



RESEARCH ARTICLE

CORPORATE CIVIL LIABILITY AND COMPENSATION REGIME FOR ENVIRONMENTAL POLLUTION IN THE NIGER DELTA

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ABSTRACT

Petroleum activity has been highly instrumental in yielding economic rewards for resource producing countries and supplying a vital energy source, but it also has the potential to cause profound environmental impacts. Oil pollution forms part of the general malaise of environmental pollution. The disastrous effect of oil pollution is now beyond question. The restive situation in the Niger Delta can be blamed on heinous environmental crimes and breach of good environmental management by multinational oil companies. Over the past decades, the Niger Delta terrain has been overrun through deliberate over-exploitation carried out in total disregard of the basic principles of sustainable environmental management. The impact of the oil spill includes habitat degradation, pollution from gas flaring and these are cumulative and have acted synergistically with other environmental stresses to impair ecosystems and severely compromise human livelihoods and health. These unfortunate incidents make the victims individuals and host community, landowners, pond owners and other property owners to demand compensation and has progressively pushed the Niger Delta to the brink of ecological disaster. Despite international treaties, declarations, industry best practices and the recognition of their application in the absence of adequate environmental laws and enforcement in developing countries such as Nigeria, environmental pollution from oil and gas activities continue unabated. This paper sets out to examine the corporate civil liability and compensation regime for environmental pollution in the Niger Delta. It will focus on legislation covering pollution in the Niger Delta Region occasioned by oil and gas activities particularly, the basis of environmental policy and legislation in Nigeria and including the concept of corporate social responsibility, its role in the Niger Delta particularly considering the host communities' needs, and more significantly, whether its application erodes conformity with legal requirements and standards.

INTRODUCTION

The interaction of the people of the Niger Delta with their environment has seriously been influenced by the many forms of oil-generated environmental pollution and degradation evident throughout the area. Niger Delta region is made up of 9 States of the Nigerian Federation namely Abia, Akwa-Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers States. These States collectively made up of a population of about 20 million people. The Niger Delta has diverse ethnic group speaking about 250 dialects spreading about 5,000 communities. The Niger Delta is often labelled the minorities of the Southern Nigeria but has recently transformed, and famous because of oil exploration and now popularly known as the 'oil producing states'. The oil industry in Nigeria is operated by six-joint venture operations between Nigeria and the Trans-National Corporations: Shell (Netherlands/UK), Exxon Mobil (US) Chevron-Texaco (US), AGIP (Italy), and

Elf-Aquitaine (France)¹. The Nigerian Constitution² provides that oil is the property of the federal government. The Nigerian government under the auspices of the Nigerian National Petroleum Company ('NNPC) operates in partnership with these multinational companies. The Petroleum Act³ determines the structural operations of oil exploration in Nigeria. There are other relevant legislative mechanisms⁴ which are promulgated by the Nigerian government to give directions on how oil exploration could be safely conducted.

¹ Nigeria Oil and Gas, <http://www.nigerianoil-gas.com/upstream/index.htm> (last visited 22/1/2016)

² The Nigerian Constitution, Ch. IV (Fundamental Rights), pt. 44, ss3 (1999) (Nigeria) ('Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in and under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the national Assembly.')

³ Petroleum Act (1969) (Nigeria).

⁴ The Oil in Navigable Waters Act (1968) (Nigeria), the Oil Pipelines Act (1956) (Nigeria), the Associated Gas Act (1979) (Nigeria) and the Petroleum (Drilling and Production) Regulations (1969) (Nigeria); the Environmental Protection Agency Act (1988).

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The frequency of oil spill in the State is no longer news as its negative impact on the aquatic and terrestrial ecosystem is well known. This is one of the reasons behind the articulated struggle for resource control by the oil producing States, which is expected to enable the people of the region to take their destiny in their own hands. It is an irony of life that a six-decade profitable exploitation of our resources (oil and gas) has gradually led Nigerians into a painful dilemma with huge wealth accumulated on the one side and serious environmental destruction and disastrous aftermaths such as social distress and conflict on the other side. Despite the apparent reality that the oil sector has contributed immensely to the growth of Nigerian economy, it has left the people of the Niger Delta impoverished and vulnerable in the face of environment hazards caused by oil pollution. Oil pollution forms part of the general malaise of environmental pollution. The disastrous effect of oil pollution is now beyond question. Despite the consciousness of the disasters caused by oil pollution, the development of advanced technology and careful precautions, it has been admitted that "accidents seem to occur periodically in drilling for oil". The Nigerian experience on oil pollution and related activities assumed particularly terrifying dimensions since 1980. They are all engaged in the exploitation and production of crude oil and its by-products, such as gas and kerosene. It is the process of exploitation, production and processing of crude oil that polluted and degraded the environment. The activities of these transnational corporations are not adequately checked; the corporations are only interested in the profit they make in oil exploitation without due regards to environmental considerations. Nigeria is without doubt a major force in Africa. It has by far the largest population. It has the biggest economy in Africa, and it is the continent's largest petroleum producer, with the largest gas reserves in the continent. It is therefore understanding why the nation should naturally stand as a model to many other African countries. If Nigeria can get it right with its petroleum resources, it will be in a better position to offer salient lessons for other African countries.

