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## EVADING RESPONSIBILITY: THE STATE AND THE INTERNATIONAL OIL COMPANIES

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### ABSTRACT

*The sustainable development of the petroleum resources is a constant challenge to the government because it seems that the latter prefers to opt for economic development at the expense of the environment.*

*Studies of the Niger Delta Region (NDR) of Nigeria have shown that a minor crude oil leakage often destroys a farm produce that can last for years, thus debilitating the farmers and their families who depend on farm-land and water for their livelihood.<sup>1</sup>*

*According to Ejumudo et al,<sup>2</sup> Corporate Social Responsibility (CSR) means the "commitment of companies towards encouraging the growth and development of the community and voluntarily eliminating practices that are not in accordance with public interest".<sup>3</sup> It is therefore important that public interest is included in the operational decisions of companies, taking into consideration the well being of the people and their environment.<sup>4</sup> If the concept of CSR is implemented properly, the companies would take the path of sustainable development of petroleum resources in the NDR of Nigeria. Too, they would have taken into consideration the public interest which includes the welfare of the people and their environment.*

*This article intends to highlight reason(s) for the continuous degradation of the NDR environment by the activities of international oil companies (IOCs) and illegal oil bunkering, etc. despite the extant environmental laws and the impacts of the damage and pollution on the environment; also, how the state and oil companies' evasion of responsibility aids in the reoccurrences of crude oil spills and gas flaring; and finally proffer some solution to observed challenges.*

**KEY WORDS:** Environmental Law, Environmental Degradation, Corporate Social Responsibility (CSR) and Sustainable Development.

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<sup>1</sup> Damilola S Olawuyi, 'Legal and Sustainable Development Impacts of Major Oil Spills' (2012) Vol. 9 Consilience: The Journal of Sustainable Development <<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=7&cad=rja&uact=8&ved=0CG0QFjAG&url=http%3A%2F%2Fwww.consiliencejournal.org%2Findex.php%2Fconsilience%2Farticle%2FviewFile%2F290%2F134&ei=xlEoU8OEA4n07AbtpoDwAw&usq=AFQjCNFfDSEt16yz2hnEuJwOq1ONbNbOoQ&sig2=wOZII-a5bDgF-kqQ64IuxQ&bvm=bv.62922401,d.ZGU>> accessed 18 March 2014.

<sup>2</sup> Ejumudo, Kelly, Zephaniah Osuyi Edo; Lucky Avweromre and Jonathan Sagay, 'Environmental Issues and Corporate Social Responsibility (CSR) in Nigeria Niger Delta Region: The Need for a Pragmatic Approach.' (2012) 4 Journal of social science and public policy, Cenresin Publications <[www.Cenresinpub.org](http://www.Cenresinpub.org)> accessed 7 May 2014.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

## INTRODUCTION

The challenges in countering the degradation of the Niger Delta Region (NDR) of Nigeria environment are numerous. Our focus in this article is therefore on the governance gaps that arise in the region as a result of globalization. This premise stems from the fact that globalization has consented to the link of corporate human right harm to the people and the environment, even though not intentional.<sup>5</sup> This can be seen in the increased legal rights given to International Oil Companies (IOCs) over the years which have also increased the flow of foreign direct investment that subsequently brought cases of disparity among the IOCs, the states and the host communities that are damaging to human beings and the environment.<sup>6</sup> The bilateral treaties between the states and IOCs as currently in effect are the case in point. The treaties give the foreign investors the right to take the host states to international arbitration (these are binding) including when the alleged damages are as a result of implementing a legislation that would improve environmental and social standards that also apply uniformly to other businesses.<sup>7</sup> However, every incorporated company should be subject to the laws of the country in which it functions and it is based.<sup>8</sup>

So far, states, especially developing countries (like Nigeria) may be deficient of institutional capability of enforcing national laws and regulations against IOCs carrying out oil exploration activities in their jurisdictions even when the will is present, because of the constraint to impede sourcing, competing for and retaining international investment.<sup>9</sup> Furthermore, the home states of these IOCs would be unwilling to legislate on the harm done in another country by their oil companies. These states are also constrained by the permitted scope of extra-territorial regulation of a nation (which is yet to be fully understood), their unwillingness to cause loss of investment opportunity to their own companies or not ready to incite these companies to move their own headquarters from their jurisdictions.<sup>10</sup>

In Nigeria, the major stakeholders in the oil and gas industry in the NDR are the government and the IOCs.<sup>11</sup> The major operators in the industry are the IOCs.<sup>12</sup> The NDR has been neglected by the government and there is a widespread poverty and underdevelopment in the region.<sup>13</sup> The operations of the IOCs have been said to be the cause of the environmental degradation in the region.<sup>14</sup> The United Nations Development Program (UNDP) in its Niger Delta Human Development Report stated that for over 30 years the IOCs

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<sup>5</sup> John Ruggie, 'Protect, Respect and Remedy: A Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises,' (2008) 8 HUMAN RIGHTS COUNCIL <<http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>> accessed 27 May 2014.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Gabriel Eweje, 'Environmental Costs and Responsibilities Resulting from Oil Exploitation' [2006] Journal of Business Ethics <<http://eds.a.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=6bb322fc-eb9a-4a56-9c72-761305af8990%40sessionmgr4002&vid=1&hid=4103>> accessed 22 April 2014.

