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# Planning Law and Federalism in Nigeria: The Dilemma of Implementation of the Niger Delta Regional Development Master Plan

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## ABSTRACT

Judgement of courts interpreting the Nigerian constitutional position on urban and regional planning as a residual matter in line with the spirit of federalism has created a quagmire as to the place of the Niger Delta Regional Development Master Plan and its effective implementation in States in the Niger Delta. This study is qualitative research derived from content analysis using inductive - deductive reasoning, from secondary data obtained from court judgements, Federal and State laws, law reports, journals, books and internet materials relevant to the subject matter to construct its position. Subjective opinions were intuitively canvassed in analyzing how the interplay between the Federal and State Governments affects the Niger Delta Regional Development Master Plan implementation. The study concludes that the Niger Delta Regional Development Master Plan remains a visitor at the doorpost of State Governments in line with extant laws and the federal structure system practised in Nigeria. It recommends the adoption of the Niger Delta Regional Development Master Plan within the legal and institutional development planning framework of each Member State of the Niger Delta and the activation of the Niger Delta Development Advisory Committee as a panacea to the dilemma of implementation of the master plan.

***Keywords:*** Planning law, Federalism, Niger Delta Regional Development Master Plan, Court Judgement.

## 1.0 INTRODUCTION

Recent judicial pronouncements on a case involving the Rivers State Government and the Niger Delta Development Commission (NDDC) was emphatic on the need for the NDDC to secure the approvals of the Rivers State Government in line with the State's extant Planning laws before executing any developmental projects within the jurisdiction of the State. This judgement including other court pronouncements in the past flagged the place of Urban and Regional Planning in Nigeria, particularly with respect to the legal and institutional framework of the Niger Delta Regional Development Master Plan (NDRDMP). This study examines the legality of implementing the NDRDMP in member states of the Niger Delta from the standpoint of situating Planning Law and Federalism as envisaged by the Constitution of Nigeria 1999 (as amended).

## 2.0 LITERATURE REVIEW

### 2.1 Federalism

Federalism is a system of government that establishes a constitutionally specified division of powers between different levels of government. It is a constitutional mechanism for dividing power between different levels of government so that federated units can enjoy substantial, constitutionally guaranteed autonomy over certain policy

areas while sharing power in accordance with agreed rules over other areas (Elazar, 1987).

Thus, federalism combines partial self-government with partial shared government as a means of ensuring peace, stability and mutual accommodation in countries that have territorially concentrated differences of identity, ethnicity, religion or language. Federalism, especially in large or diverse countries, can also improve service delivery and democratic resilience, ensure decisions are made at the most appropriate level, protect against the over-concentration of power and resources, and create more opportunities for democratic participation. Federal systems are usually associated with culturally diverse or territorially large countries. Notable examples of federal countries (or countries with federal-like characteristics, sometimes referred to as 'quasi-federations') include Argentina, Belgium, Brazil, Canada, Germany, India, Malaysia, Nigeria, Pakistan, Spain, South Africa and the United States (Bulmer 2017).

The 1999 Constitution of the Federal Republic of Nigeria (as amended) is poised towards federalism as its provision in section 2(2) unambiguously indicates that "Nigeria shall be a Federation consisting of States and a Federal Capital Territory". Section 3(1) specifies that there shall be thirty-six (36) States in Nigeria and goes ahead to mentions all 36 states and the FCT as the federating units.

This was the spirit of the decision of the Court of Appeal in Attorney General Ogun State v. Aberuagba (1985) 1 NWLR (pt.3) 395 where it was held that by section 2(2) of the 1999 Constitution, Nigeria shall be a federation, and by the doctrine of federalism, which Nigeria has adopted, the autonomy of each government, which presupposes its separate existence and its independence from the control of the other governments including the Federal government, is essential to federal arrangement. Therefore, each government exists not as an appendage of another government but as an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs, free from direction by another government.

Bulmer (2017) expressing his views on the pros and cons of federalism avers that while federalism poses not to be advantageous as it leads to the potential exclusion of minorities, duplication of laws, policies, ministries, lack of coherence, increased cost of governance, empowering elites to the detriment of the populace; federalism can fast-track development if harnessed as cooperative and efficient federalism in which the federal government decentralizes power and gives greater control of resources and policies to the federating states while harmonizing the efforts of these states for the greater progress of the federation as a supervisor and collaborator.

Oluwole (2009) espouses that there are three broad applications of the principle of federalism to conflict resolution, First, federalism serves as a link to the Central government. In this instance, federalism becomes the lubricant of the relationship between the various tiers of government. Second, federalism is used to unite divided societies while each entity still maintains its independence in non-negotiable issues. The third is the use of federalism to achieve the economy of scale. That is each group or branch produces what it has a comparative advantage in. Therefore, federalism is a political equilibrium, which results from an appropriate balance between shared rule and self-rule.

