

NIGER-DELTA DEVELOPMENT COMMISSION (ESTABLISHMENT, ETC.) ACT

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An Act to provide for the repeal of the Oil Mineral Producing Areas Commission Act 1998, and among other things, establish a new Commission with a re-organised 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 and for connected purposes.

[2000 No.6.]

[12th July, 2000]

[Commencement.]

PART I

Establishment, etc., of the Niger-Delta Development Commission and the Governing Board

1. Establishment of the Niger-Delta Development Commission, etc.

(1) There is hereby established a body to be known as the Niger-Delta Development Commission (in this Act referred to as "the Commission").

(2) The Commission-

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

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

(3) The Commission shall have its head office in Port Harcourt, Rivers State and shall establish an office in each member State of the Commission.

2. Establishment of the Governing Board of the Commission

(1) There is hereby established for the Commission a governing Board (in this Act referred to as "the Board"), which shall consist of-

(a) a chairman;

(b) one person who shall be an indigene of an oil producing area to represent each of the following member States, that is-

(i) Abia State;

(ii) Akwa Ibom State;

(iii) Bayelsa State;

(iv) Cross River State;

(v) Delta State;

(vi) Edo State;

(vii) Imo State;

(viii) Ondo State; and

(ix) Rivers State;

(c) three persons to represent non-oil mineral producing States provided that such membership should be drawn from the remaining geo-political zones which are not represented in the Commission;

(d) one representative of oil producing companies in the Niger-Delta nominated by the oil producing companies;

(e) one person to represent the Federal Ministry of Finance;

(f) one person to represent Federal Ministry of Environment;

(g) the managing director of the Commission; and

(h) two executive directors.

(2) The chairman and other members of the Board shall-

(a) be appointed by the President, subject to the confirmation of the Senate, in consultation with the House of Representatives; and

(b) be persons of proven integrity and ability.

(3) The members of the Board referred to in paragraphs (i) *if* of subsection (I) of this section shall be part-time members.

(4) The supplementary provisions set out in the Schedule to this Act shall have effect with respect to the proceedings of the Board and the other matters contained therein.

[Schedule.]

3. Tenure of office

(I) Subject to the provisions of section 4 of this Act, a member of the Board, other than an *ex officio* member, shall hold office for a term of four years at the first instance and may be re-appointed for a further term of four years and no more.

(2) A member of the Board other than an *ex officio* member may resign his appointment by notice in writing under his hand addressed to the President, which resignation shall take effect only upon receipt by the President.

4. Rotation of office of chairman of the Commission

The office of the chairman shall rotate amongst the member States of the Commission in the following alphabetical order-

(a) Abia State;

(b) Akwa-Ibom State;

(c) Bayelsa State;

(d) Cross River State;

(e) Delta State;

(f) Edo State;

(g) Imo State;

(h) Ondo State; and

(i) Rivers State.

5. Cessation of membership of the Board, etc.

(1) Notwithstanding the provisions of section 3 of this Act, a person shall cease to hold office as a member of the Board if-

(a) he becomes bankrupt, suspends payment or compounds with his creditors;

(b) he is convicted of a felony or any offence involving dishonesty or fraud;

(c) he becomes of unsound mind, or incapable of carrying out his duties;

(d) he is guilty of serious misconduct in relation to his duties;

(e) in the case of a person possessed of professional qualifications, he is disqualified or suspended, other than at his own request, from practising his profession in any part of the world by an order of a competent authority made in respect of that member; or

(f) he resigns his appointment by a letter addressed to the President.

(2) Where a vacancy occurs in the membership of the Board it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, so however, that the successor shall represent the same interest and shall be appointed by the President, subject to the confirmation of the Senate, in consultation with the House of Representatives.

6. Allowances of members

There shall be paid to every member of the Board such remunerations, allowances and expenses as the Federal Government may, from time to time, direct.

PART II

Functions and powers of the Commission, etc.