<sup>12</sup> Amnesty International, 'NIGERIA: PETROLEUM, POLLUTION AND POVERTY IN THE NIGER DELTA' <[www.amnesty.org/en/library/asset/AFR44/017/2009/en/e2415061-da5c-44f8-a73c-a7a4766ee21d/afr440172009en.pdf](http://www.amnesty.org/en/library/asset/AFR44/017/2009/en/e2415061-da5c-44f8-a73c-a7a4766ee21d/afr440172009en.pdf)> .

<sup>13</sup> Osa Ekhaton Eghosa, 'Environmental Protection in the Oil and Gas Industry in Nigeria: The Roles of Governmental Agencies' <<http://login.westlaw.co.uk/maf/wluk/app/document>> accessed 10 April 2014.

<sup>14</sup> Ibid.

had carried out their oil extraction activities devoid of environmental regulation to guide their operations.<sup>15</sup>

In this article, the role of the government and the IOCs is examined in other to address why the degradation of the environment has so far deteriorated to the present state. It would also be shown that the Nigerian government has evaded its duty to protect and respect the rights of its citizens in the NDR and how some IOCs have failed to take proper measures to prevent pollution and counteractive actions to pollution and environment-damage, thereby taking advantage of the laxity in the regulatory system.<sup>16</sup>

**a) *The failure of government to protect the rights***

The operation in the oil and gas industry in the NDR of Nigeria has carried on for decades with no effective or little regulation. The reason is not for lack of legislation.<sup>17</sup> We can state here that Nigeria is aware of the renowned principles of the American Petroleum Institute (API) and American Society of Mechanical Engineering (ASME). The pollution of water and land is also prohibited under the Nigerian law.<sup>18</sup> This can be seen in section 6(3) of the Oil Pipeline Act which provides that a person authorized to carry out survey for oil shall “take all reasonable steps to avoid unnecessary damage to any land entered upon and any buildings, crops or profitable trees thereon...”<sup>19</sup>. Section 25 of the Petroleum (Drilling and Production) Regulations provides that the lessees or licensee shall “adopt all practicable precautions ... to prevent the pollution of inland waters, rivers, watercourses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might contaminate the water, banks or shoreline or which might cause harm or destruction to fresh water or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and, if possible, end it.”<sup>20</sup>

In conjunction with the laws that are regulating the oil industry are also the Nigerian environmental legislation, some of which were enacted some years after activities of the oil industry had started.<sup>21</sup> In 2007, the National Environmental Standards and Regulations Enforcement Agency Act (NESREA) replaced the Federal Environment Protection Agency Act and has become the major law on environment in Nigeria. Section 7(h) and (g) of the NESREA Act has removed oil and gas from the purview of the Agency.<sup>22</sup> This removal is stated in section 7(h) that authorizes NESREA to “enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector”.<sup>23</sup> This is further supported by section 7(g) of the same Act which directs NESREA to implement the observance of the regulations on the importation, exportation, distribution, storage, sale, handling and disposal of hazardous chemical and waste other than in the oil and gas sector.<sup>24</sup>

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<sup>15</sup> ‘UNDP NIGER DELTA HUMAN DEVELOPMENT REPORT’ (2006) <[http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CDYQFjAA&url=http%3A%2F%2Fweb.ng.undp.org%2Freports%2Fnigeria\\_hdr\\_report.pdf](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CDYQFjAA&url=http%3A%2F%2Fweb.ng.undp.org%2Freports%2Fnigeria_hdr_report.pdf)> accessed 16 May 2014.

<sup>16</sup> Amnesty International (n 13).

<sup>17</sup> Ibid. *The Report of the Technical Committee on the Niger Delta, November 2008 and the UNDP, Niger Delta Human Development Report, 2006.*

<sup>18</sup> Ibid.

<sup>19</sup> Ibid. The Oil Pipeline Act 1956

<sup>20</sup> Ibid. The Petroleum (Drilling and Production) Regulations (1969)

<sup>21</sup> Ibid.

<sup>22</sup> Tawfiq Ladan Muhammed, ‘REVIEW OF NESREA ACT 2007 AND REGULATIONS 2009-2011: A NEW DAWN IN ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT IN NIGERIA’ (2012) 8/1 LEAD Journal (Law, Environment and Development Journal) <<http://www.lead-journal.org/content/12116.pdf>>.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

Environmental and oil specialists have referred to the contents of the environmental and oil legislation in Nigeria to be minimally adequate regarding compliance with the international standards in respect of the oil industry operation.<sup>25</sup> Significant flaws have been pointed out in these laws, especially in relation to the impacts that the activities of the oil and gas industry have on the environment and the affected population.<sup>26</sup> Additionally, poor implementation of the inadequate laws has actually left the IOCs basically unregulated or self regulated.<sup>27</sup> The three factors that are associated with the failure in implementing these legislation<sup>28</sup> are: a) The regulator is also a stakeholder and major financial beneficiary of the projects in the oil industry; b) The overlapping and lack of capacity in the regulatory system; and c) Under-resourcing of the regulatory agencies that supervise environmental matters.<sup>29</sup>

The regulatory system in Nigeria has been described by environmental experts as "muddled".<sup>30</sup> The statutory authorities that regulate environmental challenges and matters seem to overlap sometimes and even contradict each other.<sup>31</sup> For instance, the Federal Ministry of Solid Minerals Development stated that the process of environmental impact assessment (EIA) is exclusively the function of the Federal Government. This however is not consistent with the role of the State's EPAs, where monitoring and implementation of standards in their regulations are indistinguishable.<sup>32</sup> According to Oyenekenwa,<sup>33</sup> in a country with a federal system of government like Nigeria, these overlaps and inconsistencies in the legislative and constitutional provisions may lead to the mismanagement of the EIA process within the various tiers of government.<sup>34</sup> However, there are provisions (like section 86 of EIA Act of 1992) that provide that the responsibilities of processing the EIA in Nigeria can be delegated to the states and other legal and legislative authorities but there is no clear delineation of the process to be adopted.<sup>35</sup>