However, the practice of federalism in Nigeria is somewhat confusing and contentious particularly as it relates to some issues in the exclusive, concurrent and residual legislative list. Urban and Regional Planning appears to have been in this quagmire hence the legal logjams and the need for judicial interpretation which has serious consequences on planning and development.

**2.2 Planning Law**

Town Planning which goes by other nomenclature such as; Urban and Regional

Planning, Spatial or Territorial Planning, Community Planning, Town and Country Planning, Physical Planning or simply as Planning, over time has been defined in many ways. The global definition as put forward by the UN-Habitat is adopted. It defined Urban and Territorial Planning as a decision-making process aimed at realizing economic, social, cultural and environmental goals, through the development of spatial visions, strategies and plans and the application of a set of policy principles, tools, institutional and participatory mechanisms and regulatory procedures. It has an inherent and fundamental economic function, and it is a veritable instrument for reshaping the forms and functions of cities and regions to generate internal economic growth, prosperity and employment while addressing the needs of the most vulnerable, marginalized or underserved groups (Ayinde, 2021).

Planning is basically an activity of government and operated by laws, regulations and schemes often guided by development plans. Oyesiku (2019) notes that Town and Country Planning legislation in Nigeria has a long history and evolved in response to the rapid socio-economic changes in the last one hundred years with the phenomenal population growth rate which is about the highest in the world. Nigeria's population has continued to balloon with a census figure of 88.5 million in 1991 and 140 million people in 2006, the 2021 projected figure stands at over 200 million with an estimated annual growth rate of 2.6%.

The pressure created by rapid population growth rate and little investment in infrastructure and services in the urban and rural areas is responsible for the deteriorating environment and declining quality of life. This underscores the need for government to embark on the preparation of master plans and other levels of physical plans that will guide development in human settlements in an organized manner. To achieve this end, planning laws become very important in ensuring that there is order and control in formulating the principles that guide an efficient environment conducive to human life.

Planning laws are a system of rules and regulations to guide the orderly arrangement of physical development activities in accordance with acceptable planning norms and standards, providing the legal basis for directing and controlling the present and future actions of the built environment in any locality (Oyesiku, 2019). With the aid of planning law, the framework for legal and institutional structures are provided to entrench the culture of a properly planned and regulated environment for all sectors of human activities be it economic, social, residential, municipal services and facilities to ensure that there are harmonious relationships among the various competing land uses.

Planning legislation in the view of Wapera, Mallo & Jiriko (2015) is a mandate by (any tiers of government) federal, state or local authorities which attempts to produce outcomes that might not otherwise occur, produce or prevent outcomes at the different levels to control urban development and management in any jurisdiction of planning. In this way, regulations can be seen as implementation artefacts of policy statements.

Nigeria has operated different planning laws at different eras of its political advancement beginning from the colonial to post-independence era, till date. There is a historical link between Town Planning laws in Great Britain and Nigeria. In Britain, during the mid-19$^{th}$ Century, the outbreak of cholera epidemic in 1831 and 1833 led to what could be regarded as the first planning law, which was targeted at promoting public health and safety; the Public Health Act 1844. After which there were several other public health laws in Britain until the real beginnings of the modern tradition of detailed physical planning marked by town planning schemes were brought into being by the 1909 Housing and Town Planning Act.

Eventually, the 1909 Act was modified with the introduction of the interim development control by the enactment of the Housing and Town Planning Act 1919 which enabled developers to develop their property and be compensated if the development does not conform in an area where the British government has indicated interest but not acquired yet (Ola, 1977; Oyesiku, 1997; Duruzoechi, 1999)

A more fundamental change to the 1909 Act was the 1932 Town and Country Planning Act which enabled local authorities in England and Wales to prepare planning schemes for any land. This can be regarded as the foundation of Urban and Regional Planning in Great Britain. The 1932 Act in Britain was the foundation of the 1946 Nigerian Town and Country Planning Law also known as CAP 126 Laws of Eastern Nigeria as applicable to Rivers State and other States within the then Eastern Regional Government and CAP 123 Laws of Western Nigerian 1959 (Ola, 1977; Oyesiku, 1997; Duruzoechi, 1999)

However, it is instructive to note that prior to the promulgation of the 1946 Town and Country Planning law in Nigeria, the colonial authorities have enacted planning laws at intervals in their bid to control land and development in Lagos and other parts of Nigeria. These laws include; Town Improvement Ordinance of 1863; the 1904 Cantonment Proclamation; the Town and Country Planning Ordinance No. 9 of 1914, the 1917 Road and Township Ordinance No. 29, which classified townships into first, second or third class townships with Lagos as the only first-class town; the 1928 Lagos Town Planning Ordinance setting up the Lagos Executive Development Board; and then the Nigerian Town and Country Planning Ordinance of 1946 which was a coalition of the 1914, 1917 and 1928 planning ordinances in Nigeria (Ola, 1977; Oyesiku, 1997; Duruzoechi, 1999)

The promulgation of the Nigerian Urban and Regional Planning Decree No. 88 of 1992 by the General Ibrahim Babangida regime later adopted as an Act of the National Assembly now CAP N138 LFN 2004, repelled the forty-six years old obsolete and moribund Town and Country Planning Ordinance of 1946, used then by the regional governments.