Statement of Problem

Decades of dictatorship, a breakdown of civil society, and a near complete lack of attention to environmental concerns have turned the Niger delta into one of the world's most endangered ecosystems; an epicenter of human rights abuses and environmental injustice. Activities in the oil and gas industry have changed the environment in many fundamental ways. At each stage gaseous, liquid and solid waste materials are produced and discharged. Whether from the upstream (exploration and production), downstream sector (refining and processing of crude oil and gas products), or transportation, marketing and distribution, the potential for damage to the environment, is extremely high. The constant Environmental damage as a direct result of Oil spill in Nigeria and lack of reasonable measures of restoration to the victims is alarming. Corrugated iron sheets popularly used for roofing in the area now have a life span of 10 years or less, farming and fishing have become impossible, streams are so polluted that the people have resorted to drilling bore-hole for drinking water. Usually, once there is oil spill, it is assumed that the oil company must have been the source or cause, while the victims expect adequate and fair compensation from the multinational oil companies after investigations, arbitration or litigation. But, the persistent activities of oil thieves, oil bunkers and pipeline vandals are a strong impediment and

limitation on compensation of such victims and have led to loss of properties and lives even that of NNPC officials. So many Nigerians have lost their lives in the struggle to ensure adequate compensation to oil spill victims. Would blood be spill as long as oil is produced on Nigerian soil? Thus, this paper broadly discusses the urgent need for a legal framework on compensation of oil spill victims in Nigeria.

Objective of the Paper

Global concern has heightened over the unbridled manner in which deleterious activities harmful to the earth are being carried out by International Oil Companies (IOCs) especially in the oil and gas industry. This notwithstanding, the global community continues to rely heavily on oil and gas supplies. The expansion of these activities has brought to the fore issues of environmental protection and sustainable development leading to a close examination of legislations and key operational practices aimed at improving environmental performance within the industry. Generally, the benefits of adopting practices that protect the environment are widely recognised by regulators and operators. This recognition has contributed to the development of a variety of international, regional and national regulatory instruments, as well as the development of self-regulation guidelines produced by the operators themselves and non-governmental organisations. The main objective of this paper is to examine corporate civil liability and compensation regime for environmental pollution in the Niger Delta. With the alarming rise in cases of oil theft, oil Bunkering and pipeline vandalism, and oil spill as a result, who ensures adequate and fair compensation to oil spill victims. The need for the federal government to set up oil spillage compensation funds that will make provision for compensation from oil pollution resulting from oil spills of multi-national oil companies is also explored in this paper.

MATERIALS AND METHODS

The significance of this book lies in the different approach it adopts in the investigation of oil operations issues concerning the Niger Delta people of Nigeria. There is a growing number of literature on issues relating to the exploitation of oil in the Niger Delta region of Nigeria. This paper relies on secondary data that are sourced from textbooks, journals, articles, periodicals, magazine, news items and the internet. To a great extent, most of the materials sourced from journal, articles, magazine, news item and periodical are also available online. The data collected from all these sources are critically content – analyzed in line with the objective of the paper, to wit; corporate civilliability and compensation regime for the environmental pollution in the Niger Delta. Websites of the respective national environmental regulatory authorities, international environmental groups and oil and gas industry bodies will be accessed for official statements, reports and working papers.

Brief Analysis of the Niger Delta Region and Its Relationship to Oil

Niger Delta: The Area and the People: The concern of this section is with the description of the NigerDelta and its people. The importance of this lies in the fact that the subject matter of this project affects both the area and its People. Yet, as will be seen below, the constituent parts of this region have become a subject of debate in recent times, brought about by some

political developments. The thrust of the inquiry here is to pinpoint the exact area within the purview of this work.

Geographical Definition of the Niger Delta: It should not be difficult to define the physical location of the Niger Delta. However, as will be seen shortly, clearly due to political and economic reasons, there is now some dispute as to the extent and limits of the Niger Delta. This sub-paragraph outlines the geographical definition of this area as accepted by many, especially the Niger Delta people. According to available geographical statistics, the Niger Delta has its apex at a place called Aboh.⁵ It is below this point that River Niger bifurcates into its two main distributaries – that is, Rivers Nun and the Forcados. Available evidence also indicates that the southernmost tip of the delta is at palm point, south of Akassa, and at the estuary of River Nun.⁶ The entire Region extends from the Benin River in the west to Imo River in the East.⁷ In other words, the Niger Delta may be described as a lowland located at the southern part of Nigeria. Dike accurately and vividly described the location of the region thus:

“From Lagos to the Cameroons lies the low country of the Nigerian coastal plain. The Niger Delta occupies the greater part of this lowland belt and may be described as the region bounded by the Benin river on the west and the Cross river [and Imo river] in the east, including the coastal area where the Cameroon mountain dip into the sea.”⁸