Section 44 of the Exclusive Legislative List under section 323 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) includes the operations of the oil industry under the exclusive reserve of the Federal Government of Nigeria.<sup>36</sup> Therefore, the Federal Government is not just a stakeholder in the oil industry but also mandated by law to regulate environmental laws and set standards.<sup>37</sup> This concept is not an uncommon practice, because governments of some resource rich countries also take part in the regulation of the oil operation and at the same time issue regulation on risks and safety that arise from the activities of the oil industry. However, the African Commission in 2002 recommended that in order to avoid conflict of interests that could result in violation of human right, an independent oversight mechanism of the oil industry must be put in place. It is rather

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<sup>25</sup> Amnesty International (n 13).

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Nerry Echefu, 'Environmental Impact Assessment in Nigeria: Regulatory Background and Procedural Framework' [2010] UNEP EIA Training Resource Manual.

<sup>31</sup> Margaret Okorodudu-Fubara, 'COUNTRY REPORT: NIGERIA Legal Developments, 2009-2011' [2012] IUCN Academy of Environmental Law e-Journal Issue 2012 (1).

<sup>32</sup> Onyenekenwa Cyprian Eneh, 'Managing Nigeria's Environment: The Unresolved Issues' (2011) 4 Journal of Environmental Science and Technology 250 <<http://scialert.net/fulltext/?doi=jest.2011.250.263>> accessed 19 May 2014.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Amnesty International (n 13). The 1999 Constitution of The Federal Republic of Nigeria.

<sup>37</sup> Ibid.

observed that Nigerian government has failed in ensuring that there is regulatory independence in the oil industry.<sup>38</sup>

The Petroleum Act empowers the Minister of Petroleum Resources to exercise several powers, including the power to order the suspension of licensees' or lessees' operations until the required measures have been taken to prevent the risk to life or property.<sup>39</sup> Sadly, this provision has not been evoked even with the danger to life and property suffered by the oil and gas producing communities of the NDR from the activities of the IOCs.<sup>40</sup> The activities of the oil companies have continued unhindered despite their oil spills, fatal accidents and the significant degradation of the environment, even loss of life.<sup>41</sup> Due to the fact that the harmful activities of the oil companies have been overlooked by the government, the aggrieved host communities (fearing that their natural resources are on the verge of extinction as a result of unsustainable means of development) have proceeded by adopting self-help to interrupt the activities of the IOCs. Their action would only lead to the government (a major stakeholder in the highly profitable but harmful business) sending out members of the armed forces to suppress them, adding to the injury of the people.<sup>42</sup> What a price to pay by the helpless members of the host communities for asking for minimum development of their environment as compensation for the huge volume of crude oil extracted from their God-given land and sea.<sup>43</sup> The government's action arises from the fact that each day that the activities of the oil company is interrupted, leads to enormous loss of petrol dollars that would have been generated and accrued to it if not for the interruption.<sup>44</sup>

It is upsetting that government would prefer to send the military to suppress the genuine agitation by the helpless host communities because of the unsustainable method of exploitation of their God-given petroleum resources but would set no dissuasive (comparatively very low) penalties for environmental pollution that would act as deterrence to the oil companies.<sup>45</sup> For instance, to enable a licensee or lessee to report oil spill to National Oil Spill Detection and Response Agency (NOSDRA) (in compliance with the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990) the Federal Government established the NOSDRA in 2006 under the Federal Ministry of Environment. The department is charged with the duty of implementing the National Oil Spill Contingency Plan (NOSCP) in Nigeria.<sup>46</sup> It is provided in the regulation that a company that fails to clean up an area that is impacted by oil spill "to all practical extent, including remediation" would be fined the sum of just one million naira only.<sup>47</sup> This relatively low fine regime has been a concern of the civil societies in the NDR. They link the low fine regime to the fact that the government is a major stakeholder in the oil business and would not want to also bear the brunt of the penalties if they were so high for deterrence.<sup>48</sup>

This research has taken the route of examining the laws to show how the various governments in Nigeria have failed in their duties, by not protecting the people of the NDR as

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<sup>38</sup> Ibid.

<sup>39</sup> F.O Ayodele-akaakar, 'Appraising The Oil & Gas Laws: A Search For Enduring Legislation For The Niger Delta Region' Vol. 2, 199 FJRSB (FIDA Journal).