The 1992 planning law provides for the types and levels of physical development plans including the administrative structure and functions of the various bodies established by law at the federal, state and local government levels.

It is informative to note that being a law promulgated by the Military, a priori it provided for a central planning administration dictated by the Federal Government. This did not go down well with State Governments such as Lagos State. After the return to democracy in 1999, it became clear that pursuant to the devolution of powers principles, the Lagos State Government could not bear some actions of the Federal Government, which is challenged in court, with respect to the regulation of physical development of land and whether the Federal Government can exercise physical development control over land vested in Federal Government in the respective states of the federation (Oyesiku, 2019). The Supreme decided in favour of the Lagos State Government. [See the case of AG Lagos State v. AG Fed & 33 ors (2003) 2 NWLR (pt. 833) 1]

The Rivers State Government also standing on the strength of the Supreme court judgement and its Physical planning law instituted a suit against the Niger Delta Development Commission (NDDC) contending on the issue of obtaining statutory permits before the construction of infrastructure projects within its jurisdiction. The judgement was in favour of the Rivers State Government. (See the case of Governor of Rivers State & anor v. Niger Delta Development Commission (NDDC) & 4 ors). These judgements will be dissected particularly in focus on how it will affect the mandate of the NDDC to implement the Niger Delta regional development master plan.

## 2.3 Niger Delta Regional Development Master Plan (NDRDMP).

The Niger Delta includes all nine (9) oil-producing states in Nigeria: Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers states with a total land area of about 112,000 square kilometres. The population of the region in 2006 was 28.9 million people, projected to rise to 45.7 million by 2020. The region contains the world's third-largest wetland, with the most extensive freshwater swamp forest and rich biodiversity is famous in Africa due to its geographical location, difficult terrain and remarkable oil revenue, which accounts for about 96 per cent of Nigeria's foreign earning (Akinwale, 2009; Oluwole, 2009).

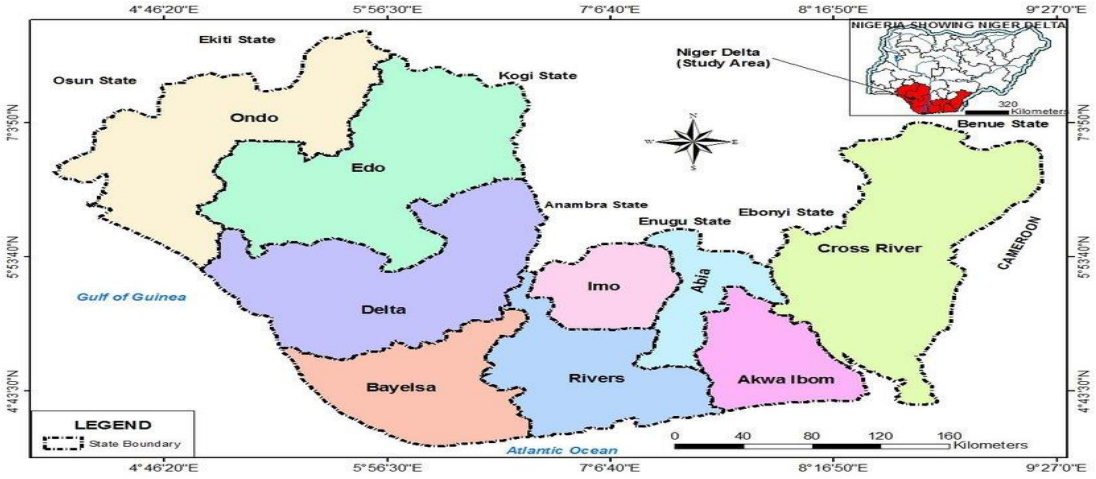


**Fig. 1: Map of Niger Delta Showing States.**
*(Source: https://www.researchgate.net/publication/321106825)*

The NDDC was set up by the Federal Government of Nigeria by virtue of act no. 6 of 2000 which repealed the defunct Oil Mineral Producing Areas Development Commission (OMPADEC) Decree of 1998, in a bid to assuage the neglect, marginalization and deprivation of the Niger Delta people and quell the call for resources control which became prominent following the "Kaiama Declaration" in 1998; which contains principles of equity and justice by the Ijaw Youth Council (IYC).