Similarly, in one of the most recent studies of Nigeria, the Niger Delta was described as a triangle with its apex between Ndoni and Aboh, descending eastwards to Qua Iboe River⁹ at Eket and westwards to the Benin River with its base along the Atlantic coast between the bights of Benin and Biafra.¹⁰ It is notable that a conspicuous feature of the Niger Delta is its network of Rivers. It has been described as a floodplain built up by the accumulation of sedimentary deposits washed down Rivers Niger and Benue, some 40-50 million years ago.¹¹ The major River of the Region is the Niger, which has two main distributaries, viz., Rivers Nun and Forcados, and a myriad of smaller and shallower distributaries which end up in creeks and estuaries, characteristic of the tidal flood plain and coastal front of the delta.¹² The hinterland of this Region is drained mainly by the Ase and Ethiopie River Basins in the west and the Orashi and Sombreiro River Basins in the east. There are other river systems (running more or less parallel to River Niger), which drain the coastal plains to the west and east of the Niger Delta, and link the network of distributaries, creeks, streams, and estuaries, that make up the Niger Delta. In terms of landmass, the total land area of the region is approximately 25, 900 Km or approximately 2.8 per cent of Nigeria's total land area.¹³

⁵See Niger Delta Environmental Survey (1997), Vol. 1, 4 (hereafter NDES, 1997).

⁶NDES (1997: 4).

⁷NDES (1997: 4).

⁸Dike, K.O., *Trade and Politics in the Niger Delta* (Oxford: Clarendon Press, 1956:19).

⁹Qua Iboe River is actually in Cross River; the change in description of this River might have been the result of the creation of Akwa Ibom State in 1991, from Cross River State.

¹⁰NDES (1997: 22).

¹¹NDES (1997: 4).

¹²NDES (1997: 22).

¹³NDES (1997: 4).

Other Definitions of the Niger Delta: In recent times, other definitions of the Niger Delta have emerged, and this appears to be largely the result of the importance which the natural resources (especially oil) of the region have acquired in the Nigerian economy. According to a recent study, political and economic considerations have interjected to raise what is otherwise a mundane question:¹⁴ ‘what the constituent parts of the Niger Delta are?’ The controversy is such that a recent report surmises: There is no consensus on the definition of the Niger Delta, even among the recognised spokesmen of the region.¹⁵ There is some evidence that this is the by-product of the politics of oil revenue.¹⁶ A few of the divergent views are briefly outlined below. Some people define the Niger Delta as the six states of the so-called south-south zone of Nigeria, namely, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, and Rivers States. This generally coincides with the geographical definition of the region. A somewhat variation of this definition can be found in the view of those who make a distinction between the ‘core’ and the ‘peripheral’ Niger Delta. According to this view, the constituent of the ‘core’ Niger Delta is, in order of importance, Rivers, Delta, Bayelsa, and, to some extent, Akwa Ibom, states, while the periphery comprises Ondo, Anambra, Edo, Cross River, and Imo, states.¹⁷ Against these two views, there is an elastic school which contends that all the groups in both the ‘core’ and ‘peripheral’ areas belong to the Niger Delta region.¹⁸ In other words, this school rejects the ‘core’ ‘peripheral’ distinction. Remarkably, all these views have been described as political (and economic) definitions of the Niger Delta. Commenting on such definitions, a recent report pertinently said: In recent decades, the definition of the Niger Delta has been bedevilled by politics. This was not so before the ascendancy of crude oil in the Nigerian economy. In the colonial and early independence periods, the Niger Delta was more or less coterminous with Ahoada, Degema, Opobo, Ogoni, Brass, Western Ijaw and Warri Divisions.¹⁹ The agitation during and after the colonial era had always been for the creation of a distinct political region in this area in order to allay the fears of ethnic domination by more populous ethnic groups. But, since the oil boom era of the early 1970s, the definition of the Niger Delta, which has tended to connote some proprietary rights over the oil wealth, has become highly politicised. Political boundaries suddenly have assumed great significance because of their importance in determining which states and local governments fall among the ‘oil producing areas’ of Nigeria with all its implications for revenue sharing. At various times in the recent political history of Nigeria,

¹⁴NDES (1997: 7).

¹⁵International IDEA (2000: 142).

¹⁶This point was made by the Niger Delta people in the memorandum they submitted to the Commission set up by President Obasanjo's government (Oputa Commission/Panel) in June 1999 to investigate human rights violations in the country from 1966 to 1999.

¹⁷There are presently 36 States in the Federation of Nigeria, viz.: Abia, Adamawa, Akwa-Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombo, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe, and Zamfara.

¹⁸For these conflicting views, see International IDEA (2000: 142). See also, NDES (1997: 7).

¹⁹53 There was no dispute over the extent or definition of the Niger Delta before the Willink Commission that enquired into the fears of Nigeria's minorities in 1957-58. See the *Report of the Commission Appointed to Enquire into the fears of Minorities and means of Allaying them* (Cmd. 505, 1958). The Commission was headed by Sir Henry Willink. (The report and issues relating to the Commission will hereafter be referred to as ‘the Commission’ or ‘Willink Commission’).

squabbles over the oil wealth have led to agitation for boundary adjustments between States and for the creation of local governments even within the states in the delta region.