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Osa Ekhator Eghosa, 'Environmental Protection in the Oil and Gas Industry in Nigeria: The Roles of Governmental Agencies' <<http://login.westlaw.co.uk/maf/wluk/app/document>> accessed 10 April 2014.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.



well as their environment from the adverse effect of unsustainable development of petroleum resources in the region. It would be expedient to also include in the extant Petroleum Industry Bill (PIB) which will provide the appropriate and deterrent penalty regime, as upward raise in the penalty regime would be of immense benefit to the society and the environment. The PIB will repeal most of the legislation in place that regulate the petroleum sector which include the Oil Pipeline Act, the Associated Gas Re-injection Act and the Petroleum Act in Nigeria.<sup>49</sup> The Bill (contains 234 pages) proposed the establishment of some regulatory bodies, funds and institutions that will be under the Minister of Petroleum Resources who is charged with the responsibility of coordinating the activities of the petroleum industry in Nigeria.<sup>50</sup> The total review of the legal framework of the petroleum industry in Nigeria (has long been awaited) is a commended move. Unfortunately, the PIB from the view point of protecting the people and the environment has far less provisions for sustainable development of the oil and gas resources than most of the laws it would be repealing.<sup>51</sup> This is therefore a cause for concern. It also does not take into cognizance the recommendation of the African Commission which calls for the independent regulation of the oil industry.<sup>52</sup>

For example, section 198 (1) of the PIB provides that "*in the course of upstream operations, no person shall injure or destroy a tree which is of commercial value, or the object of veneration to the people resident in the area of the lease or license. If they do so (2), they are required to pay fair compensation to those directly affected*".<sup>53</sup>

This section is very precise and if it is implemented, it would have a significant impact on how petroleum resources are developed and the consequences when a spill occurs. The section however does not include crude oil pollution of water resources, farmland or fishing rights<sup>54</sup> in the list of places the lessee or licensee would be liable if in the course of the oil operation harm is done to them therein.

The penalties for flaring gas are stipulated in section 201 thus: (1) "*The lessee shall pay such gas flaring penalties as the Minister may determine from time to time. (2) The lessee shall install such measurement equipment as ordered by the Inspectorate to "properly measure the amount of gas being flared."*<sup>55</sup>

Subsection one is vague and arbitrarily, because a penalty system that is dependent on the mood of the Minister could act as a hindrance to investment.<sup>56</sup>

Section 202 stipulates that the Federal, State Ministries and any relevant bodies should be consulted in the area of the lease over the Environmental Management Plan. These bodies are to respond within 30 days.<sup>57</sup>

The provision of this section is good as it helps in regulating crude oil operations. If the mode of implementation that was carried out by the Ministry of Environment and NOSDRA

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<sup>49</sup> Ibid.

<sup>50</sup> Aluko Oyeboode, 'Overview of the Nigerian Petroleum Industry Bill' [2012] Hogan Lovells <[www.aluko-oyebode.com](http://www.aluko-oyebode.com)> accessed 23 May 2014.

<sup>51</sup> Amnesty International (n 13).

<sup>52</sup> Ibid.

<sup>53</sup> Stakeholder Democracy Network Facilitating Community Empowerment, 'Note on the Nigerian Petroleum Industry Bill inRelationtotheEnvironment' <<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=www.stakeholderdemocracy.environment.pdf>> accessed 25 May 2014.

<sup>54</sup> Amnesty International (n 13).

<sup>55</sup> Stakeholder Democracy Network Facilitating Community Empowerment (n 162).

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

is to be followed, then the provisions of this section might not be able to create the impact it is meant to achieve.<sup>58</sup>

The bill also stipulates sanctions which include the fact that the license or lease of an oil company would be suspended for failure to pay compensation until the amount awarded is paid.<sup>59</sup>

Section 203 of the bill provides for financial bond to be paid by the licensee to the inspectorate in a situation where remediation is not made after an environmental pollution.<sup>60</sup>

The bill further provides that the petroleum inspectorate would “*facilitate and promote harmony and maximum co-operation between operators in the upstream petroleum industry and the communities residing or working in areas where petroleum is produced.*”<sup>61</sup> This provision does not include the methods for disclosure of information on impact of the oil companies' activities by the IOCs or the government bodies to the host communities.<sup>62</sup> Nevertheless, incorporating a section that the affected communities should be consulted would help to enhance this section.<sup>63</sup>

Section 293 of the PIB stipulates that oil companies should take reasonable and practical steps to restore the environment affected by the activities of exploration and development of the petroleum resources.<sup>64</sup> Subsection two of this section states that “*the licensee or lessee shall not be liable for, or under an obligation, to rehabilitate where the act adversely affecting the environment has occurred as a result of sabotage of petroleum facilities, which also includes tampering with the integrity of any petroleum pipeline and storage systems...*”<sup>65</sup> The bill further in subsection four states that the cost of rehabilitating an environment that was adversely impacted as a result of sabotage would be borne by the local government and the state government in whose jurisdiction the sabotage takes place.<sup>66</sup> It is therefore observed that subsection four unwittingly places the obligation to protect the pipeline on the local and state governments or they bear the cost for any sabotage. This is regarded as unfair provision since the host community is supposed to be protected by the law and not required to bear the cost on behalf of the oil companies which are expected to protect their pipelines. International practices have shown that measures must be taken by oil companies (in accordance with the recommendations by the American Petroleum Institute) to protect their pipelines from sabotage and oil theft. It has also been suggested that oil companies are supposed to take reasonable steps to include in their Integrity Management Program, rigorous safety measures such as having pipeline specifications that are sabotage resistant, a greater sensitive leak detection system and a very vital competent pipeline surveillance “close circuit” cameras. Information about the cameras are required to be circulated to the public to act as a deterrent to sabotage.<sup>67</sup>

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<sup>58</sup> Ibid.

<sup>59</sup> Amnesty International (n 13).

<sup>60</sup> Stakeholder Democracy Network Facilitating Community Empowerment (n 54).

<sup>61</sup> Amnesty International (n 13).

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Stakeholder Democracy Network Facilitating Community Empowerment (n 54).

