk, Less Teeth' (2006) 8 *International Energy Law and Taxation Review* 201.

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5 Government compensation scheme have been known as various names such as administrative compensation scheme, state compensation scheme or state compensation programme.

6 The fieldwork was mainly conducted in five States in the NDR (Akwa – Ibom, Bayelsa, Delta, Edo and Rivers) and others conducted in Lagos State where the headquarters of most oil companies and regulatory bodies are located. Survey and interview participants were drawn from different stakeholder groups such as members of oil-producing communities, oil companies, regulatory bodies, legal practitioners, accounting professionals and interventionist agency. While 350 questionnaires were administered and 281 were both returned and usable for analysis, 25 semi-structured interviews were also conducted.

the relevant provisions of NDDC Act<sup>7</sup> in relations to the GCS. Next, section 4 presents the empirical findings followed by the discussion of empirical findings in section 5. Finally, section 6 concludes the paper and offers some recommendations.

## 2 CONCEPTUALISING GOVERNMENT COMPENSATION SCHEME

The foundation of government compensation scheme (GCS) lies on the inadequacies in effectively compensating victims of crimes.<sup>8</sup> It is on this logical premise that the offender's interest should not be placed before the victim's interest.<sup>9</sup> In resonance, Floyd argued that:

We are dedicated to insuring that due process is accorded to all persons accused of crime; and we are also concerned with rehabilitating the criminal - and justly so! But we need also to concern ourselves as energetically with the plight of the victim and his rehabilitation.<sup>10</sup>

The above resonates with a situation where plenty resources are channelled towards the rehabilitation of convicts and less attention accorded the welfare of the victims. Given the illogicality of such stance by public scrutiny, the State is motivated to intervene through establishing compensatory schemes.<sup>11</sup> Government's adoption of compensation schemes is driven by restitution, due duty of care owed to its citizens and social welfare.<sup>12</sup> Thus, GCSs are part of a government's interventionist action plans to offer mutual protection and security on the basis of social welfare.<sup>13</sup> In principle therefore, it can be argued that the GCS is usually anchored on the general principle of risk distribution with a fault or non-fault system as its base.<sup>14</sup>

However, the GCS should be clearly distinguished from compensatory damages, which are money awarded to a plaintiff to compensate for damages, injury or another incurred loss. Compensatory damages are awarded in civil cases where loss has occurred because of negligence or unlawful conduct of another party through the torts system.<sup>15</sup> In contrast, the GCS serves as a substitute and/or complements to the tort system.<sup>16</sup> Notwithstanding that the GCS was ideologically framed to provide respite to crime victims, its adoption has been extended to other deprived and victimised people across different facets of the society. For instance, the

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7 The Niger Delta Development Commission (Establishment etc) Act. No. 6 LFN 2000 [hereafter NDDC Act].

8 Olanrewaju Fagbohun, *The Law of Oil Pollution and Environmental Restoration: A Comparative Review* (Odade Publishers, 2010) 204; and Peter Cane, *Atiyah's Accidents, Compensation and the Law* (7th edn, Cambridge University Press 2006) 304.

9 Her Majesty Stationary Office, *Penal Practice in a Changing Society: Aspects of Future Development Aspects of Future Development* (England and Wales) (CMND 645, Her Majesty Stationary Office 1959) 7.

10 Glenn Floyd, 'Compensation to Victims of Violent crime' (1970) 6(2) *Tulsa Law Review* 100.

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11 Fagbohun (n 8) 204.

12 Floyd (n 10) 110-115; and Andrew Ashworth, 'Punishment and Compensation: Victims, Offenders and the State' (1986) 6 *Oxford Journal Legal Studies* 86.

13 Fagbohun (n 8) 204.

14 *ibid*.

15 Donald Harris, David Campbell and Roger Halson, *Remedies in Contract and Tort* (2nd edn, Cambridge University Press 2002) 21; Mark Lunney, and Ken Oliphant, *Tort Law: Text and Materials* (5th edn, Oxford University Press 2008) 847; Ekhaton noted that in Nigeria there is heavy reliance on the principles of tort in getting compensation. See, Eghosa O Ekhaton 'Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation' (2016) 21 *Annual Survey of International & Comparative Law* 43, 77.

16 Albert C Lin, 'Beyond Tort: Compensating Victims of Environmental Toxic Injury' [2015] *Southern California Law Review* 1439, 1443; Clifford Fisher, 'The Role of Causation in Science as Law and Proposed Changes in the Current Common Law Toxic Tort System' (2001) 9 *Buffalo Environmental Law Journal* 35.

GCS has been extended to healthcare,<sup>17</sup> agriculture,<sup>18</sup> and indeed as a response to environmental pollution.<sup>19</sup>

Moreover, over the years, GCSs have been established in different jurisdiction to recompense environmentally victimised people as an alternative means of recompensing those people.<sup>20</sup> According to Lin, GCSs are advantageous in bringing respite to environmentally victimised people in the sense that: (i) they typically employ specialised or expert decision makers, who can conduct their own studies and consider a broad range of information; (ii) provide more continuous oversight and distribute compensation more fairly among a class of victims; and (iii) administrative systems are in theory, more politically accountable than other means of recompensing victims such as litigation.<sup>21</sup> It is thus deducible that the GCS is a choice option in recompensing environmentally victimised people due to its organised structure.

An application of GCS in the NDR is of paramount importance given the pervasive environmental degradation caused by oil operations and the attendant social, economic and developmental dislocations it creates for the Niger Delta people. Environmental degradation impacts on ecosystems and social systems.<sup>22</sup> It subsequently harms the 'characteristic aspects of the landscape' and impairs the 'lifestyle of indigenous communities'.<sup>23</sup> As such, the victims of oil pollution may be humans, the environment (including fauna and flora) or both.<sup>24</sup> This dual impact makes the GCS suitable for recompensing the affected. It is therefore necessary for the design of compensatory schemes to encompass solutions addressing these two components. However, Bowman argues that compensation schemes established in most jurisdictions as responses to environmental pollution fail to recognise harm to the environment.<sup>25</sup> Instead,

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17 Marie Bismark and others, 'Accountability Sought by Patients Following Adverse Events from Medical Care: The New Zealand experience' (2006) 17 Canadian Medical Association Journal 889.