²⁰A further variant of the political definitions is even more sweeping, as it considers the Niger Delta to be synonymous with oil-producing areas. By this definition, the boundaries of this region may be described as indeterminate,²¹ and appears to extend laterally along the coast to include the coastal creeks and lagoon zones to the west and east of the delta where there are oil and gas producing fields (both offshore and onshore).²² This view probably influenced the debate on the enactment of Niger Delta Development Commission (Establishment, Etc.) Act 2000 (NDDC Act) and possibly shaped the final 'definition' of the Niger Delta under the Act. At the stage of bill, the NDDC Act was called *Niger Delta and Oil Minerals Producing Areas Commission*. At that stage, 'Niger Delta' was defined to mean, 'the states covered by the delta formed by the River Niger and its branches as it enters into the Atlantic Ocean, presently comprising Akwa Ibom, Bayelsa, Delta, and Rivers states'.²³ In the same bill, the expression 'Member States of the Commission' was defined to 'include 'Abia, Akwa-Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo, and Rivers states'.²⁴ This suggests a distinction between the 'Niger Delta' and 'Oil Mineral Producing Areas', although, as could be observed, the latter includes the former.²⁵ It is important to observe that the definition of 'Niger Delta' under this bill accords with the non-political definition of the region, as stated above. However, the final law, which eventually emerged as the NDDC Act 2000, excised the definition of the Niger Delta from the original document and did not replace it with another; but retains the definition of Member States of the Commission' as stated above, with a modification that says 'and any other oil producing State'.²⁶ The implication appears to be that the Niger Delta is synonymous with oil producing areas/states. Also, it can be said that by the modification the boundaries of the Niger Delta are indeterminate. In the result, the meaning of 'Niger Delta' under the NDDC Act is the latest illustration of political definition of this region.²⁷ It is noteworthy that the problem with political definitions such as this is that it can complicate issues by creating social and political problems, just as indeterminate boundaries can complicate environmental management schemes. On the contrary, geological and geographical definitions of the Niger Delta are very useful for environmental monitoring purposes. 'This is because environmental processes do not obey political or artificial boundaries but rather, they operate within well-defined natural units or geological units'.²⁸ For purposes of this book, the 'Niger Delta' is used to describe the region covered by Rivers, Delta and Bayelsa states, and its people are the indigenous inhabitants of these constituent states of Nigeria.²⁹ This is in

accord with both the geography of the region and the history of the people.

Status of the Niger Delta People within the Nigerian State: In recent times, the various peoples of the Niger Delta have issued several 'Declarations of Rights', which suggest that they are minorities and/or indigenous peoples in the Nigerian State. The documents also lay claims to rights associated with the status they claim. The aim of this section is to analyse relevant parts of the Declarations together with relevant historical facts in order to determine whether they are minorities and/or indigenous peoples as defined above. Although several Declarations have been issued since 1990, for the present purposes, only two of them, namely the Ogoni Bill of Rights 1990 (and its addendum of 1991),³⁰ and the Kaiama Declaration 1998³¹ (for convenience, collectively called herein as 'Niger Delta Declarations of Rights'³²) will be mainly utilised here, especially as all of them are canvassing the same thing; and also having regard to the general and widespread acceptability of these two (original) document in the Region. On the question of minority status, the Niger Delta Declarations are replete with this claim. Few examples will suffice to illustrate this point. Firstly, in the Ogoni Bill of Rights, it is stated: 'The split of the country into 30 States and 600 local governments in 1991 [was] a waste of resources, a veritable exercise in futility. It is a further attempt to transfer the seized resources of...minority groups in the [Niger] Delta to the majority ethnic groups of the country'. Secondly, there is a claim that the majority ethnic groups of Nigeria 'have usurped the rights of the ethnic minority groups in the Niger Delta for the past thirty years'.³³ The division of the Southern Protectorate into East and West in 1939 by the British marked the beginning of the balkanisation of a hitherto territorially contiguous and culturally homogeneous people into political and administrative units, much to our disadvantage. This trend is continuing in the balkanisation of the [Niger Delta people] into six States - Ondo, Edo, Delta, Bayelsa, Rivers and Akwa Ibom States, mostly as minorities who suffer socio-political, economic, cultural and psychological deprivations'.³⁴ It might be observed here that the minority status claimed by the Declarations appears to be that of 'national minority', and not 'regional minority' as was the case before. In fact, records show that the combined population of the 'Niger Delta States' (Rivers, Delta, and Bayelsa states) is 11,015,676 entire Nigerian population of 140,431,790³⁵. This position satisfies one of the criteria of minority status, namely, numerical inferiority, as found above. Further, the Declarations indicate that the Niger Delta people are a non-dominant group in the

in states outside the three states mentioned here (for example, Akwa Ibom state and Ondo state). Even so, it should be emphasised that this does not make such other states 'Niger Delta states'.

³⁰For full text, see: <http://www.nigerianscholars.africanqueen.com/docum/ogoni.htm>.

³¹For full text, see: <http://www.essentialaction.org/shell/kaiama.html>

³²There is a recent document with similar name, which adopts these two earlier documents, and which was issued on 10 November 2000, being the fifth anniversary of the execution of the Ogoni human and environmental rights campaigner, Ken Saro-Wiwa. See Declaration of Niger Delta Bill of Rights at: http://www.nigerdeltacongress.com/darticles/declaration_of_niger_delta_bill_.htm.