<sup>67</sup> Professor Richard Steiner Anchorage, ‘Double Standard Shell Practices in Nigeria Compared with International Standards to Prevent and Control Pipeline Oil Spills and the Deepwater Horizon Oil Spill’ [2010] Friends of the Earth Netherlands.

However, the Petroleum Industry Act, 2021 (PIA or "the Act") was signed into law in August 2021. The PIA makes major reforms to the oil and gas industry's legal and governance structure, regulatory, host community participation, administrative and fiscal arrangements.

Only companies incorporated and legitimately existing in Nigeria under the Companies and Allied Matters Act are awarded a license or lease.<sup>68</sup> Section 70 of the Act renames and replaces existing licenses and leases connected to upstream petroleum operations.<sup>69</sup>

According to Section 111(3) of the Act, a license for midstream and downstream petroleum operations may be issued if the following conditions are met: • It meets the technical standards necessary for petroleum operations based on excellent worldwide petroleum industry practices;<sup>70</sup> • The location and amount of the area occupied by the facilities or right of way are acceptable to the Authority; • It meets the Authority's health, safety, and environmental standards; and • It allows for the efficient and economical use of facilities and pipes.<sup>71</sup>

The PIA mandates lessees and licensees to set up a decommissioning or abandonment fund and make regular contributions to it, which will be used for abandonment and decommissioning.<sup>72</sup>

Decommissioning is a broad word for the process of returning an oil producing site to its pre-release condition at the end of its useful life.<sup>73</sup> Prior to the PIA, corporations normally recorded decommissioning expenses in their accounts in accordance with the rules of International Accounting Standard (IAS) 37 "Provisions, Contingent Liabilities, and Contingent Assets."<sup>74</sup> Typically, industry operators did not fund such provisions<sup>75</sup> but the PIA provides that a licensee or lessee must notify the NUPRC of the establishment of its decommissioning and abandonment fund within three months after the start of upstream petroleum operations.<sup>76</sup>

This suggests that companies that began production prior to the implementation of the PIA should have established the funds as soon as the PIA was signed by the President.<sup>77</sup> Furthermore, the PIA requires operators to design and submit a decommissioning and abandonment plan to the NUPRC within 12 months of the PIA's effective date.<sup>78</sup>

Section 234 of the Act provides for another notable entry in Chapter 3 of the Act, which is the Petroleum Host Community Development (PHCD).<sup>79</sup> To maintain a happy coexistence between petroleum firms and host communities, suitable measures were incorporated in the PIA to accommodate the host communities' demands.<sup>80</sup> The Act also provides for the incorporation of host communities development trusts under Section 235 of the Act, as the settler is required to incorporate a Host Communities Development Trust for the benefit of host communities for which the settler is responsible, and the Act specifies the timeline for

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<sup>68</sup>Petroleum Act 2021

<sup>69</sup>Ibid

<sup>70</sup>ibid

<sup>71</sup>ibid

<sup>72</sup> Ianre Afuye, Damilare Abdulai, Petroleum Industry Act, 2021: The Road To Compliance For Upstream Companies(2022)Mondaq

<sup>73</sup>Ibid

<sup>74</sup>Ibid

<sup>75</sup>Ibid

<sup>76</sup>ibid

<sup>77</sup>Ibid

<sup>78</sup>ibid

<sup>79</sup> Resolution Law Firm, Overview Of The New Petroleum Industry Act 2021(2022)Mondaq

<sup>80</sup>Ibid



doing so.<sup>81</sup> Sections 240 and 244 of the Act further address the sources and allocation of the host communities' development trust.<sup>82</sup> The HCDDT will be supported by a contribution from each settlor equal to 3% of its actual yearly operating expenditure in the immediately preceding fiscal year for upstream petroleum operations affecting host communities.<sup>83</sup>

The monies will be dispersed to host communities by the Board of Trustees using a matrix provided by the settler.<sup>84</sup>

Other host community compliance criteria are as follows:

- Conducting a needs assessment in the host community within six months of the licence or lease being granted, or within six (6) months of the first annual contribution in the case of an existing licence or lease. The findings from the needs assessment will be used to develop the Host Communities Development Plan.<sup>85</sup>
- Submission of the HCDDT's annual report to the NUPRC, which will include a yearly audited account, a list of proposed projects for the following year, the status of ongoing projects, and the cost of individual projects.<sup>86</sup>

Chapter 4 of the Act introduced the Petroleum Fiscal Industry Framework (PIFF). The PIFF's objectives include establishing a progressive fiscal framework that encourages investment in the Nigerian petroleum industry, balancing rewards with risk, and increasing revenues to the Federal Government of Nigeria; providing a forward-looking fiscal framework based on core principles of clarity, dynamism, and fiscal rules of general application, among other things.<sup>87</sup> The new fiscal framework under the PIA applies to existing licences when they are renewed, while marginal field operators must convert to Petroleum Mining Leases (PMLs) within 18 months after the Act's effective date.<sup>88</sup>

Although the Petroleum Profits Tax Act (PPTA) will continue to apply to existing Oil Mining Leases (OMLs) obtained previous to the formation of the PIA until the obligatory conversion timetable, operators can elect to apply the PIA prior to renewing their current OMLs.<sup>89</sup> The Act mandates that all money received from the petroleum business that is owed to the government be deposited to a federal account, and that collection of government revenue in the petroleum industry is the responsibility of the Federal Inland Revenue Service (FIRS).<sup>90</sup>

The petroleum industry is deemed to have a high risk of negative environmental impacts, and as such, a plan to control such impacts is required.<sup>91</sup>