7. Functions **and** powers of **the** Commission

(1) The Commission shall-

(a) formulate policies and guidelines for the development of the Niger-Delta area;

(b) conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development of the Niger-Delta area in the field of transportation, including roads, jetties and waterways, health, education, employment, industrialisation, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications;

(c) cause the Niger-Delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and socio-economic development;

(d) prepare master plans and schemes designed to promote the physical development of the Niger-Delta area and the estimates of the costs of implementing such master plans and schemes;

(e) implement all the measures approved for the development of the Niger-Delta area by the Federal Government and the member States of the Commission;

(f) identify factors inhibiting the development of the Niger-Delta area and assist the member States in the formulation and implementation of policies to ensure sound and efficient management of the resources of the Niger-Delta area;

(g) assess and report on any project being funded or carried out in the Niger-Delta area by oil and gas producing companies and any other company including non-governmental organisations and ensure that funds released for such projects are properly utilised;

(h) 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;

(i) liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control; and

(j) execute such other works and perform such other functions which, in the opinion of the Commission, are required for the sustainable development of the Niger-Delta area and its people.

(2) In exercising its functions and powers under this section, the Commission shall have regard to the varied and specific contributions of each member State of the Commission to the total national production of oil and gas.

the Directorate of Legal Services;

the Directorate of Education, Health and Social Services;

(3) The Commission shall be subject to the direction, control or supervision in the performance of its functions under this Act by the President.

8. Powers of the Board

The Board shall have power to-

(a) manage and supervise affairs of the Commission;

(b) make rules and regulations for carrying out the functions of the Commission;

(c) enter and inspect premises, projects and such places as may be necessary for the purposes of carrying out its functions under this Act;

(d) pay the staff of the Commission such remuneration and allowances as appropriate;

(e) enter into such contracts as may be necessary or expedient for the discharge of its functions and ensure the efficient performance of the functions of the Commission; and

(j) do such other things as are necessary and expedient for the efficient performance of the functions of the Commission.

PART III

Structure of the Commission

9. Establishment of Directorates

(1) There shall be established in the head office of the Commission, the following Directorates-

(a) the Directorate of Administration and Human Resources;

(b) the Directorate of Community and Rural Development;

(c) the Directorate of Utilities Infrastructural Development and Waterways;

(d) the Directorate of Environmental Protection and Control;

(e) the Directorate of Finance and Supply;

(f) the Directorate of Agriculture and Fisheries;

(g) the Directorate of Planning, Research, Statistics and Management Information System;

(h) the Directorate of Commercial and Industrial Development; and

(i) the Directorate of Projects Monitoring and Supervision.

(2) The Board may, with the approval of the President, increase the number of Directorates, as it may deem necessary and expedient to facilitate the realisation of the objectives of the Commission.

10. Establishment of the Management Committee

There shall be for the Commission a Management Committee which shall-

(a) consist of a chairman who shall be the Managing Director, two Executive Directors, the Directors responsible for the Directorates established under section 9 of this Act and such number of other members as may be determined from time to time by the Board;

(b) be responsible to the Board for the general administration of the Commission.

11. Establishment of the Niger-Delta Development Advisory Committee

(1) There is hereby established for the Commission, a Niger-Delta Development Advisory Committee (in this Act referred to as "the Advisory Committee") which shall consist of-

(a) the Governors of the member States of the Commission; and

(b) two other persons as may be determined, from time to time, by the President.

(2) The Advisory Committee shall be charged with the responsibility of advising the Board and monitoring the activities of the Commission, with a view to achieving the objective of the Commission.

(3) The Advisory Committee may make rules regulating its own proceedings.