18 Patience Elabor-Idemudia, 'Nigeria: Agricultural Exports and Compensatory Schemes-rural Women's Production Resources and Quality of Life' in Pamela Sparr (ed), *Mortgaging Women's Lives: Feminist Critiques of Structural Adjustment* (Zed Press 1994) 134-154.

19 See, Japan's administrative compensation program which was established by virtue of the Kôgai Kenkô Higai Hoshô Hô [Pollution-Related Health Damage Compensation Law], Law No. 111 of 1973; Alice Stewart, 'Japan's 1987 Amendment to the 1973 Pollution-Related Health Damage Compensation Law: Tort Reform and Administrative Compensation in Comparative Perspective' (1988) 29 *Harvard International Law Journal* 475; Rabin L. Robert, 'Some Thoughts on the Efficacy of a Mass Toxics Administrative Compensation Scheme' (1993) 52 *Maryland Law Review* 951; and Lin (n 16) 1494-1500.

20 In Canada compensation schemes are structured to recompense aboriginal communities. See, Robert Mainville, *An Overview of Aboriginal and Treaty Rights and Compensation for their Breach* (Purich 2001) 128.

21 Lin (n 16) 1464-1470.

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22 Paul Wapner, 'Environmental Ethics and Global Governance: Engaging the International Liberal Tradition' (1997) 3(2) *Global Governance* 213. Lee underscored that 'social welfare needs of residents in environmentally polluted communities are a multi-dimensional, long-term issue. [Tackling it holistically will do a lot] ...to bring about sustainable development'. Tsuey-Ping Lee, 'A Welfare Approach to Mitigating Environmental Injustice: Exploring Needs of Pollution Victims' (2009) 29 <<http://www.umdcipe.org/conferenc es/epckdi/2.pdf>>.

23 Michael M O'Hear, 'Sentencing the Green-Collar Offender: Punishment, Culpability and Environmental Crime' (2004) 95(1) *The Journal of Criminal Law and Criminology* 133, 163.

24 Ambrose OO Ekpu, 'Compensation for Oil Pollution Damage: The Need for Equity' (20th International Conference of the Society of Petroleum Engineers 1996) 242, 255; and Osamuyimen Enabulele, 'Oil Pollution and the Polluter Pays Principle: The Nigerian Experience' (PhD thesis, Glasgow Caledonian University 2018) 41.

25 Michael Bowman, 'The Definition and Valuation of Environmental Harm: An Overview' in Michael Bowman and Alan Boyle (eds), *Environmental Damage in International and Comparative Law: Problems of Definition and Valuation* (Oxford University Press 2002) 12-13; and O'Hear (n 23) 163.



those schemes have been ‘concerned with the infringement of established human interests relating to the person or property caused through the medium of the environment’.<sup>26</sup> By implication, most jurisdictions’ GCSs established as responses to environmental degradation pay little or no attention to environmental remediation, but focus on resolving human claims. This attitude towards the environment apparently resonates with the traditional perception that the environment is a free resource ripe for plunder,<sup>27</sup> which negates concern for future generations.

GCS can be designed to provide ex ante and ex post compensation.<sup>28</sup> This implies that it can be designed to address the needs of current and future victims of environmental degradation. It has been argued that to aid a large group of people to recover from severe environmental degradation, it is crucial to map out a long-term package to cater for their multiple needs, taking into consideration their peculiar characteristics.<sup>29</sup> GCSs are essential in this context as they are usually designed to bring succour to a large populace, which make them efficient schemes for addressing such environmental challenges.<sup>30</sup> However, the GCS has been criticised for its high administration costs when compensable harms are broad.<sup>31</sup> Its administration varies across jurisdictions.

By nature, GCSs are administrative and funded by the government on a welfare basis,<sup>32</sup> but in some jurisdictions they are designed to levy polluting

companies for funding.<sup>33</sup> Such funding arrangement echoes the polluter pays principle (PPP) where the polluter is responsible for the prevention and compensation of victims.<sup>34</sup> It also has the potential to serve as a deterrent to other operators in the same line of business in that operators fund the compensation scheme. However, the operators may ultimately transfer the costs of such levies to the consumers,<sup>35</sup> thereby distorting the deterrent effect of the GCS.<sup>36</sup> Another downside is that the operators may perceive their contribution to the compensation funds as a leeway to

26 Bowman *ibid* and O’Hear *ibid*.

27 Bowman *ibid* 13.

28 Lin (n 16) 1486; and Daniel A Farber, ‘Basic Compensation for Victims of Climate change’ (2007) 155(6) *University of Pennsylvania Law Review* 1605, 1635-1639.

29 Lee (n 22) 29.

30 Matthew Hall, ‘Criminal Redress in Cases of Environmental Victimisation: A Defence’ (2016) 49 (2) *Revue Criminologie* 141.

31 Farber (n 28) 1646.

32 Matthew Hall, *Victims of Environmental Harm: Rights, Recognition and Redress under National and International Law* (Routledge 2013) 114.

33 *ibid*; and Farber (n 28) 1607.

34 The PPP essentially creates a strict regime of standard setting for pollution prevention, an obligation for polluters to clean-up and remediate the environment as well as compensate victims of environmental pollution. The main goals of the principle are cost allocation and internalisation while its functions are economic integration, redistribution, preventive as well as curative functions. The principle has been interpreted among others to be a principle of efficiency, equity or fairness, potentially produces pedagogical and deterrent effects as well as promotes international harmonization of national environmental policies. See Hakeem Ijaiya, ‘The Principle of Sustainable Development: An Appraisal of the Polluter Pays Principle in the Nigerian Oil and Gas Industry’ (2013) 4 (1) *Malaysia Lega Network Series* 1, 12-13; Margaret R Grossman, ‘Agriculture and the Polluter Pays Principle: An Introduction’ (2006) 59 (1) *Oklahoma Law Review* 1; Nicolas de Sadeleer, *Environmental Principles, from Political Slogans to Legal Rules* (Oxford University Press 2002) 21-60; Mizan R Khan, ‘Polluter-Pays-Principle: The Cardinal Instrument for Addressing Climate Change’ (2015) 4(3) *Laws* 638; Edwin Woerdman, Alessandra Arcuri and Stefano Clo, ‘Emissions Trading and the Polluter-Pays Principle: Do Polluters Pay Under Grandfathering?’ (2008) 4(2) *Review of Law & Economics* 565; Hans C Bugge, ‘The Principles of Polluter Pays in Economics and Law’ in Erling Eide and Roger Van Der Bergh (eds), *Law and Economics of the Environment* (Juridisk Forlag 1996) 53-90; Sanford E Gaines, ‘Polluter-pays Principle: From Economic Equity to Environmental Ethos’ (1991) 26 *Texas International Law Journal* 463; and Enabulele (n 24) 63-77.