According to the PIA rules, operators will be obliged to submit for approval an environmental management plan for projects that need environmental impact assessment. The plan must be submitted within 12 months of the PIA's effective date (August 15, 2022) or six months after the grant of the necessary licence or lease.<sup>92</sup>

Prior to the NUPRC's approval of the environmental management plan, such licensees or lessors must pay a prescribed financial contribution to an environmental remediation fund establi

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<sup>81</sup>Lanre supra n72

<sup>82</sup>Resolution Law Firm supra n 76

<sup>83</sup>Lanre supra n72

<sup>84</sup>Ibid

<sup>85</sup>Ibid

<sup>86</sup>Ibid

<sup>87</sup> Resolution Law Firm supra n 76

<sup>88</sup>Lanre supra n72

<sup>89</sup>Ibid

<sup>90</sup> Resolution Law Firm supra n 76

<sup>91</sup>ibid

<sup>92</sup>Lanre supra n72

shed by the NUPRC for the rehabilitation or management of negative environmental impacts related to the licence or lease.<sup>93</sup>

The PIA further states that the holder of a license or lease must submit a natural gas flare eradication and monetisation plan within 12 months of the Act's effective date, which must be produced in compliance with the Act's regulations.<sup>94</sup>

It is advised that companies should conduct a hands-on and comprehensive analysis of the PIA to determine how the PIA affects their operations from a compliance and operational standpoint. Given that the PIA imposes severe administrative fines for noncompliance, IOCs must be proactive in ensuring that the PIA's timelines are met.<sup>95</sup> Professional assistance in conducting PIA impact assessments should be sought by IOCs and also develop a compliance plan.

### **CORPORATE RESPONSIBILITY**

According to Prof. John Ruggie,<sup>96</sup> "the baseline responsibility of companies is to respect human rights".<sup>97</sup>

It has been said that the state is the appropriate entity to balance the difficult decisions necessary to reconcile different societal needs from the findings of environmental experts. Various questions have been asked as to whether or not the state has got the balance and moral right to discharge its protection responsibility to the people of the host communities in the NDR of Nigeria and the environment, given its role in oil exploration and relationship with the IOCs.<sup>98</sup> It has to be stated here that the failure of government to balance these rights by providing and implementing adequate laws to protect the communities from the activities of the oil companies does not free the oil companies from taking responsibility of their actions and the consequent impact of such on the host communities.<sup>99</sup> They still have the duty to respect the rights of the people by not causing harm and not infringing on the right of others.<sup>100</sup> There are many cases where oil companies should have other added responsibilities to their host communities. For instance, performing certain public functions, making commitment to undertake voluntary functions or duty to respect the rights of the host communities are the baseline for all companies in every situation and jurisdiction.<sup>101</sup> These responsibilities originated from the concept of corporate social responsibility (CSR).

#### **a) The Concept of Corporate Social Responsibility**

Corporate Social Responsibility, according to Cooke and Mende<sup>102</sup> is "*the concern for the welfare of the society which restrains business from engaging in destructive activities whatever their immediate profitability and to focus contributions to the betterment of*

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<sup>93</sup> Ibid

<sup>94</sup> Ibid

<sup>95</sup> Ibid

<sup>96</sup> Ibid.

<sup>97</sup> John Ruggie (n 5).

<sup>98</sup> Ibid.

<sup>99</sup> Amnesty International (n 13).

<sup>100</sup> John Ruggie (n 5).

<sup>101</sup> Ibid.

<sup>102</sup> O. K. Edu, 'Corporate Social Responsibility: The Case of Multinational Oil Companies in the Niger Delta of Nigeria' (2011) 23 Sri Lanka Journal of International Law 101 <<http://heinonline.org/HOL/Page?handle=hein.journals/sljin123&id=107&div=&collection=journals>>. S. H. Cooke and J. J. Mandelson, *Key to social Responsibility* Sam Advanced Management Journal (1977) VOL 42 No 1 p30

society"<sup>103</sup>. Heagreaves and Denman however view CSR as "those investments and contributions to the wider community designed to help create the healthy overall environment that a company requires to survive and operate efficiently".<sup>104</sup>

From the above definitions of the concept, it can be deduced that social responsibility involves much more than cash and products donations by a company. It embraces the application of international best practices of business standards in its operations which include taking precautionary methods in order to protect the rights of the people. It is not just a mere charitable move but a vital question on the ethics of the company.<sup>105</sup> It has been observed that IOCs in Nigeria have voluntarily undertaken projects for the benefits of the host communities, their customers and the general public particularly to stem agitation by those concerned. This is also influenced by the necessity to maintain a good corporate citizenship and a conducive business atmosphere to operate.<sup>106</sup> It is also noticed that these companies seem to equate CSR with philanthropy. CSR in our opinion, exceeds building of cottage hospitals and blocks of classroom but includes promotion of safe environment and cultivation of friendly process of sustainable development and exploitation of oil resources that would not have adverse effects on the people.<sup>107</sup>

There are international standards that have been provided that would aid oil companies in providing CSR to communities in the NDR of Nigeria and these embrace exploration activities that would not cause harm. According to Ochieze, the oil companies in Nigeria have rather chosen corporate complicity.<sup>108</sup> Complicity is defined by Ramasastry<sup>109</sup> as "a situation in which an IOC 'aids and abets' a host government in carrying out serious human rights abuses". Though the concept of complicity centers on the assistance given by IOCs to government to carry out wrongdoings, it can be said that individuals and other institutions can also act as perpetrators in the scheme too.<sup>110</sup> In agreement with the assertion above, Wettstein<sup>111</sup> states that "an adequate understanding of the concept of corporate complicity will lead to the conception of corporate responsibility that reaches beyond the common limits of doing no harm".<sup>112</sup> What this means is that although the duty to protect is usually attributed to the state, the international companies also have a duty to protect not just respecting human rights.<sup>113</sup>

There are internationally recognized standards set for oil companies to follow in respect to pipeline oil spill prevention and response. These standards are set by the American Petroleum Institute (API), U.S Integrity Management for High Consequence Areas, American Society of Mechanical Engineers and the Best Available Technology Industry Standards of Alaska. All

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<sup>103</sup> Ibid.