PART IV

Staff

12. Appointment of Managing Director, etc.

(1) There shall be for the Commission, a Managing Director, and two Executive Directors who shall be indigenes of oil producing areas starting with the member states of the Commission with the highest production quantum of oil and shall rotate amongst member States in order of production, and shall-

(a) have such qualification and experience as are appropriate for a person required to perform the functions of those offices under this Act;

(b) the Managing Director shall be the chief executive and accounting officer of the Commission;

(c) be appointed by the President and confirmed by the Senate in consultation with the House of Representatives;

(d) hold office on such terms and conditions as to emolument, conditions of service as may be specified in his letter of appointment and subject to the provision of section 3 of this Act.

(2) The Managing Director shall, subject to the general direction of the Board, be responsible-

(a) for the day-to-day administration of the Commission;

(b) for keeping the books and proper records of the proceedings of the Board; and

(c) for-

(i) the administration of the secretariat of the Board; and

(ii) the general direction and control of all other employees of the Commission.

(3) The Board shall have power to--

(a) employ either directly or on secondment from any civil or public service in the Federation or a State such number of employees as may, in the opinion of the Board, be required to assist the Board in the discharge of any of its functions under this Act; and

(b) pay to persons so employed such remuneration (including allowances) as the Board may determine.

13. Service in the Commission to be pensionable

(1) Service in the Commission shall be approved service for the purposes of the Pensions Act.

(2) The officers and other persons employed in the Commission shall be entitled to pensions, gratuities and other retirement benefits as are enjoyed by persons holding equivalent grades as appropriate.

(3) Nothing in subsections (1) and (2) of this section shall prevent the appointment of a person to any office on terms which preclude the grant of pension and gratuity in respect of that office.

(4) For the purposes of the application of the provisions of the Pensions Act, any power exercisable thereunder by the Minister or other authority of the Government of the Federation, other than the power to make regulations under section 23 thereof, is hereby vested in and shall be exercisable by the Commission, and not by any other person or authority.

PART V

Financial provisions

14. **Fund** of the Commission

(1) The Commission shall establish and maintain a fund from which shall be defrayed all expenditure incurred by the Commission.

(2) There shall be paid and credited to the fund established pursuant to subsection (1) of this section-

(a) from the Federal Government, the equivalent of fifteen per cent of the total monthly statutory allocations due to member States of the Commission from the Federation Account; this being the contribution of the Federal Government to the Commission;

(b) three per cent of the total annual budget of any oil-producing company operating onshore and offshore in the Niger-Delta area; including gas-processing companies;

(c) fifty per cent of monies due to member States of the Commission from the Ecological Fund;

(d) such monies as may, from time to time, be granted or lent to or deposited with the Commission by the Federal or a State Government, any other body or institution, whether local or foreign;

(e) all monies raised for the purposes of the Commission by way of gifts, loan, grants-in-aid, testamentary disposition or otherwise; and

(j) proceeds from all other assets that may, from time to time, accrue to the Commission.

(3) The fund shall be managed in accordance with the rules made by the Board, and without prejudice to the generality of the power to make rules under this subsection, the rules shall in particular contain provisions-

(a) specifying the manner in which the assets or the fund of the Commission are to be held, and regulating the making of payments into and out of the fund; and

(b) requiring the keeping of proper accounts and records for the purpose of the fund in such form as may be specified in the rules.

15. **Expenditure**

The Commission shall apply the proceeds of the fund established pursuant to section 14 of this Act to-

(a) the cost of administration of the Commission;

(b) the payment of salaries, fees, remuneration, allowances, pensions and gratuities payable to the members of the Board specified in section 6 of this Act or any committee of the Board and the employees of the Commission;

(c) the payment for all contracts, including mobilisation, fluctuations, variations, legal fees and cost on contract administration;

(d) the payment for all purchases; and

(e) undertaking such other activities as are connected with all or any of the functions of the Commission under this Act.

16. Gifts to the Commission

(1) The Commission may accept gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organisation making the gift.

(2) The Commission shall not accept any gift if the conditions attached by the person or organisation making the gift are inconsistent with the functions of the Commission under this Act.