35 Hall (n 30) 114; and Farber (n 28) 1607.

36 Hall (n 30) 141; and Farber (n 28) 1635-1639.



pollute, hence validating the ideology that pollution can continue as long as compensation is paid. Also, how the compensation funds are utilised is as important as the creation of the funds. It has been suggested that the compensation funds are best utilised by tying them to adaptation projects to prevent diverting them towards paying financial compensation to victims.<sup>37</sup> This suggests that victims must have other means of seeking redress involving financial compensation. Polluters must not commit to indiscriminate pollution because of contribution to the funding scheme. Farber has argued that the existence of GCS should not preclude the utilisation of measures to prevent environmental pollution.<sup>38</sup> This suggests that irrespective of the existence of compensation schemes, pollution prevention should be the watchword. Operators should adhere to regulatory requirements while regulatory bodies are to continue to monitor operators to ensure that preventive measures are met.

### 3 NIGER DELTA DEVELOPMENT COMMISSION

Both the Nigerian governments and other stakeholders recognise how oil operations have significantly affected the environment and means of livelihood in the NDR.<sup>39</sup> Hence, the government's initiation of compensation schemes from time to time to ameliorate the people's plight. In most instances, compensation schemes constitute an integral part of government's action programme for the overall purpose of social welfare or redistribution schemes.<sup>40</sup> In principle, it is apparent that GCS in relation to the NDR is implemented on the premise that the government is a

polluter. It has been argued that the government could be considered a polluter where '...regulatory authority performs the dual functions of an operational and a regulatory authority [and/ or ] ...when the government enters a joint venture agreement with the operator and subsequently pollution arises from the joint venture operations'.<sup>41</sup> Hence, the government becomes partly liable for pollution caused by the activity of the joint ventures. Currently the principal compensation scheme operational in the NDR is through the Niger Delta Development Commission (NDDC).

NDDC was established through an act of Parliament<sup>42</sup> in response to longstanding demands by the NDR States for a more equitable distribution of wealth generated from their region and to address both environmental and other social-economic problems in the NDR.<sup>43</sup> Prior to the NDDC, interventionist mandates were delivered, albeit unsuccessfully, by various statutory bodies or interventionist agencies such as the Niger Delta Development Board, Niger Delta Basin Development Authority, and Oil Mineral Producing Area Development Commission (OMPADEC). An NDDC Act repealed the OMPADEC Decree 1998 as the agency created by the latter failed in tackling the oil-driven environmental crises in the NDR.<sup>44</sup>

The function of the NDDC includes inter alia: formulation of policies and guidelines for the development of the NDR;<sup>45</sup> to conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development of the NDR in the field of transportation including roads, jetties and waterways, health, education, employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications;<sup>46</sup> and tackling ecological and environmental problems that

37 Farber (n 28) 1646.

38 *ibid.*

39 Pyagbara (n 3) 9; Ejiba and others (n 3) 4 and Elum and others (n 3) 12889.

40 Fagbohun (n 8) 218.

41 See, Enabulele (n 24) 42.

42 NDDC Act, section 1 (1).

43 Amnesty International, Nigeria: Are Human Rights in the Pipelines? (Amnesty International 9 November 2004) 11 < <https://www.amnesty.org/download/Documents/88000/afr440202004en.pdf>>.

44 See, the preamble to the NDDC Act.

45 NDDC Act, section 7(1)(a).

46 NDDC Act, Sec 7(1)(b).

arise from oil exploration in the NDR.<sup>47</sup> These functions can be loosely classified into three categories of: infrastructural development, human capital development and environmental protection.

However, the above formulation is not set in stone – it is fluid. For instance, provision of roads is basically infrastructural development, but human capital development can also be achieved through the process. This is because road infrastructure facilitates accessibility of the communities and job creation. Other government ministries, departments and agencies in Nigeria undertake functions like the NDDC's. For instance, the Federal Ministries of Works and Health deliver infrastructural development and health service across Nigeria (including the NDR). Irrespective of the mandates of those ministries or department to deliver those social and developmental services, the NDDC undertakes similar functions.<sup>48</sup> In that regard, the NDDC functions as a vehicle for government compensation. But the NDDC must be harnessed as an integrated approach to bring respite to the NDR people negatively impacted by oil operations by touching every facet of their wellbeing. This resonates with the underpinnings of GCSs as instruments or action plans aimed at succouring a large group of people and helping them to recover from severe environmental degradation by implementing a systematically structured long-term package to meet their multiple needs with peculiar characteristics.<sup>49</sup> As earlier mentioned, the NDDC's functions loosely classified into infrastructural development, human capital development and environmental protection appear to represent a systematically structured package to address diverse needs in the NDR. Whether NDDC judiciously discharges these responsibilities to the NDR people is a different issue altogether. As such, this paper problematises the NDDC as a government compensation scheme (GCS) to gain insight into the extent it has mitigated the impacts of environmental

degradation on the NDR. A systematic analysis of the empirics is done in connection with the broad functions of infrastructural development, human capital development, and environmental protection.

## 4

### ANALYSIS OF EMPIRICAL FINDINGS

This section analyses the field-based empirical data from survey and interviews of various stakeholders to provide insight into the extent the NDDC discharges its GCS remits and its performance limiting factors. These findings are thematically organised according to the three broad functions of NDDC (infrastructural development, human capital development, and environmental protection) discussed earlier and the performance limiting factors that systematically emerged from the in-depth scrutiny of the qualitative empirical data.

#### 4.1 Broad Functions of the NDDC

##### *4.1.1 Infrastructural Development*

NDDC was designed to provide infrastructural projects for the NDR to bridge the region's infrastructural deficits compared to other parts of Nigeria and to give the region access to modern facilities as dividends of hosting oil operations. Our empirical survey evidence shows that members of the oil-producing communities are largely positive on NDDC's effort at addressing infrastructural deficiencies in the region (see figure 1). As shown in figure 1, 63 per cent, 10 per cent and 27 per cent respondents respectively are in agreement, undecided, and in disagreement over NDDC's success at achieving infrastructural development in the Niger Delta.