<sup>104</sup> Ibid. J. Heagreaves and S. Denman Business Survival and Social Change (London: Associated Business Programmes Ltd, 1993) p253

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> C. Ochieze, C. Ochieze, 'Corporate Complicity in the Extractive Industry: Where Does Legal Liability Stand?' (*OGEL*) <<http://www.ogel.org/article.asp?key=2442>> accessed 17 April 2023

<sup>109</sup> Florian Wettstein, 'The Duty to Protect: Corporate Complicity, Political Responsibility, and Human Rights Advocacy' [2010] *Journal of Business Ethics*. Ramasastry, A, 'Corporate Complicity: From Nuremberg to Rangoon. An Examination of Forced Labour Cases and Their Impact on the Liability of Multinational Corporations', [2002] *Berkeley Journal of International Law* 20(1), 91-159.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

these standards when used together signify good oil field practice for petroleum pipeline management.<sup>114</sup>

The Integrity Management System is the U.S Code of Federal Regulation for Supervision of Pipeline Integrity.<sup>115</sup> Its regulations centre on protecting 'High Consequence Areas' that have the tendency to be impacted by rupture.<sup>116</sup> High Consequence Areas are defined as vicinity that is highly populated by humans, navigable waterways or environments extraordinarily sensitive to oil spills, covering productive ecosystem or drinking water areas.<sup>117</sup>

The seven requirements stipulated by the Integrity Management System for Good Oil Field Practice<sup>118</sup> are: i) Identifying all the segments of the pipeline that can affect the High Consequence Areas in occurrence of failure; ii) Developing a Baseline Assessment Plan; iii) Set criteria for corrective actions to address integrity issues raised by the assessment; iv) Make continuous practice of monitoring, assessing and evaluating the pipeline integrity; v) Identifying preventive and mitigating measures to protect the High Consequence Areas; vi) Have a scheme to measure the effectiveness of the program; vii) Review the integrity assessment result and information analysis and have a qualified person to assess the results.<sup>119</sup>

Another important part of Petroleum System Integrity requires that the oil spill response must also be in accordance with the good oil field practices.<sup>120</sup> The internationally recognized standard is that a company should be readily equipped to promptly act in response to accident and to efficiently discharge its oil.<sup>121</sup> To achieve this, what is required is a pre-planning that is comprehensive, also have pre-staged equipments, and trained response staff for early detection of oil spill. Every effort must be provided to stop the outflow of oil very quickly, also recover much of the oil already spilled and remediate seriously the environment to the state it was before the spill.<sup>122</sup> Further guidance is provided in the American Petroleum Institute 1160.<sup>123</sup>

Though legislative requirements differ around the world, the models above which obtain in Alaska, USA provide good oil field practices that can be used in comparing performance with regard to pipeline integrity and oil spill response.<sup>124</sup>

Having looked at internationally recognized standards in regards to pipeline integrity and oil spill response, we wish to look at the practice in Nigeria to see if they meet the responsibility standards that oil companies take delight to evade in the country. In reaching a conclusion, majority of the comparison would be done using Shell Petroleum Development Company of Nigeria Limited (Shell Nigeria - a pioneer oil company in Nigeria's oil and gas industry) which has operated in the country for over seventy years now.<sup>125</sup>

According to Prof. Anchorage, it is impossible from the information provided by Shell Nigeria to give a detailed analysis of the company's performance in order to compare its

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<sup>114</sup> Professor Richard Steiner Anchorage (n 68).

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid. Steiner, R., and K. Byers. 1990. Lessons of the Exxon Valdez. Alaska Sea Grant Report SGED- 08 1990. 33 pp.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> SHELL NIGERIA, 'Nigeria: Potential, Growth and Challenges - Shell Global' <<http://www.shell.com/global/environment-society/society/nigeria.html>> accessed 21 May 2023.

performance with the internationally recognized good oil field practice for pipeline. To carry out such analysis, it would require a detailed review of the entire pipeline system by a team of engineers.<sup>126</sup>

In view of the above inhibition, we intend to make some deductions from available records without carrying out a detailed evaluation as recommended above.<sup>127</sup> Obviously, the best available technology and integrity management systems have been or ought to have been owned by Shell Nigeria because it has been in existence since 1937 as Shell D'Arcy.<sup>128</sup> In July 2013, the Managing Director of Shell Nigeria, Mutiu Sunmonu, in responding to an accusation that his company was slow in responding to the fire and oil spills at Bodo West, stated that teams were quickly mobilized and an assessment of the risk was conducted with the help of the Joint Police Task Force to restrict access to the impacted environment for safety reasons.<sup>129</sup> He further attributed the spills and fire to oil theft on the 28" TNP.<sup>130</sup> Shell Nigeria's spill data on its website showed that a greater number of the spill was caused by third party sabotage. The data for 2014 (which at the time of writing this chapter stopped in the month of May, 2014) showed that the company had the highest oil spill incidents in March 2014 and a greater part of these was attributed to sabotage while the remaining percentage was operationally caused.<sup>131</sup>