³³For these two claims, see Addendum to the Ogoni Bill of Rights 1991 (particularly Forward by Ken Saro-Wiwa). Full text can be found at: <http://nuos-ogoni.org/ogonibill.html>.

³⁴See footnote 31

³⁵Computation of population figures of the 2006 (latest) population census. See National Population Commission, *Census 2006 (National Summary)*. A new census may be conducted in 2016.

²⁰NDES (1997: 7).

²¹NDES (1997: 7).

²²NDES (1997: 7-8).

²³NDDC Bill, section 30.

²⁴NDDC Bill, section 30.

²⁵There was no express definition of 'oil mineral producing areas' in the bill.

²⁶NDDC Act, section 30.

²⁷See NDDC, 'History of the Commission', available at: <http://www.nddconline.org/history.shtml> (visited 29/01/16).

²⁸NDES (1997: 7).

²⁹It should be noted, however, that the constituent states of Nigeria – presently, Nigeria is a federation of 36 states – do not correspond to ethnic community boundaries. Hence, Niger Delta people may be found

Nigerian State; as the above population figures indicate. The Ogoni Bill of Rights bemoans the fact that successive Nigerian Governments since independence have been run by 'Nigerians of the majority ethnic groups. Indeed, there is ample evidence to show that since independence from Britain in 1960 the Nigerian State has been (and continues to be) ruled by successive military and 'civilian' governments dominated by members of the majority ethnic groups save for the tenure of Dr. Jonathan.³⁶ Evidence also shows that several military governors who were not Niger Delta people had successively ruled the 'Niger Delta States' (i.e. Rivers, Bayelsa, and Delta states) during the military era. The implication of this is that, although the Niger Delta people had states called their own, they were not governing themselves. Furthermore, there is ample evidence to suggest that the Niger Delta people are still under domination up until this day, notwithstanding Nigeria's return to constitutional rule in May 1999. For example, Constitution of Nigeria³⁷ provides evidence of domination: The Constitution places the languages of the majority ethnic groups (Hausa/Fulani, Yoruba, and Ibo) above all others in the Federation (including the languages of the Niger Delta people). Section 55 of the Constitution provides: 'The business of the National Assembly shall be conducted in English, and in Hausa, Ibo and Yoruba when adequate arrangements have been made therefore.'³⁸ As respects ethnic, cultural and religious issues, there is abundant evidence that the Niger Delta people are significantly different from the other peoples of Nigeria. Importantly, evidence suggests that they have the desire to safeguard their identity; the declarations of Rights give clear indications of this. For instance, the Ogoni Bill of Rights demands the right to use and develop the Ogoni languages and culture.³⁹ In the result, the Niger Delta people arguably satisfy all the elements of minority status as identified above and should, therefore, be properly regarded as a minority group in the Nigerian State. With regard to the question of indigenous status, the Ogoni Bill of Rights significantly asserts: 'The Ogoni [Niger Delta] people, before the advent of British colonialism, were not conquered or

colonized by any other ethnic group in present-day Nigeria'.⁴⁰ Similarly, the Kaiama Declaration noted that 'it was through British colonisation that the Ijaw nation was forcibly put under the Nigerian State'; and points out that: 'But for the economic interests of the imperialists, the Ijaw ethnic nationality would have evolved as a distinct and separate sovereign nation, enjoying undiluted political, economic, social, and cultural autonomy.'⁴¹ More importantly, any doubt as to the status they are claiming is clearly laid to rest by the following statement:⁴² 'Contrary to the belief that there are no indigenous people in black Africa, our research has shown that the fate of such groups as... Ogoni in Nigeria [is], in essence, no different from those of the aborigines of Australia, the Maori of New Zealand and the Indians of North and South America. Their common history is of the usurpation of their land and resources, the destruction of their culture and the eventual domination of the people. Indigenous people often do not realise what is happening to them until it is too late. More often than not, they are the victims of the actions of greedy outsiders. EMIROAF will continue to mobilise and represent the interest of all indigenous people on the African continent. It is in this regard that we have undertaken to publicise the fate of the Ogoni people in Nigeria.'⁴³ Moreover, there is ample evidence that Britain signed a number of treaties with the Chiefs of the Niger Delta, and this is another indication that they were considered as sovereign.⁴³ It is important to note that the people are still largely governed by their native customs and institutions, and still cherish their ways of life (see above). In terms of economic life, there is also evidence that they are among the poorest peoples in Nigeria. Thus, the Niger Delta people would appear to fall within the two limbs of the definition of indigenous peoples under the ILO Convention 169: '(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of the present State boundaries and who, irrespective of their status, retain some or all of their own social, economic, cultural and political institutions'. Furthermore, the claim for the right to (internal) self-determination in the Niger Delta Declarations indicates that they identify themselves as indigenous people in Nigeria. Again, this satisfies the requirement of the ILO Convention 169.⁴⁴ As Dias puts it, the Ogoni [Niger Delta] 'claim to have a distinct culture, language, history, political system and religion – a self-identification that would allow them to be considered indigenous people'.⁴⁵ Overall, the Niger Delta people arguably