Similarly, the interviewees were positive about NDDC's performance in the area of infrastructural development. For instance, Community stakeholder 1 said: 'I think the NDDC is visible in my community. The primary school that we have in the community is being built by the NDDC. There is a one-kilometre

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47 NDDC Act, Sec 7(1)(h).

48 See, Sec 7 of the NDDC Act.

49 Lee (n 22) 29.

Figure 1: To what extent would you agree that the NDDC has addressed infrastructural deficiencies?

	Frequency	Percent
Strongly agree	114	40.6
Agree	62	22.1
Undecided	28	10.0
Strongly	24	8.5
Strongly disagree	53	18.9
Total	281	100.0

road that was also done by the NDDC in the community and probably a water scheme'.<sup>50</sup> Both the survey and interview results suggest that NDDC's infrastructural development interventionist actions have been successful in bridging the infrastructural gap in the NDR. This result corroborates Ojukwu-Ogba who found that the NDDC has performed relatively well in its equitable distribution of meaningful projects across the oil-producing communities of the NDR, gauged by the delivery of its objectives in concrete terms.<sup>51</sup>

#### 4.1.2 Human Capital Development

NDDC was also designed to fast-track human capital development in the NDR in a bid to curb unemployment. Elicited responses demonstrate that majority of members of oil-producing communities are of the opinion that the NDDC has improved human capital development in their communities (see figure 2). Their responses show that 74 per cent agreed, 8 per cent were undecided, while 17 per cent disagreed over improved human capital development in their communities.

Figure 2: To what extent would you agree that the NDDC has improved human capital development?

	Frequency	Percent
Strongly agree	138	49.1
Agree	72	25.6
Undecided	23	8.2
Disagree	21	7.5
Strongly disagree	27	9.6
Total	281	100.0

<sup>50</sup> Interview with Community stakeholder 1, Community Public Relations Officer, Edo State (Edo State, 02 February 2015).

<sup>51</sup> Nelson E Ojukwu-Ogba, 'Legislating Development in Nigeria's Oil Producing Region: The NDDC Act Seven Years On' (2009) African Journal of International and Comparative Law 136, 144.

The above position was supported by Community stakeholder 5 who stated that:

The NDDC is trying, I must be sincere, [the] government established NDDC to look into the plight of Niger Delta Region and as a result they have empowered our youths. They have provided scholarships to many students and have aided youths in skill acquisition. For instance, some women were trained in hairdressing...<sup>52</sup>

The above narrative suggests that the NDDC to a large extent has been able to enhance the capacity of the people of the NDR to earn a living. Hence, human capital development as supported by the NDDC aims to boost the living standards of the people. This finding seems to contradict some previous studies that argue that the NDDC has not made any significant progress in improving the living conditions of the Niger Delta people.<sup>53</sup> There have been instances where communities applauded the provision of skill acquisition equipment, supply of books and science equipment which, according to Imobighe, are mostly provided with little or no consideration for their end use or sustenance.<sup>54</sup> From observation, standards of living in most of the communities in the NDR are still

very low despite claims by the NDDC that things are improving, and available statistics attest to this. For instance, data provided by Amnesty International indicates that the Niger Delta people are among the most deprived oil-producing communities in the world and about 70 per cent of the populace live on less than US\$1 a day – the standard economic measure of absolute poverty.<sup>55</sup>

#### 4.1.3 Environmental Protection

The NDDC Act specifically provides that the NDDC should ‘tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger-Delta area...’<sup>56</sup> One of the major visible environmental problems arising from oil operations in the NDR is oil spill, which requires clean-up and remediation. While stakeholders consider the two prior themes as areas the NDDC has positively performed and delivered benefits to the Niger Delta people, the NDDC has achieved underwhelming performance in environmental protection. The results in figure 3 shows that 83 per cent respondents consider the NDDC as performing poorly in addressing environmental degradation problems, while 16 per cent and 1 per cent respondents are positive and neutral respectively.

**Figure 3: To what extent would you agree that the NDDC has addressed environmental degradation?**

	Frequency	Percent
Strongly agree	32	11.4
Agree	12	4.3
Undecided	3	1.1
Disagree	158	56.2
Strongly disagree	76	27.0
Total	281	100.0

<sup>52</sup> Interview with Community stakeholder 5, Community Member, Rivers State (Rivers State, 10 February 2015).

<sup>53</sup> Thomas A Imobighe, ‘Conflict in the Niger Delta: A Unique Case or a Model for Future Conflicts in other Oil-Producing Countries?’ in Rudolf Traub-Merz and Douglas Yakes (eds), *Oil policy in the Gulf of Guinea, Security and Conflict, Economic Growth, Social Development* (Friedrich-Ebert-Stiftung, 2004) 108 and Akinwale A Ayofe and Evans Osabuohien, ‘Re-Engineering the NDDC’s Master Plan: An Analytical Approach’ (2009) 11(2) *Journal of Sustainable Development in Africa* 142, 155.

<sup>54</sup> Imobighe *ibid* 108.

<sup>55</sup> Amnesty International, ‘Nigeria Ten Years On: Injustice and Violence Haunt the Oil Delta’ (3 November 2005) para. 1.1 <<https://www.amnesty.org/download/Documents/80000/afr440222005en.pdf>>.

<sup>56</sup> Sec 7(1)(h) of NDDC Act.

Interviewees were equally dissatisfied with NDDC's actions in discharging its environmental protection function. Even an interviewed NDDC personnel 1 had concerns with the NDDC's disposition to environmental protection stating that: 'I will say from my own perspective that we have not met the full objective of environmental protection'.<sup>57</sup> The above account appears to demonstrate that environmental protection has not received the deserved attention from NDDC. Given that environmental degradation underlies most of the problems in the NDR, one would expect the NDDC to channel more resources towards environmental remediation and restoration. Yet this is not the case as confirmed by its insider member, suggesting that the compensation scheme undermines environmental concerns which primarily drive the perennial agitations and socio-economic dislocations in the Niger Delta. Whilst there are constraints on the agency's performance, our findings agree with previous studies that the NDDC has not made meaningful progress in improving the environmental conditions of the NDR since its establishment.<sup>58</sup>

## 4.2 Performance Limiting Factors

An establishment of GCS is driven by the need to address issues of restitution, duty of care and social welfare.<sup>59</sup> The NDDC's activities align the NDDC with the GCS ideals being a government's structured action plan to develop the Niger Delta. However, several constraints have been identified as limiting the desired performance of this interventionist instrument. This

section presents empirical evidence of factors constraining NDDC's performance as a GCS.