Section 7 of the NDDC Act states the powers and functions of the commission to include: formulate policies and guidelines for the development of the Niger-Delta area; 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, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications; cause the Niger-Delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and socio-economic development; 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; implement all the measures approved for the development of the Niger-delta area by the Federal Government and the member states of the Commission; 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; amongst other functions (FRN, 2000)

The mandate of the commission is unambiguous. It is an interventionist agency to facilitate the rapid, even and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable, ecologically regenerative

and politically peaceful to develop quality infrastructure to promote diversification and productivity in the oil-rich Niger Delta region (Isidiho & Sabran, 2015; Deekor, 2019).

To what extent the NDDC has performed in actualizing this mandate is an issue open to question, referencing the drama of the probe by the 9th National Assembly and the forensic audit report of 2021 which alleged that billions of naira have been mismanaged and stolen. Thus, Akinwale (2019) questioned the ability of the NDDC to restore hope and develop the rural areas of the Niger Delta, which is in dire need of development.

As a strategy to develop the Niger Delta region, the Federal Government through the NDDC launched the Niger Delta Regional Development Master Plan (NDRDMP) also known as the NDDC Master Plan in 2005 with a lifespan of 15 years that elapsed in 2020. Akinwale (2009) notes that by the initiation of a master planning process for physical and social development to achieve speedy and global transformation of the Niger Delta into a zone of equity, prosperity, and tranquillity, the Federal Government demonstrated renewed interests in the development of the region.

Former President Olusegun Obasanjo in whose administration this milestone was achieved, captured succinctly what appears to be the vision of the Government. "As we launch the master plan today, it is my abiding belief that we are also launching the commencement of a voyage of hope that will sail the Niger Delta past a legacy of turbulence, neglect and poverty into an assured future as our nation's most peaceful, most prosperous and most ecologically regenerative region by 2020" (Okereke, 2007).

The Master Plan, which was designed by GTZ of Germany and patterned after Alaska and Alberta, according to Akinwale (2009) was principally designed to develop rural communities and reduce rural-urban migration in phased implementation period. The is based on three phases of 5-years each, namely: the foundation phase (2006-2010); the expansion phase (2011-2015); and the consolidation phase (2016-2020) anchored on five pillars: disarmament, demobilization, rehabilitation and reintegration (DDRR); infrastructure and economic development; environmental protection; involvement of host communities in the protection of assets; and inclusion in the sharing of oil proceeds (Oluwole, 2009).

The broad-based targets of the Master Plan cover the following aspects: demography; environment and hydrology; agriculture and aquaculture; biodiversity; transport; rural, urban, regional planning and housing; community development; governance and capacity development; education; health; small and medium enterprises (SMEs); water supply; energy (especially electricity); telecommunication; vocational training (for employment generation); waste management and sanitation; large-scale industry; solid minerals; tourism; social welfare; arts, sports, and culture; women and youth employment; conflict prevention; access to financial instruments; and investment promotion covering about 26 sub-sectors of master plan deliverables articulated using an integrated development planning approach. This perhaps was the first serious attempt by the Federal Government to move away from tokenism to a roadmap for the actualization of the goals to develop the Niger Delta region into a place of peace and prosperity (Oluwole, 2009).

In 2007, then Nigerian President Umaru Yar'Adua endorsed the NDRDMP as the policy framework for the Niger Delta Development. This gesture seems to settle the question of policy continuity as was feared in some quarters. The Master Plan is believed to be the first integrated development plan driven by stakeholders' participation in Nigeria. The plan covers different sectors including health, education, transportation, and agriculture, while its

objectives embrace economic growth and infrastructural development. In particular, its major goal is to reduce poverty, induce industrialization, and ensure the social-economic transformation of the area. Thus, it is aimed at raising the people's living standards in accordance with the nation's 'Vision 2020' and the Millennium Development Goals-MDGs (Akinwale, 2009).

However, professionals in urban and regional planning fields have also raised questions as to the overt lack of the physical planning (land-use) component of the NDRDMP. The argument is that the absence of a spatial component and clear-cut regional planning strategy in the NDDC master plan document would amount to an exercise in futility because all government actions, policies and projects without the spatial dimension on ground is bound for failure. Thus, they argue that the NDRDMP is more of a socio-economic plan than a comprehensive development plan.

It is believed that the Master Plan would be the means of solving problems such as unemployment and violence, in the Niger Delta. It was estimated that $50 billion (N6.4 trillion) would be required for the implementation of the Master Plan for 15 years according to (Akinwale, 2009). The effectiveness of the Master Plan depends on commitment from all stakeholders, especially the Federal Government, the Niger Delta States and the Major Oil and Gas Companies. The later are contributors to NDDC fund, contributing 3% of the total annual budget and statutory remittances from the Federal Government equivalent of 15 per cent of the total monthly statutory allocations due to member States of the Commission from the Federation Account among other sources of funding (FRN, 2000; FRN, 2017).