17. Powers to borrow

The Commission may, with the consent of the President, borrow, on such terms and conditions as the Commission may determine, such sums of money as the Commission may require in the exercise of its functions under this Act.

18. Annual estimates and expenditure

(1) The Board shall, not later than 30 September in each year, submit to the National Assembly through the President an estimate of the expenditure and income of the Commission during the next succeeding year for approval.

(2) The Board shall cause to be kept proper accounts of the Commission in respect of each year and proper records in relation thereto and shall cause the accounts to be audited not later than six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

19. Quarterly report

The Commission shall, at the end of every quarter in each year, submit to the President a report on the activities and administration of the Commission.

20. Annual report

(1) The Board shall prepare and submit to the President, not later than 30 June in each year, a report in such form as the President may direct on the activities of the Commission during the immediately preceding year, and shall include in the report a copy of the audited accounts of the Commission for that year and the auditor's report thereon.

(2) The President shall, upon receipt of the report referred to in subsection (1) of this section, cause a copy of the report and the audited accounts of the Commission and the auditor's report thereon to be submitted to each House of the National Assembly.

PART VI

Miscellaneous

21. Establishment of Monitoring Committee

(1) There is hereby established for the Commission a Monitoring Committee which shall consist of such number of persons as the President may deem fit to appoint from the Public or Civil Service of the Federation.

(2) The Monitoring Committee shall-

(a) monitor the management of the funds of the Commission and the implementation of the projects of the Commission; and

(b) have access to the books of account and other records of the Commission at all times, and submit periodical reports to the President.

22. Offices and premises of the Commission

(1) For the purposes of providing offices and premises necessary for the performance of its functions under this Act, the Commission may, subject to the Land Use Act-

(a) purchase or take on lease any interest in land, or other property; and

(b) construct offices and premises and equip and maintain same.

(2) The Commission may, subject to the Land Use Act, sell or lease out any office or premises held by it, which office or premises is no longer required for the performance of its functions under this Act.

23. Directives by the President

Subject to the provisions of this Act, the President may give to the Commission directives of a general nature or relating generally to matters of policy with regard to the performance by the Commission of its functions and it shall be the duty of the Commission to comply with the directives.

24. Limitation of suits against Commission, etc.

(1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any officer or employee of the Commission.

(2) Notwithstanding anything contained in any other law or enactment, no suit shall lie against any member of the Board, the Managing Director or any other officer or employee of the Commission for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or such law or enactment, duty or authority, shall lie or be instituted in any court unless-

(a) it is commenced within three months next after the act, neglect or default complained of; or

(b) in the case of a continuation of damage or injury, within six months next after the ceasing thereof.

25. Service of documents

A notice, summons or other document required or authorised to be served upon the Commission under the provisions of this Act or any other law or enactment, may be served by delivering it to the Managing Director or by sending it by registered post and addressed to the Managing Director at the principal office of the Commission.

26. Restriction on execution against property of the Commission

(1) In any action or suit against the Commission, no execution or attachment of process in the nature thereof shall be issued against the Commission.

(2) Any sum of money which may by the judgment of any court be awarded against the Commission shall, subject to any direction given by court where notice of appeal of the said judgment has been given, be paid from the general reserve fund of the Commission.

27. Indemnity of officers

A member of the Board, the Managing Director, any officer or employee of the Commission shall be indemnified out of the assets of the Commission against any proceeding, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, if any such proceeding is brought against him in his capacity as a member of the Board, the Managing Director, officer or employee of the Commission.

28. Repeal of 1998 No. 41, and saving provision, etc.

(1) The Oil Mineral Producing Areas Development Commission Act 1998 is hereby repealed and accordingly the Commission established under that Act (in this section referred to as "the dissolved Commission") is consequentially dissolved.

(2) By virtue of this Act, there shall be vested in the Commission immediately at the commencement of this Act, without further assurance, all assets, funds, resources, and other movable and immovable property which immediately before the commencement of this Act were vested in the dissolved Commission.