### 4.2.1 Poor Funding

No compensation scheme can be successfully implemented without adequate funding. Theoretically, the NDDC is adequately funded.<sup>60</sup> Its funds are contributed as follows: (a) the federal government, whose quota is the equivalent of fifteen per cent of the total monthly statutory allocations due to member States within the NDR;<sup>61</sup> (b) fifty per cent of monies due to states within the NDR from the ecological fund;<sup>62</sup> (c) three per cent of the total annual budget of oil-producing companies operating within the NDR.<sup>63</sup> Other sources of funding are grants, loans, gifts deposited with the NDDC by any institution be they local, international or raised by the NDDC themselves, and proceeds from all other assets that may, from time to time, accrue to the NDDC.<sup>64</sup>

Whilst the above suggests that NDDC is well funded to have enough resources for its adaption projects in the Niger Delta, our empirical evidence suggests otherwise as the discrepancy relates to the actual remittances the monies due the agency. For example,

57 Interview with NDDC personnel 1, Senior Staff, Niger Delta Development Commission (Port Harcourt, 18 February 2015).

58 Sylvester O Nliam, 'Is the Precautionary Principle Brought Home in the Nigerian Petroleum Industry? Comparative Perspectives between Nigeria and the UK' (PhD thesis, University of Aberdeen 2011) 250.

59 Floyd (n 10) 110-115.

60 Ojukwu-Ogba (n 51) 142; and Ayofe and Osabuohien (n 53) 148-149.

61 NDDC Act, Sec 14 (2) (a).

62 NDDC Act, Sec 14 (2) (c).

63 NDDC Act, Sec 14 (2) (b). Oil companies claimed that they have made huge financial contributions to the NDDC. For instance, Shell its 2016 Sustainability Report claimed that '[i]n 2016, the SPDC JV and SNEPCO contributed \$106.8 million (Shell share \$48.5 million) to the NDDC. Over the last five years Shell Companies in Nigeria's contribution to the NDDC totalled more than \$800 million (Shell share around \$340 million)'. See, Shell, Sustainability Report 2016, Our Activities in Nigeria, <<http://reports.shell.com/sustainability-report/2016/managing-operations/our-activities-in-nigeria.html>>. Also, ExxonMobil claims that since the inception of the NDDC it has contributed a total of N160 billion. See, ExxonMobil, 'Mobil Pays N160 billion to NDDC in 14 Years' (30 August 2015) <<http://motoringworldng.com/mobil-pays-n160-billion-to-nddc-in-14-years/>>.

64 See, NDDC Act, Sec 14 (2) (d) and (e).

NDDC personnel 1 said that '[o]ne thing is what the law says, another is the implementation. ...but the simple logic there is that the money required to implement is not forthcoming. If that money is not in place, it will be more theoretical than being practical'.<sup>65</sup> NDDC personnel 2 corroborated the above claims by stating that '...there are a lot of projects that the commission needs to embark upon, but funds are simply not there... We have so many contactors who are still being owed, not because the commission does not consider it necessary to pay them but funds'.<sup>66</sup> With this evidence, it is obvious the NDDC cannot effectively discharge its functions.

#### *4.2.2 Corruption and Lack of Autonomy*

Corruption is endemic across all sectors in Nigeria. Interviewees link the poor performance of NDDC to corruption. For instance, Community stakeholder 2 said that:

NDDC is a conduit pipe. It is a very corrupt agency. The government just set it up to enrich their cronies. NDDC has not lived up to its billing because the volume of jobs [the] NDDC has done is not commensurate in any way with the money they have gotten. Few projects executed lack quality because they are not awarded to professionals.<sup>67</sup>

This view was echoed by Community stakeholder 3 who stated that the '[creation of the] NDDC was only a conduit which top officials use in embezzling money in the name of developing host communities. Roads constructed by NDDC are even worse than access roads in the community constructed by the oil companies'.<sup>68</sup>

The implication of the above narratives is that the NDDC has become a medium for some individuals to siphon money, as contracts are awarded to them and payment made but projects are not executed. In circumstances where they are executed, they are substandard. Mboho and Inyang have argued that all efforts by the government through statutory bodies have been abject failures due to corruption, maladministration and insincerity on the part of the Federal Government.<sup>69</sup>

NDDC's autonomy is lacking, like in other parts of the Nigerian oil industry, due to political interferences by the government because of state corruption.<sup>70</sup> The issue of lack of autonomy has contributed to the ineffective administration of the NDDC as a vehicle for the actualisation of GCS in the NDR. According to NDDC personnel 1, '...interference from the political class equally hampers the deliverables of our activities'.<sup>71</sup> The above suggests that without independence in decision-making and project initiations, the NDDC cannot fast-track the overall development process in the NDR, which is consistent with Nliam's argument that the autonomy of the NDDC is threatened by external influences.<sup>72</sup>

#### *4.2.3 Inconsistent Coordination in Project Implementation*

Furthermore, concerns were raised that there were inconsistencies in the implementation of projects by

<sup>65</sup> Personal Interview (n 57).

<sup>66</sup> Interview with NDDC personnel 2, Senior Staff, Niger Delta Development Commission, (Port Harcourt, 12 February 2015).

<sup>67</sup> Interview with Community stakeholder 2, Community Leader, Rivers State (Rivers State, 10 February 2015).

<sup>68</sup> Interview with Community stakeholder 3, Community Leader, Rivers State (Rivers State, 26 February 2015).

<sup>69</sup> Kingdom S Mboho and A I Inyang 'Institutional Failures and Poverty in the Niger Delta Region: A Critical Appraisal of NDDC Projects in Ikot Abasi, Akwa Ibom State, Nigeria' (2001) 2 (1) *International Journal of Economic Development Research and Investment* 26, 27; and Kaniye SA Ebeku, 'Niger Delta Oil, Development of the Niger Delta and the New Development Initiative: Some Reflections from a Socio-Legal Perspective' (2008) 43(4) *Journal of Asian and African Studies* 399, 421. It has been alleged that NDDC's lack of transparency is responsible for the reluctance of oil companies to pay their yearly counterpart funding. See, Amnesty International (n 43) 7.