Hitherto, the Commission executes various forms of projects in the nine States that make up the Niger Delta without recourse to the federating State Governments; brandishing the NDRDMP. The Rivers State Government went to court to challenge the implementation of the NDRDMP and construction of infrastructure projects within its territory without approvals from the State Government or any of its agencies and got a favourable judgment.

## 3.0 METHODOLOGY

This study adopted a desk review research approach derived from content analysis using inductive - deductive reasoning, from secondary data obtained from court judgements, Federal and State laws, law reports, journals, books and internet materials relevant to the subject matter to construct its argument. Subjective opinions were intuitively canvassed in analyzing how the interplay between the Federal and State Governments in Nigeria vis-a-vis planning law and federalism affects the Niger Delta Regional Development Master Plan implementation.

## 4.0 FINDINGS AND DISCUSSION

### 4.1 Rivers State Government Versus NDDC & 4 Ors.

On Wednesday 29th July 2020, a Rivers State High Court gave a declarative judgement in suit PHC 358/2020 between The Governor of Rivers State & Attorney-General of Rivers State as Plaintiffs against the Niger Delta Development Commission (NDDC) & 4 others as Defendants. Proceedings of the court indicated that all nine prayers and relief but one (No. 5) sought by the Plaintiffs as contained in the originating summons were granted by the court.

The judgement elicited divergent comments and reactions from the public mostly from a political and emotional perspective. However, it is important to examine the matter from a professional viewpoint because the issues are purely legal and town planning based, with impetus from extant Town Planning Laws and the Constitutional provisions regarding this matter.

For ease of reference, prayers one to three of the originating summons filed by

the Plaintiffs are hereby reproduced as follows;

1. A DECLARATION that by virtue of sections 4 and 5 of the Constitution of the Federal Republic of Nigeria 1999 (as amended); the respective provisions of the Land Development (Provisions For Roads) Law, CAP 73 Laws of Rivers State of Nigeria (LRSN) 1999; the State Lands Law, CAP 125 LRSN 1999; the Building Lines Law CAP 19 LRSN 1999; the Rivers State Physical Planning and Development Law No. 6 of 2003; and the Greater Port Harcourt City Development Authority Law No. 2 of 2009, the Government of Rivers State is vested with the exclusive competence to control and determine all matters connected with and /or pertaining to the physical planning, local planning, urban planning, regional planning and all matters ancillary thereto concerning the physical development of all landmass within the geographic territory and boundaries of Rivers State.
2. A DECLARATION that upon a proper construction of section 18 of the interpretation Act; Sections 4 and 5 and Paragraph 29 of the second schedule of the Constitution of the Federal Republic of Nigeria 1999; the Land Development (Provisions For Roads) Law, CAP 73 Laws of Rivers State of Nigeria (LRSN) 1999; the State Lands Law, CAP 125 LRSN 1999; the Building Lines Law CAP 19 LRSN 1999; the Rivers State Physical Planning and Development Law No. 6 of 2003; and the Greater Port Harcourt City Development Authority Law No. 2 of 2009 and sections 43 and 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Defendants CANNOT, pursuant to sections 7 and 8 or any other provisions of the Niger-Delta Development Commission (Establishment, etc.) Act or any other law enter into land, schools, markets, hospitals, roads and any other property in Rivers State for any purpose whatsoever including but not limited to the construction of roads, supply of Solar Light/ Solar street light, upgrading/ renovation of such road, school or hospital, construction of jetty, construction of bridges, construction of rigid pavements and drains, construction of buildings, reticulation of pipe-borne water including the construction of Solar Water Scheme without first Obtaining appropriate approvals or permits from the relevant authorities and or agencies of the Government of Rivers State.
3. A DECLARATION that the Niger Delta Development Commission (Establishment etc.) Act does not under any guise confer on the Defendants the power to grant permits, rights, approvals and licenses for the purpose of physically developing any part of the landmass within the territorial boundaries of Rivers State by way of construction and /or renovation of buildings, construction of roads, repairs and renovation of roads (other than Federal Highways) building of bridges, renovation, repairs and maintenance of bridges (except of Federal Highways) which said power is a power exclusively vested in the Government of Rivers State by virtue of Sections 4 and 5 of the Constitution of the Federal Republic of Nigeria 1999 (as amended); the respective provisions of the Land Development (Provisions For Roads) Law, CAP 73 Laws of Rivers State of Nigeria (LRSN) 1999; the State Lands Law, CAP 125 LRSN 1999; the Building Lines Law CAP 19 LRSN 1999; the Rivers State Physical Planning and Development Law No. 6 of 2003; and the Greater Port Harcourt City Development Authority Law No. 2 of 2009.