³⁶ At independence in 1960, Dr. Nnamdi Azikiwe (Ibo) was the Governor-General/President, while Abubakar Tafawa Bewawa (Hausa/Fulani) was the Prime Minister. They ruled from 1960 – 1966. The succeeding Heads of States were as follows: - Gen. Aguiyi-Ironsi (Ibo): January 1966 – July 1966; Lt. (later Gen.) Gowon (Northerner - installed by the Hausa/Fulani military officers): July 1966 – 1975; Gen. Mohammed (Hausa/Fulani): 1975 – Feb. 1976; Gen. Obasanjo (Yoruba): Feb. 1976 – 30 September 1979; Alhaji Shagari (Hausa/Fulani): 1979 - 1983; Gen. Mohammed Buhari (Hausa/Fulani) 1984 – 1985; Gen Ibrahim Babangida (Hausa/Fulani): 1985 – 1993; Chief Shonekan (Yoruba): August – November 1993; Gen. Abacha (Hausa/Fulani): 1993 – 1998; Gen. Abubakar (Hausa/Fulani): June 1998 – 8 May 1999; Chief (Gen.) Olusegun Obasanjo (Yoruba): 1999 – 2007, Umaru Musa Yar'dua ; Gen. Mohammed Buhari (Hausa/Fulani) 2007-2010, Dr Goodluck Jonathan (Niger Delta) 2010 - 2015 ; Mohammed Buhari (Hausa/Fulani) 2015–the present.

³⁷ Constitution of the Federal Republic of Nigeria 1999.

³⁸ This linguistic dominance may be said to be as old as Nigeria itself. For instance, in 1961 (one year after independence) Chief Enahoro (a representative of a Niger Delta constituency in the Federal Parliament)

commented: 'The existing three Regions in this country are dominated by three cultural groups in the East, West, and Northern Region, and if you listen to the NBC [Nigerian Broadcasting Corporation] you will think there are only three languages in Nigeria – Ibo, Yoruba, and Hausa. Where are the rest of us? Certainly, we want our languages to be heard and known.' See Federal Parliament Debates, First Parliament, Second Session, 1961-62, House of Representatives, Vol. I, Lagos 1961, col. 766.

³⁹ See Ogoni Bill of Rights, paras. d and e. In a statement annexed to the Ogoni Bill of Rights (addressed to the International Community) the first President of MOSOP (Dr. G.B Leton) stated, *inter alia*: 'Ogoni languages are dying; Ogoni culture is dying' (at para. 5).

⁴⁰ Ogoni Bill of Rights, para. 1.

⁴¹ Paras. a and b.

⁴² Issued by the Ethnic Minority Rights Organisation of Africa (EMIROAF). Ken Saro-Wiwa and other Niger Delta activists were key players of this organisation. Quoted in Saro-wiwa (1995: 130 – 131)

⁴³ In this regard, an authoritative British author has observed that the British Consul in the Oil Rivers Protectorate (Niger Delta) found that 'some of the Chiefs were of such importance that the Consul was glad enough to make use of them in the government of the country. Such a Chief was Nana of Benin river who, although merely the hereditary Governor of the Jekris [Itshekiris], and nominally a vassal of the King of Benin, was in point of fact practically an independent sovereign' (Burns, 1948: 146)

⁴⁴ Art. 1 (2).

⁴⁵ See A.K. Dias, 'International Standard-Setting on the Rights of Indigenous Peoples: Implications for

satisfy the definition of 'national minorities' as well as 'indigenous people' in the Nigerian State.⁴⁶ It is notable that the status of 'people' (as with that of 'minorities') need not coincide with the entire population of an existing State. This is the logical conclusion from the decision of the African Commission on Human and Peoples' Rights, where the Commission regarded the 'Ogoni People of the Niger Delta' as a 'people' distinct from the entire people of Nigeria,⁴⁷ thereby effectively ending the age-long claim by most African countries that 'all members of their population are indigenous and that there is no indigenous group as distinct from the entire population'.

Discovery of Oil in Nigeria: A German-owned company called Nigerian Bitumen Company started the search for oil in Nigeria sometime in 1908 when the company explored a certain location some wherein the south-western area of the present Nigerian State⁴⁸. That attempt was unsuccessful, and the company was forced to abandon further search in 1914 following the outbreak of the First World War.⁴⁹ The German company did not return after the hostilities of the First World War. Believing that oil might be found in Nigeria, the British colonial administration promulgated the Mineral Oils Ordinance 1914⁵⁰ to 'regulate oil exploration and exploitation in the country'. Section 3 of this Ordinance provided:

'It shall not be lawful for any person to search or drill for or work mineral oils within or under any lands in Nigeria except under a license or lease granted by the minister under this Ordinance'.