<sup>70</sup> See, George S Akpan, 'The Failure of Environmental Governance and Implications for Foreign Investors and Host States - A Study of the Niger Delta Region of Nigeria' [2006] *International Energy Law & Taxation Review* 1, 7.

<sup>71</sup> Personal Interview (n 57).

<sup>72</sup> Nliam (n 58) 251.



NDDC staff. For example, NDDC personnel 1 said that:

[It is] ...because of the way the commission is being run, maybe because of the issue of continuity in government. ...the way it is structured which is evident when a new regime comes on board. Sometimes they seem to deviate from the existing programmes, so we are not synchronising our activities together. New board comes, new projects [are initiated]. It leads to abandonment of existing projects and programmes. So, this actually hampers our total objectives.<sup>73</sup>

The implication is that when there is a change in the management of the NDDC, there is the tendency for projects initiated by the previous administration to be terminated. This is because the new administration initiates new projects. This results in situations where there are abandoned and uncompleted NDDC projects dotted around States within the NDR. The NDDC only identified the alienation with other development stakeholders in the NDR in its report.<sup>74</sup> However, interview narratives suggested that the problem of effective coordination also occurs within the governing board of the NDDC. This clearly impedes the effective establishment of GCS for recompensing victims of environmental degradation, due to its organised structure.<sup>75</sup> It shows that in practice the NDDC has experienced challenges as regards to its organisational structure to ensure the efficient implementation of its mandate.

<sup>73</sup> Personal Interview (n 57).

<sup>74</sup> NDDC, '3rd Quarter Activities of the Commission for the Period July-September 2016' 16 <<https://pdfslide.net/documents/this-report-covers-the-nddc-niger-delta-development-nddegovng1pdfdelta.html>>.

<sup>75</sup> See, Lin, (n 16) 1464-1470.

#### 4.2.4 *Community Involvement/ Local Participation*

The Niger Delta Regional Development Master Plan (NDRDMP)<sup>76</sup> identifies public participation as an avenue for effectively protecting the natural environment.<sup>77</sup> Concerns were raised that members of oil-producing communities do not play a primary role from conception to actualisation of projects executed in their community by the NDDC. Commenting on this issue, Community stakeholder 4 said 'they (NDDC) do not consult us when they want to execute most projects. At most what they do is to acquire land from us then they build whatever in their view suits us'.<sup>78</sup> The implication is that initiatives for the development of the community are devoid of informal institutions innate in the community.<sup>79</sup> This situation reduces the robustness of the design and implementation of development initiatives. A feature which is lacking, as members of oil-producing communities are not integrated in the process; and hence the absence in consulting and integrating their wealth of indigenous knowledge which is of incalculable

<sup>76</sup> The NDDC prepared the NDRDMP in 2004. The implementation of the NDRDMP was designed for a 15year period. This is in three phases of 5years each – first phase 2006-2010; second phase 2011-2015; and the last phase 2016-2020. See, NDDC, Niger Delta Regional Development Master Plan (2004) <<https://www.nddc.gov.ng/downloads/3/eBooks>>.

<sup>77</sup> *ibid* 38-39.

<sup>78</sup> Interview with Community stakeholder 4, Community Member, Bayelsa State (Bayelsa State, 01 February 2015).

<sup>79</sup> Informal institutions are norms, mores, customs and traditions prevalent in a society. See, Enabulele (n 24) 132-135; Oliver E Williamson, 'The New Institutional Economics: Taking Stock, Looking Ahead' (2000) 38 (3) *Journal of Economic Literature* 595, 596; Douglass North, *Understanding the Process of Economic Change* (Princeton University Press 2005) 50; and Valentin Seidler, 'The Role of Informal Institutions in Building the Institutional Framework of an African State: The Case of the Kanuri in Nigeria' (2011) <[http://homepage.univie.ac.at/valentin.seidler/wp-content/uploads/2014/02/working-paper-2011\\_The-Role-of-informal-institutions\\_Stanford.pdf](http://homepage.univie.ac.at/valentin.seidler/wp-content/uploads/2014/02/working-paper-2011_The-Role-of-informal-institutions_Stanford.pdf)>.



value.<sup>80</sup> A further consequence of the above, is the fact that the members of the affected communities are inadvertently provided with the opportunity to withhold ownership of the implementation process of the development initiative, as well as the outcome of the latter. In any case, the development initiatives often fail because of the lack of community involvement /participation. This finding is consistent with previous studies which argued that a lack of community participation in design, handling and implementation is responsible for the failure of most strategies initiated in the NDR to alleviate the plight of the people.<sup>81</sup>

#### 4.2.5 Youth Restiveness

Another challenge is the problem of youth restiveness in the NDR.<sup>82</sup> For example, NDDC personnel 1 said ‘...of course the problem of youth restiveness in host communities... They are actually limiting [us], because sometimes when a contractor goes to site to do his job they place so much demand on that contractor [to the extent] that he is not able to meet up’.<sup>83</sup> Similarly, NDDC personnel 2 said that:

One of our major challenges is that of youth restiveness which threatens security in the region. We have also become victims of this restiveness. Most times when we take the projects to these communities [in some instances] we have been attacked. ...we have been beaten up, seriously manhandled in the course of trying to give them the projects.<sup>84</sup>

The above narratives suggest that the endemic nature of youth restiveness in the NDR impedes the smooth execution of projects, because they make overbearing demands before projects can be executed in their locality. It reveals a high level of insecurity in the NDR and impacts on staff of NDDC whose task is to bring needed developments to the region. The NDDC have recognised this and have stated that youth restiveness significantly contributes to the security challenges faced in NDR.<sup>85</sup> This perennial issue has created an entitlement mentality amongst the youth, which further aggravates the tumultuous situation in the NDR. Indeed, such youth restiveness hampers the NDDC from effectively delivering its mandate in the NDR.<sup>86</sup>

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80 For the benefit of indigenous knowledge see, Emma Crewe and Richard Axelby, *Anthropology and Development: Culture, Morality and Politics in a Globalised World* (Cambridge University Press 2013) 149; National Research Council, *Responding to Oil Spills in the US Arctic Marine Environment* (National Academies Press 2014); and Enabulele (n 24) 142-143.