(3) As from the date of the commencement of this Act, all rights, interests, obligations and liabilities of the dissolved Commission existing before the commencement of this Act under any contract or instrument or in law or equity, shall by virtue of this Act be assigned to and vested in the winding-up committee to be established and funded by the Federal Government to verify and settle outstanding debt of the dissolved Commission.

(4) Any proceedings or cause of action pending or existing immediately before the commencement of this Act by or against the dissolved Commission in respect of any right, interest, obligation or liability of the dissolved Commission may be commenced or continued, as the case may be, and any determination of any court of law, tribunal or other authority or person may be enforced by or against the Commission to the same extent that the proceedings, cause of action or determination might have been continued, commenced or enforced by or against the dissolved Commission as if this Act had not been made.

(5) Notwithstanding the provisions of this Act but subject to such directions as may be issued by the Commission, a person who immediately before the commencement of this Act held office in the dissolved Commission shall be deemed to have been transferred to the Commission on terms and conditions not less favourable than those obtaining immediately before the commencement of this Act, and service in the dissolved Commission shall be deemed to be service in the Commission for purposes of pension.

(6) The President, if he thinks fit, may, within twelve months after the commencement of this Act, by order published in the *Federal Gazette*, make additional transitional or saving provisions for the better carrying out of the objectives of this section.

29. Regulations

The Commission may, with the approval of the President, make regulations, generally for the purposes of giving full effect to this Act.

30. Interpretation

In this Act, unless the context otherwise requires-

"chairman" means the chairman of the Board;

"Commission" means the Niger-Delta Development Commission established by section I of this Act;

"Board" means the governing Board established for the Commission under section 2 (1) of this Act;

"member" means a member of the Board and includes the chairman, Managing Director and Executive Directors;

"member States" include Abia, Akwa-Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo, Rivers States and any other oil-producing State;

"oil" means oil and gas; and

"President" means the President of the Federal Republic of Nigeria.

31. Short title

This Act may be cited as the Niger-Delta Development Commission (Establishment, etc.) Act.

SCHEDULE [Section 2 (4).]

Supplementary provisions relating to the Board, etc.

Proceedings of the Board

1. (1) Subject to this Act and section 27 of the Interpretation Act, the Board may make standing orders regulating its proceedings or those of any of its committees.

(2) The quorum of the Board shall be the chairman or the person presiding at the meeting, Managing Director or one Executive Director and one third of other members of the Board. The quorum of any committee of the Commission shall be as determined by the Board.

2. (1) The Board shall meet whenever it is summoned by the chairman and if the chairman is required to do so by notice given to him by not less than four other members, he shall summon a meeting of the Board to be held within fourteen days from the date on which the notice is given.

(2) At any meeting of the Board the chairman shall preside but if he is absent, the members present at the meeting shall appoint one of their number to preside at the meeting.

Committees

3. (1) The Board may appoint one or more committees to carry out, on behalf of the Board, such functions as the Board may determine.

(2) A committee appointed under this paragraph shall consist of such number of persons as may be determined by the Board and a person shall hold office on the committee in accordance with the terms of his appointment.

(3) A decision of a committee of the Board shall be of no effect until it is confirmed by the Board.

a vacancy in the membership of the Board or committee; or

a defect in the appointment of a member of the Board or committee; or

reason that a person not entitled to do so took part in the proceedings of the Board or committee.

Miscellaneous

4. (1) The fixing of the seal of the Commission shall be authenticated by the signatures of the chairman or any other member of the Board generally or specifically authorised by the Board to act for that purpose and the Managing Director.

(2) A document purporting to be a document duly executed under the seal of the Commission shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.

5. The validity of any proceedings of the Board or of a committee shall not be adversely.

SUBSIDIARY LEGISLATION

No Subsidiary Legislation