Notably, the 1914 Ordinance contained a discriminatory provision, probably designed to exclude enemy countries and their nationals from doing business in a British territory,⁵¹ which provided as follows:

"No lease or license shall be granted except to a British subject or to a British company registered in Great Britain or in a British colony and having its principal place of business within

Mineral Development in Africa' <<http://www.dundee.ac.uk/cepmlp/journal/html/article7-3.html>>

⁴⁶Survival-International – a UK-based NGO – lists the Niger Delta people as part of the indigenous/tribal peoples of Africa. See Survival, 'The tribal Peoples of Africa' (available at: <<http://www.survival.org.uk/africa.htm>> (visited 26/1/16).

⁴⁷See *Communication 155/96 The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights / Nigeria* (Decided at the 30th Ordinary Session, held in Banjul, The Gambia from 13 to 27 October 2001). In this matter, the Commission admitted a 'communication' (case/action) brought on behalf of the Ogoni (Niger Delta) people by two NGOs against the Nigerian State and found Nigeria in violation of certain rights under the African Charter on Human and Peoples' Rights, which the Niger Delta people enjoy as 'collective rights'. The Commission observed that: 'Collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa' (at Para. 68). Although the Commission's decisions are recommendatory, and legally non-binding on States Parties, it is certainly entitled to authoritatively interpret the Charter provisions.

⁴⁸For historical accounts of Nigeria's oil industry, see generally: Ajomo (1972: Chapter 8); Ajomo (1987:84); Etikerentse (1985: Chapter 1); Momodu Kassim-Momodu (1986/87: 69); Omoregbe (1987: 273); L.H.Schatzal (1969: esp. pp. 1-4).

⁴⁹The First World War was from 1914-1918, essentially between Britain and Germany.

⁵⁰No. 17 of 1914. See Cap. 120 of the Laws of the Federation of Nigeria 1958 edition (reproduced in *Basic Oil Laws and Concession Contracts, South and Central Africa*) (original text), Supplement Nos. 31-35.

⁵¹The territorial area of the present-day Nigeria effectively became a British possession after the Berlin Conference of 1884-5, where European powers agreed on the partition of Africa

Her Majesty's dominions, the chairman and the managing Director (if any) and the majority of the other directors of which are British subjects.⁵² The natural consequence of the above discriminatory provision was the exclusion of qualified companies which did not satisfy the provision. In other words, competition was discouraged while monopoly was fostered with all its limitations –including lack of financial, human and material resources and expertise. The First World War ended in 1918, and the search for oil resumed some years thereafter. However, as already indicated, the trailblazer (Nigerian Bitumen Company) did not return to continue because it could not obtain license under the 1914 Mineral Oils Ordinance as a result of the above discriminatory provision; the search for oil in Nigeria was continued by a new company – Shell D'Arcy IN 1937.⁵³

At any event, there is evidence to suggest that between 1938 and 1939 Shell/D'Arcy made fruitless search for oil in Nigeria. Remarkably, like its predecessor in business, its search for oil in Nigeria suffered a setback in 1939 with the outbreak of the Second World War: its operations were interrupted by the war and the company did not resume operations until 1946, a year after the war had ended in 1945. Vigorous search for oil yielded result only in 1956, when the company struck oil in commercial quantity at Oloibiri⁵⁴ (in the then Yenagoa Province in the Niger Delta). Later the same year another discovery was made at a place called Afam⁵⁵ (in the then Rivers Province, also in the Niger Delta). Judging from the year of the commencement of search for oil (1908), it is clear that it took a long time to find oil in Nigeria. This maybe attributed partly to the interruptions caused by the First and Second World Wars, and partly to want of competition because of Shell's monopoly.⁵⁶ The oil finds were rapidly developed and exploited. By 1958 production has reached 5,100 barrels per day and the first shipment of crude oil to Europe was made, thereby launching Nigeria into the 'club' of oil producing and exporting countries. As has been stated earlier; the two oil sites were found in the Niger Delta (in the south-eastern area of Nigeria – specifically in the Eastern region of Nigeria⁵⁷). When 12 states were created in 1967 to replace the

⁵²Quoted in Momodu Kassim-Momodu (1986/87: 70-71).

⁵³See Shell (SPDC), 'The Environment' (<http://www.shellnigeria.com/>). The OEL granted to Shell D'Arcy in 1938 covered the whole of Nigeria, thereby shutting out competitors. It was a 'life-time' opportunity, which Shell did not miss. Between 1938 and 1941 and 1946-51, Shell embarked upon intensive geological reconnaissance and geophysical surveys of Nigeria

⁵⁴The name 'Oloibiri' is a corruption of 'Aleibiri'. See Annual Report of the Civil Liberties Organization (CLO), Lagos, 1997, 211. (The printers of this Report did a shoddy job, as the pages do not follow serially). Other names in the Niger Delta which suffered corruption by the British colonialists include: 'Ehuda' (corrupted as 'Ahoada') and 'Ula-Upata' (once corrupted as 'Orupata').

⁵⁵Apart from having crude oil, Afam also hosts huge electricity installations which supplies electricity to a number of communities in Nigeria quite removed from it. Yet for several years this community did not have electricity.