81 Mboho and Inyang (n 69) 34; Oyewole M Bello and Michael A Olukolajo, ‘Adequate Compensation as a Tool for Conflict Resolution in Oil Polluted Wetlands of Niger Delta Region of Nigeria’ (2016) 4(2) *Covenant University Journal of Politics & International Affairs* 34, 44; Kaniye SA Ebeku, ‘Critical Appraisal of Nigeria’s Niger Delta Development Commission Act 2000’ (2003) *International Energy Law and Taxation Review* 203; and Kaniye SA Ebeku, ‘Legal Aspects of Environmental Issues and Equity Considerations in the Exploitation of Oil in Nigeria’s Niger Delta’ (PhD thesis, University of Kent at Canterbury 2002) 444.

82 Lemmy Owugah, ‘Local Resistance and the State’ (Oil Watch African General Assembly, Port Harcourt, February 1999) cited in Ibaba S Ibaba, ‘Alienation and Militancy in the Niger Delta: Hostage Taking and the Dilemma of the Nigerian State’ (2009) 8(2) *African Journal on Conflict Resolution* 11, 12-13.

83 Personal Interview (n 57).

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84 Personal Interview (n 66).

85 NDDC (n 74) 16; Generally, on youth restiveness and security challenges in the NDR, see, Augustine Ikelegbe, ‘The Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria’ (2005) 14(2) *Nordic Journal of African Studies* 208; and Jeremiah O Arowosegbe, ‘Violence and National Development in Nigeria: The Political Economy of Youth Restiveness in the Niger Delta’ (2009) 36(122) *Review of African Political Economy* 575-594.

86 See, Samson I Omofonmwan and Lucky O Odia, ‘Oil Exploitation and Conflict in the Niger-Delta Region of Nigeria’ (2009) 26 (1) *Journal of Human Ecology* 25; Human Rights Watch, ‘The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria’s Oil Producing Communities’ (Human Rights Watch 1999) 3 <<https://www.hrw.org/reports/1999/nigeria/nigeria-0199.pdf>>; Enabulele (n 24) 220-221; and Joe Romm, ‘Dirty Money: Big Oil and Corporate Polluters Spent Over \$500 Million to Kill Climate Bill, Push Offshore Drilling’ (2010) <<https://archive.thinkprogress.org/dirty-money-big-oil-and-corporate-polluters-spent-over-500-million-to-kill-climate-bill-push-d7491209e04d/>>.

# 5

## DISCUSSION OF FINDINGS

Our empirical findings suggest that the NDDC is favourably biased towards the pursuit of infrastructural and human capital development compared to environmental protection. Not given due attention to environmental protection generates negative consequences. For example, the agitations in the NDR have had a strong link with the region's environmental degradation. Our finding concerning NDDC's greater attention to its other responsibilities and less to environmental protection corroborates prior studies.<sup>87</sup> This raises the concern on whether NDDC cherry-picks the responsibility it obliges itself to discharge. For example, between July-September 2016, NDDC executed 8,588 projects of which none related to environmental protection/pollution.<sup>88</sup> This gives the impression that the NDDC's mandate does not cover environmental protection but only human and infrastructural development. Our concern thus reflects Bowman's view that GCSs established in most jurisdictions as responses to environmental pollution have not actually involved recognition of harm to the environment.<sup>89</sup>

Although the NDDC apparently compensate the NDR by focusing on projects that will benefit collectively rather than financial compensation to individual members of the communities, Adewale argued that compensation could take the form of cash or in kind.<sup>90</sup> GCSs in some instances are designed to recompense victims financially,<sup>91</sup> but a critical analysis of the

functions of the NDDC shows that it is not designed to pay financial compensation to victims. This evidence is consistent with Farber's argument that the best way to utilise compensation funds is by tying them to adaptation projects.<sup>92</sup> The Nigerian government's approach is advantageous as the people collectively benefit from the scheme. This is commendable being consistent with the features of GCS such as the focus on bringing relief to a large population<sup>93</sup> and meeting the needs of current and future environmental degradation victims.<sup>94</sup> However, studies have evidenced defects in the ability of the NDDC as a GCS.<sup>95</sup>

Despite the important broad functions of the NDDC, inadequate funding apparently accounts for one of the key factors undermining its overall performance. Its funds primarily come from contributory funding by the government and oil companies. As the NDDC's contributory funding formula is statutorily enshrined, it ensures the agency's access to sustainable funding. Its access to the contributory funds in reality is hampered by the government's failure to pay its counterpart obligatory funding as the majority equity partner with the oil companies. The government's inadequate funding of statutory agencies in Nigeria has been symptomatic, and particularly acute in the oil industry's regulatory institutions responsible for administering the command-and-control regulation.<sup>96</sup> At a point, the House of Representative Committee on the NDDC had to appeal to the Federal Government to pay all outstanding debts owed the NDDC.<sup>97</sup> Despite the poor funding compliance by the government, the scheme is consistent with the funding arrangement of GCSs, where the government is responsible on a welfare basis<sup>98</sup> but also levies companies responsible for the pollution.<sup>99</sup> Levying oil-companies as provided by the

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87 Nliam (n 58) 250.

88 NDDC (n 74) 16.

89 Bowman (n 25) 12-13; and O'Hear (n 23) 163.

90 Ombolaji Adewale, 'Oil Spill Compensation Claims in Nigeria: Principles, Guidelines and Criteria' [1989] *Journal of African Law* 91, 103.

91 Farber (n 28) 1646.

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92 *ibid.*

93 Hall (n 30) 141.

94 Lin (n 16) 1486 and Farber (n 28) 1635-1639.

95 Imobighe (n 53) 108 and Nliam (n 58) 250.

96 See, Enabulele (n 24) 221-3.

97 Chukwudi Akasike, 'Pay Debts Owed NDDC, Reps Committee Urges FG' (December 17, 2017) <<https://punch.ng.com/pay-debts-owed-nddc-reps-committee-urges-fg/>>.

98 Hall (n 32) 114.

99 *ibid* and Farber (n 28) 1607.