According to Eweje, the host communities, particularly the Ogoni Community have alleged that gas is constantly flared in their communities and this is causing destruction to their plants and the fertility of the soil as result of the soots washed down the roofs when it rains.<sup>132</sup> However, this allegation has been refuted by the oil companies, claiming that their flares are usually far from the habitation of human beings and cannot be the cause of the impact alleged. They claimed that the contents of sulphur dioxide and nitrous oxide in the gas are low, therefore the flare can unlikely cause acid rain.<sup>133</sup> In addition, a Director in Shell Nigeria once posited that flares are usually burnt clean and only becomes smoky when oil gets into the flared pipeline by malfunction operation.<sup>134</sup> If the company's position is correct, then the affected communities should be informed that the flares generated by the activities of IOCs do not really impact that much on the environment, unless there is an operational malfunction.<sup>135</sup>

Another cause of concern in respect of the operations of the IOCs in Nigeria is the high pressure pipeline that are laid above the ground surface, that go through the villages and across lands that were once used for agricultural purposes, thereby making the land economically unprofitable.<sup>136</sup> The oil companies, have already refuted that environmental pollution is not caused by the pipeline laid above the ground, except the pipeline is damaged

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<sup>126</sup> Professor Richard Steiner Anchorage (n 68).

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

<sup>129</sup> SHELL NIGERIA, 'SPDC JV Debunks False Claims on TNP Oil Spill and Fire - Nigeria' <<http://www.shell.com.ng/aboutshell/media-centre/news-and-media-releases/archive/2013-releases/spdc-debunks.html>> accessed 31 May 2014.

<sup>130</sup> Ibid.

<sup>131</sup> SHELL NIGERIA, 'Oil Spills in the Niger Delta - Monthly Data for 2013 - Nigeria' <<http://www.shell.com.ng/environment-society/environment-tpkg/oil-spills/data-2013.html>> accessed 28 May 2014.

<sup>132</sup> Gabriel Eweje, 'Environmental Costs and Responsibilities Resulting from Oil Exploitation' [2006] *Journal of Business Ethics* <<http://eds.a.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=6bb322fc-eb9a-4a56-9c72-761305af8990%40sessionmgr4002&vid=1&hid=4103>> accessed 22 April 2023.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.



through sabotage.<sup>137</sup> This practice is rather against the norms of oil companies operated in the United Kingdom (UK) and other European Union countries where oil pipelines are buried deep underground. The question that arises is why the practice in Nigeria is different?<sup>138</sup> As asserted by Frederick<sup>139</sup> that "the harm principle morally requires businesses to find ways to prevent any harm it causes, even if such harm does not violate an environmental law".<sup>140</sup> The practice in the UK is better than what obtains in Nigeria with regards to the safety measures of hiding high pressure oil pipelines deep underground to prevent vandalism by third party. Why have the same IOCs refused to carry out the same practice in Nigeria?

The priority of operators in the oil industry should be prevention of damage to the pipelines. Unfortunately, the operators of the pipeline in Nigeria give the impression that inadequate beneficial industrial technology are utilized to control majority of their pipeline exposures which cause pollution, loss of hydrocarbons oil from containers such as pipelines classified as under intended and unintended actions.<sup>141</sup> Up-till-date, there is still no effective solution of securing pipelines against vandalism and operational malfunction in Nigeria.<sup>142</sup> According to Agbakwuru,<sup>143</sup> a lot of methodologies have been developed, using acoustic signatures for the purpose of identifying leakage. In his opinion, these are reactive instead of proactive in nature to prevent the oil content from exiting the pipelines to degrade the environment uncontrollably with the attendant economical, environmental and social adverse effect.<sup>144</sup>

In conclusion, the above analysis has shown that the major stakeholders of the petroleum industry (the state and the oil companies) have both evaded their responsibilities. This abdication of their responsibility has led to the NDR environment being degraded with impunity. The oil companies cannot leave the entire responsibility to the state. Where the state is probably failing in its duty, the oil companies have the duty (under the harm principle as stated by Fredrick and duly acknowledged above) to find ways to prevent harm caused by its activities especially where such is not prohibited by environmental law. The state also should not be blinded by the petrol dollars it gets from the operation of the oil activities to leave its jurisdiction unregulated. It should not only make laws but enforce them in order to give safe and good life to its citizens and protect their environments. Given that the PIA imposes severe administrative fines for noncompliance, IOCs must be proactive in ensuring that the PIA's timelines are met.<sup>145</sup> Professional assistance in conducting PIA impact assessments should be sought by IOCs and also develop a compliance plan.

The recommendations above are basic and essential as they would counter the adverse operation of the IOCs in Nigeria. It is the safe environment and healthy life of the people that will guarantee the future of the country.

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<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid. Frederick, R., 'Individual Rights and Environmental Protection', presented at the Annual Society for Business Ethics Conference, [1990] San Francisco, USA.

<sup>140</sup> Ibid.

<sup>141</sup> Jasper Agbakwuru, 'Pipeline Potential Leak Detection Technologies: Assessment and Perspective in the Nigeria Niger Delta Region' [2011] *Journal of Environmental Protection* <<http://www.scirp.org/journal/jep>> accessed 31 May 2023.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.