The learned Judge declared that the Niger Delta Development Commission (NDDC) must seek the consent and permit of the Rivers State Government on any project it intends to carry out within the jurisdiction of Rivers State. This judgment re-echoes the position of the Supreme Court

of Nigeria in the case of Attorney-General of Lagos State versus Attorney-General of the Federation & 33 others in June 2003 wherein the Court held that Urban and Regional Planning (which includes but not limited to; preparation of development plans, infrastructure provision, physical development and development control) falls under the residual list of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) thus, within the legislative competence of the House of Assembly of States.

This judgement is also in line with the pronouncement by Folasade Ayodeji Ojo JCA in suit CA/IB/504/2014 between Nigerian Association of Draughtsmen (Appellant) v. Executive Governor of Ogun State & 6 ors, delivered on Monday 9th December 2021, wherein the lead judgement stated that, "I have carefully examined the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and I find that Urban and Regional Planning is deemed to be on the residual list. It is not on the exclusive and concurrent legislative list. And this being so, it is one within the exclusive legislative competence of the State House of Assembly [see Attorney-General of Lagos State v. Attorney-General of the Federation and 33 ors (2003) 2 NWLR (pt. 833) 1 and Attorney General Ogun State v. Aberuagba (1985) 1 NWLR (pt.3) 395.]

In Attorney-General of Lagos State (appellants) v. Attorney-General of the Federation & 33 others (respondents), the lead judgement delivered by Uwais, CJN had the following issues for determination;

1. Whether Urban and Regional Planning (or Town Planning), as well as the Regulation of Physical Developments, are legislative matters.
2. If an affirmative answer is given to issue 1, whether Urban and Regional Planning (or Town Planning), as well as Regulation of Physical Development in relation to any land in Lagos State, are within the legislative and executive jurisdiction of the Federal Government.
3. Whether Urban and Regional Planning Decree No. 88 of 1992 is not inconsistent with the provisions of section 4 of the 1999 constitution therefore unlawful, null and void.
4. Whether the ownership rights of the Federal Government over land territories include the power to control and regulate town planning and physical development in relation to such land.
5. Whether all approvals, permits and licenses granted by the 1st defendant or any of the agencies of the Federal Government for any construction, building or physical development or use of land in Lagos State without the consent of the plaintiff are not illegal, null and void.

Holding, the Supreme court averred;

1. Issue 1 is answered in the affirmative – the phrase "Urban and Regional Planning" though can't be found in any area of the constitution is incidentally inferred in S.20 of CFRN 1999, it expressly states: "The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria". Thus the court held that the act of planning is a way of safeguarding the environment. And hence it is a legislative matter.
2. Issue 2 was also affirmed positive. The court held, per Uwais CJN, that "in view of the effect of the provisions of section 4 subsection (2), (3) and (4)(b), section 20, items 67 and 68 of the Exclusive Legislative list, all of the Constitution, when read together, the National Assembly as well State Houses of Assembly have concurrent power to legislate on the subjects of urban and regional planning and also on physical development. Hence it is within the National Assembly and Houses of assembly powers to legislate on urban and regional planning.
3. On issue 3, the urban and regional planning decree was not held to be inconsistent with the 1999 constitution. The court held, "that the word State in

section 318 of the constitution. No matter whichever way one looks at it, there is no gainsaying that the national assembly has the power to legislate on safeguarding land and therefore by extension on the subject of urban and regional planning. It follows then that the submission of the plaintiff and the 11th defendant that the power to legislate on urban and regional planning is residual under section 4 (7) of the Constitution is clearly untenable. It then also follows that the National Assembly has the power to enact an Act to protect and safeguard land. Therefore, in general, the 1992 Act is not inconsistent with the constitution. The power to protect and safeguard land is concurrent with that of the State Houses of Assembly. Although some sections of the 1992 decree were held to be an infraction to S. 2(2) of the CFRN 1999, which espouses the spirit of federalism. Those sections were sections that impose duties on the State Government and other similar sections.

The Supreme Court per Uwais CJN, further held, "The provisions place a duty on State Governments with regard to physical development in their territories. By section 2(2) of the 1999 Constitution, Nigeria shall be a Federation, and by the doctrine of federalism, which Nigeria has adopted, the autonomy of each government, which presupposes its separate existence and its independence from the control of the other government including the Federal government, is essential to federal arrangement. Therefore, each government exist not as an appendage of another government but as an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs, free from direction by another government. These provisions of the urban and regional planning decree No.88 of 1992 were held to be inconsistent with the CFRN 1999 "S. 3; S. 1(2); S. 4; S. 5(b) & (c); and every other provision(s) that imposes any duty or responsibility on the State and Local Government.