NDDC Act<sup>100</sup> is a typical instance where the PPP<sup>101</sup> is reflected in Nigerian legal instruments. However available records indicate that oil-related environmental pollution remains unabated.<sup>102</sup> Farber cautioned that the existence of GCS should not be a basis to flout pollution preventive measures.<sup>103</sup>

Our empirical analysis shows the NDDC's interventionist efficiency in bridging the infrastructural gap in the NDR. This is commendable as it signals government's desire for restitution, implementation of its duty of care and the promotion of social welfare in the NDR, which are the ideals on which GCSs are anchored.<sup>104</sup> However, our findings contradict prior studies that argue that the NDDC has not made any significant progress in improving the living conditions of the Niger Delta people.<sup>105</sup> NDDC's performance may be uncelebrated and dwarfed when compared with the stream of revenues it has received since inception. Given the evidence that the Commission has to make do with its available resources following funding shortfall from the government, it would appear that the NDDC's development of the NDR depended more on its administrative commitment and effectiveness rather than on the quantity of funds at its disposal.<sup>106</sup>

In addition to funding constraint, the NDDC is limited by lack of autonomy. Its lack of autonomy is difficult

to address as it has a statutory basis. The NDDC Act provides that the NDDC '...shall be subject to the direction, control or supervision in the performance of its functions under this Act by the President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria'.<sup>107</sup> This provision is an example of the militarised system of government which Nigeria experienced before the inception of democracy in 1999 (a year before the enactment of the NDDC Act). The implication is that any project embarked upon by the NDDC must be approved by the president, regardless of its importance and/or expediency.<sup>108</sup> It has been highlighted that GCSs formed part of interventionist action plans of government to provide collective protection and security rooted in social welfare.<sup>109</sup> Reflecting on the above, if the intention of the draftsmen is to generously fast-track the development of the NDR, does a Commission with a governing board and operational mandate need the consent of the president before it can perform its functions? A statutory issue of this manner can only be resolved through an amendment of this provision of the NDDC Act to give the NDDC full powers to execute projects independently. Hence, the amendment of the NDDC Act is long overdue. Legal instruments, whether national or international, can only be useful to the extent they are designed to reflect the substance of what they intended to address. As the social, economic and environmental spaces in

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100 NDDC Act, Sec 14 (2) (b).

101 See, de Sadeleer (n 34) 21-60; Khan (n 34) 638; Enabulele (n 24) 63-77.

102 Enabulele (n 24) 2; See, Caroline Duffield, 'Nigeria: "World Oil Pollution Capital" BBC News (15 June 2010) <<https://www.bbc.co.uk/news/10313107>>; Enabulele and others (n 2) 56; 'Initiative to Reduce Global Gas Flaring' (The World Bank, 22 September 2014) <<http://www.worldbank.org/en/news/feature/2014/09/22/initiative-to-reduce-global-gas-flaring>>; and US Energy Information Administration, 'Country Analysis Brief: Nigeria' (2016) <[http://www.eia.gov/beta/international/analysis\\_includes/countries\\_long/Nigeria/niger](http://www.eia.gov/beta/international/analysis_includes/countries_long/Nigeria/niger)>.

103 Farber (n 28) 1646.

104 Floyd (n 10) 110-115.

105 Imobighe (n 53) 108.

106 Emeka Chianu, 'NDDC – Another Shot at Infrastructural Development of Nigeria's Oil Producing Areas' [2001] *International Energy Law and Taxation Review* 214.

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107 NDDC Act, Sec 7 (3).

108 In a situation like this where the current the Nigerian president, President Muhammadu Buhari is reported to have said he would not compensate those who voted 5 per cent for him in the same way with those who voted 97 per cent for him in the 2015 general election. It is on record that a chunk of the NDR fall into the category of States that voted 5 per cent for the president, so it can be argued on the basis of this section that the president can deprive the Niger Delta people of development under the NDDC Act. See, Sunday Agbo, Phil Okose and Damian Duruiheoma 'Buhari Election Promises to South East ... 28 Months After' *Orient Daily* (18 November 2017) <<https://orientdailynews.com/politics/buhari-election-promises-south-east/>>.

109 Fagbohun (n 8) 204.

which all human and ecological interactions take place are dynamic rather than static, a good legal system must make allowance for resilience in accommodating the needful changes premised on substantive reality.

as the aims of adequate provision of respite to victims in the NDR, become of ever more increasing concern. The implication of ineffective implementation of GCS or any other strategy to mitigate the effects of activities of the Nigerian oil industry is that achieving the United Nations' 2015 sustainable development goals<sup>111</sup> may remain elusive in the NDR.

## 6

### CONCLUDING REMARKS

This paper has argued that GCS is a potential tool for the management of environmental degradation. It identified that GCS were originally designed for victims of crime<sup>110</sup> and that it can be utilised to bring respite to victims of environmental pollution. It established that GCS is operational in Nigeria through the NDDC, is used in tackling environmental degradation, as well as to address the socio-economic discrepancies in the NDR due to operations in the oil industry. Reflecting on the extent of environmental degradation in the NDR due to pollution emanating from the oil industry, there is no doubt as to the significance and requirement for policies and strategies to advance higher environmental protection. Apart from the NDDC's operations tilting more towards human capital and infrastructural development to the detriment of environmental remediation, there are other challenges bedevilling the Nigerian model of GCS. Therefore, the potential effectiveness of the NDDC as a statutory body to administer the GCS in Nigeria need to be examined,

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<sup>111</sup> The principle of sustainable development is subsumed in the United Nations time-bound strategies for combating poverty, hunger, illiteracy, gender inequality, disease and environmental degradation, what the development now refers to as the Millennium Development Goals (MDGs). UNDP, *Energizing the Millennium Development Goals: A Guide to Energy's role in Reducing Poverty* (UNDP 2005) 1. Also, the UN in 2015 sets out 17 Sustainable Development Goals (SDGs). See United Nations, 'Sustainable Development Goals' <<https://sustainabledevelopment.un.org/sdgs>>. For a discusses on sustainable development see, World Commission on Environment and Development, *Our Common Future* (Oxford University Press 1987) 27; Stephen Tromans, 'High Talk and Low Cunning: Putting Environmental Principles into Legal Practice' (1995) *Journal of Planning & Environment Law* 779, 791-796; Ifeanyichukwu A Aniyie and Osamuyimen Enabulele, 'Overview of Energy Consumption and Sustainable Development Relationship' (2013) 14(1) *University of Benin Law Journal* 112-115; Enabulele (n 24) 57-63; and Michael Jacobs, 'Sustainable Development as a Contested Concept' in Andrew Dobson (ed), *Fairness and Futurity, Essay on Environmental Sustainability and Social Justice* (Oxford University Press 1999) 31.

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<sup>110</sup> *ibid* 218.

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