4. For issue 4, inference is drawn from issue 3.
5. It was held that issue 5 was too general and blanket, and hence, it cannot be granted.

In his view on the same suit, Uwaifo JSC, queried the constitutionality of the 1992 Urban and Regional Planning Law in respect to true federalism and posited thus "It seems to me that the Decree could well be suitable for a unitary system of government. That is because, as is obvious to me, the main prop of the entire conception, formulation and layout of the Decree had as its background, a strong central command structure initiative. It might be argued that that was to be expected of a military government. Such an argument would be valid only if it was clear that there had been a political decision to alter the federal system of the country. But it would be intolerably wrong to put it forward for such a decree if what was the general expectation and understanding, at least initially, of well-meaning Nigerian political consciousness was that the advent of the military in the administration of this country, even if for the second time, was to be regarded and endured by the generality, as a mere aberration which would be temporary. Upon that lingering psyche, the Federal Military Government ought not to have extended its functions to conceive of urban and regional planning scheme for Nigeria with the implication that it had intruded into the power of the State Governments to decide the physical planning of their States for which they will bear the financial burden squarely and take full control for its implementation as envisaged in the federal system of government. – per Uwaifo JSC, A.G Lagos State v. A.G Federation (2003).

He went further to state "That in national matters, power is exclusively given to the Federation while the States are generally entrusted with power in local matters; that Urban and Regional Planning power is one

of such examples. I think that is the essence of federalism". – per Uwaifo JSC, A.G Lagos State v. A.G Federation (2003).

To buttress his stand on the essence of federalism, Uwaifo JSC averred that "The provisions of section 4(4)(b) and 4(7)(b) cannot be read as if they confer concurrent legislative power on the Federation and the States. Concurrent powers are limited to the Concurrent Legislative List. That is what the 1999 Constitution provides for and I have always understood this to be as a feature of federalism". - per Uwaifo JSC, A.G Lagos State v. A.G Federation (2003).

**4.2 Implications of the Court Judgements**

The implications of these judicial pronouncements are to the extent that urban and regional planning is a residual matter of the State and Local Governments within their jurisdiction and only applicable to the Federal Government as it relates to its powers and functions on the Federal Capital Territory- Abuja. Thus, only planning laws as promulgated by the State Houses of Assembly shall apply to the State not an Act of the National Assembly.

The voiding of the aforementioned sections of the 1992 Nigerian Urban and Regional Planning law which provided the administrative structure and types of plans to be prepared at various levels particularly the State and Local Government, renders the Niger Delta Regional Development Master Plan implementation incapacitated. Recall, that Act No. 6 of 2000 establishing the NDDC is a making of the National Assembly.

The Niger Delta master plan is indeed a regional plan, only such regional plans prepared by the State Governments in line with its laws or a regional plan prepared by the Federal Government for the Federal Capital Territory will be validly enforceable. To this extent, the Niger Delta Regional Development Master Plan which is a federal creation cannot be enforceable on various States in the Niger Delta without the collaboration of the State governments that have jurisdiction over their land area. This is in line with Lord Denning's dictum- *you cannot put something on nothing and expect it to stand.*

These judgements have put paid to the debate of the federal structure and the power formula in Nigeria as enshrined in the 1999 Constitution (as amended) by stating the obvious that States as federating units of the republic exercise some level of autonomy on matters relating to Land, Physical Planning and Development thus the Federal Government cannot execute, dictate or impose planning laws, development plans and or projects within the jurisdiction of State Governments. That is why the Constitution clearly provided for the exclusive list (Federal Government only), concurrent list (Federal and State Governments) and residual list (State and Local Governments only). The judgement does not confer on the State Government superiority over the Federal Government and its agencies but gives teeth to the Federal structure practice as envisaged by the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Land Use Act 1978 and extant Land Development and Town Planning Laws in States.

The judgement of the Port Harcourt High Court questions the abuse of powers by the government at all levels in carrying out physical and infrastructure development without obtaining planning permits or approvals from the relevant Planning Authorities in the State. Sections 40 (3) and 41 of the Rivers State Physical Planning and Development Law No. 6 of 2003 states;

40 (3): All physical development plan applications made by any Government (Federal, State, local) shall be referred to the Board for the purpose of granting development permit.

41: Notwithstanding any provision in this law to the contrary, government or its agencies involved in development of land shall obtain approval of the Control Department.

The provisions of the law are clear and this applies to the NDDC implementing

the NDRDMP through construction of projects or any other agency of government. The fact that the planning laws are not fully implemented or enforced is not an inclination that the business as usual practice going on in respect to failure to obtain planning permits for government projects is right. Planning laws are meant to regulate both the actions of the private, corporate and institutional developers all in the public interest. The Rivers State High court pronouncements only stated the obvious, reinforcing the provisions of the rule of law.

The judgement also flares the issues of lack of synergy between agencies of government both at the Federal and State levels. A situation were agencies of government carry out development projects without effective collaboration is anti-progressive, to say the least. In the case of NDDC and the Rivers State Government, there have been situations where both parties award and re-award the same projects and contractors from both clients jostling for space, leading to low-quality projects and in some cases wastage of resources. Inter-governmental collaboration is a sine qua non for sustainable development in the Niger Delta.

Another fall out of this judgement is the need to rethink the legal and administrative framework of Urban and Regional Planning and land policies in Nigeria. Whereas it has become necessary to put in place the National Physical Development Plan at the national level and Regional Plans at the State level, such plans must be based on the principle that States and Local Governments must also have in place packages of hierarchy of development plans, cutting across multi-sectors which is systematically implemented to guide growth. Every square meter of land should be accounted for in a well-articulated spatial framework and strategic vision that flows from the general to the specific. The higher order plans like the National Physical Development Plan and Regional Plans such as the Niger Delta Regional Development Master Plan will be made to be in sync with lower level development plans at the State and Local areas. This will erase the problem of NDDC carrying out projects that do not address the needs and aspirations of the people.

## 5.0 CONCLUSION

The Niger Delta Region is a paradox of poverty amidst plenty. Its socio-economic problems include: widespread poverty with low level of industrial development, unemployment, poor health, a poor road network and difficult conditions, especially in the riverine areas and the absence of basic infrastructure and social services.

The NDDC was established by the Federal government as a medium to bridge the infrastructure gap and assuage the neglect, marginalization and deprivation of the Niger Delta people. Consequently, the NDRDMP was formulated as a catalyst to initiate programs, policies and projects in line with the Federal Government's vision to offer a lasting solution to the socio-economic difficulties of the Niger Delta Region and a mission to facilitate the rapid, even and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable, ecologically regenerative and politically peaceful.

The operationalization of this mandate through the implementation of the master plan and execution of projects in member States have become an issue of judicial opprobrium with respect to the concept of federalism as envisaged by the 1999 Constitution (as amended). This led to court pronouncements that situate urban and regional planning as a residual matter within the purview of State Governments, with serious implications on the implementation of a development framework such as the NDRDMP birthed by the Federal Government. While this portends a clog in the wheel of progress for the region as regards the intervention of the NDDC to carry out projects in States in the Niger Delta, it however, remedies the anomaly and

flagrant contravention of relevant provisions of extant laws including State Town Planning Laws and the Constitution of the Federal Republic of Nigeria 1999 (as amended).

From the perspective of the NDDC, it recognizes that one of the most pressing changes required to existing planning law is the need to provide a clear framework and up-to-date definition of the statutory framework for regional planning and other spatial development plans. Nigeria's planning and development laws and regulations require modification in the light of changing circumstances and policy changes emerging in areas such as urban management and rural development (FRN, 2006). Therefore, the NDDC is not unaware of the apparent limitations of its powers to implement the Master Plan within the jurisdiction of State Governments.

## 6.0 Recommendations

Going forward, there is a need to define the relationship between national, regional, and local levels of planning and the responsibilities of each level of government and agencies. The policies and proposals contained in regional plans, such as the NDRDMP, must be in sync with physical development plans and the statutory framework of States and Local Governments.

The NDRDMP acknowledges that the primary object of any change in planning and development legislation should therefore be twofold: to establish a statutory framework that is respected and enforceable; and to maintain a balance between the degree of statutory intervention or regulation and the need for simple, speedy, and non - bureaucratic procedures that do not unnecessarily burden individuals or organizations with red-tape (FRN, 2006). To achieve this will require an implementation structure agreeable to all stakeholders.

The judgment of courts in this matter should be enforced because of the benefits derivable. Whereas it strengthens the rule of law, it will erase waste and unnecessary competition for space for political expediency between State Governments in the Niger Delta and the NDDC. It will also reinforce the need for effective synergy between agencies of government at the Federal and State level for the benefit of the people using the integrated infrastructural development approach.

There is need to review the NDRDMP to include real-time spatial (land-use) component that aligns with the development framework of State and Local Governments if much is to be desired of the master plan's impact in repositioning the Niger Delta for sustainable development.

Thereafter, each State Government in the Niger Delta is expected to adopt the NDRDMP within its legal and institutional planning framework. Until this is done, the NDRDMP remains a visitor at the doorpost of each member State of the Niger Delta and in a dilemma of implementation.

Furthermore, the activation of section 11 of the NDDC Act which provides for the establishment of a Niger Delta Development Advisory Committee consisting of Governors of the member States will bridge the gap between the NDDC and State Governments. It would appear that the solution to the crisis of implementation of the NDRDMP will depend on the disposition of the stakeholders to play their roles in a make or mar relationship, in compliance with court judgements and extant laws.

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