⁵⁶Shell's monopoly was broken 'in order to increase the pace of exploration and avoid over-dependence on one company'. See Annual Report of the Mines Division, Ministry of Mines and Power, 1958/59, Federal Government Printer Lagos, 1960. Other oil companies that were admitted at the end of the monopoly included Gulf, Agip, Phillips, Safrap (now Elf), Esso Petroleum, and American Overseas.

⁵⁷It is arguable that the potentials of oil had encouraged the Eastern region to attempt secession from the Nigerian State in 1967. A civil war was fought from 1967-1970 between the federal government and the seceding (Eastern) region (called the 'Republic of Biafra'). During the war the Niger Delta area was under the control of the Eastern regional government (the government of Biafra). The promulgation of the Petroleum Decree in 1969 (vesting the entire property in crude oil in the federal government) suggests that the federal government fought

former regions of Nigeria, they became part of Rivers state. Today, following the creation of Bayelsa state in 1996, Oloibiri – an ethnic Ijaw community – is now part of Bayelsa state.⁵⁸ Since the first discoveries, further discoveries of oil in commercial quantities have been made in areas within the Niger Delta region. Since the first shipment of oil to Europe in 1958 the oil resource of the Niger Delta has provided much revenue for Nigeria. Among others, the oil revenue has been used to finance social development projects in the country. However, Niger Delta Declarations of Rights and other statements of claim made by the Niger Delta indigenous people suggest that the huge oil revenue has not benefited the Niger Delta region and its people instead oil revenue has been used to develop other areas of the country while the Niger Delta and its people are neglected.

The Place of Oil in the Nigerian Economy

'Oil will continue to be the major source of government revenues in the near term'

– President Olusegun Obasanjo (Budget Address, December 2003)⁵⁹

From the creation of Nigeria in 1914 till the end of colonialism in 1960 (and up to the end of the first decade after independence) its economy was agro-based; and agriculture was the dominant occupation of the various native peoples. As one commentator puts it, 'during the colonial period (1914-1959),⁶⁰ Nigeria was exploited for its agricultural products'. The key agricultural products were cocoa (produced in the West), groundnut and cotton (in the North), and palm oil (in the East, including the Niger Delta⁶¹). Although oil was discovered (and oil exploitation began) in Nigeria in 1956, there is evidence to indicate that it did not play any significant role in the Nigerian economy until the early 1970s. According to Robinson, 'in the early 1960s, revenue from oil accounted for less than 10 per cent of Nigeria's revenue base'.⁶² For instance, in 1963 and 1964 oil revenue was only 4.1 per cent and 5.9 per cent, respectively, of the total revenue of the country. On the contrary, the bulk of the country's revenue at this period was from agriculture, and more than 70 per cent of the people were employed in this and related sector (Robinson 1996: 9).⁶³ However, from the early 1970s the dominance of agriculture began to decline as the yield from oil began to soar. In what can be described as a recent illustration of the 'Dutch

disease'⁶⁴ syndrome, since the oil boom of the 1970s the agricultural sector has been neglected, with the result that the contribution of agriculture to the national revenue continues to dwindle yearly. In general development, there is nothing short of truism that there have rapid changes in the spheres of economic and social life of Nigeria due to the emergence of oil in national lives. This discovery of oil has systematically submerged agricultural sector which used to provide the bulk of our revenue. This sector has been neglected for oil sector. The oil sector contributed about 86 percent of the federal government revenue, accounted for about 90 percent of the country's foreign exchange earnings and constituted over 25 percent of the nation's Gross Domestic Products. Also, the previous impact of the good work of the Petroleum Trust Fund (PTF) cannot be over emphasized. Structurally and otherwise, the oil boom of the 1970's helped significantly in transforming Nigeria from an ordinary third world black country to an appreciate position both in term of development, infrastructure, international politics et cetera. It is the first and only producer in West Africa and the second most producer in West Africa, it is only to Libya. Among the major world producers with an output of 110 million tons in 1974, it was placed sixth. Because of its limited internal market, it exports largest proportion of its output. To facilitate exportation, pipelines have been laid to connect the major oil wells with the ports of Bonny and Escravos. Today, urban and rural development in parts of the country can be traced to the oil wells located in the remote villages of the country where oil continues to gush out day and night.⁶⁵ Nigeria is currently not enjoying the best of times. The country is presently suffering the adverse effects of the dwindling revenue from crude oil and gas sector, which today accounts for about 95 percent of its revenue.⁶⁶ Recently, analysts have warned that the low price of crude oil in the international market might lead to fiscal crisis in Nigeria, which if not addressed urgently, would constitute a major threat to social stability in Nigeria. Afrinvest in its Report titled, 'Nigerian Economy and Financial Market: 2015 Review and 2016 Outlook,' disclosed that "the impact of lower crude oil price is likely to keep domestic output growth at a sub-optimal level. (This is) as consumption expenditure which contributed 74 per cent to Gross Domestic Product, GDP, in the second quarter of 2015 stays soft, while private sector investment, which is 17 per cent of GDP may be constrained by currency market challenges and the higher risk environment." The Report further stated that Nigeria's response to the low crude oil price environment had served to worsen the cloud of investors' uncertainty; a situation which it said led to the rout in the country's financial system. It said: 'The country is currently experiencing the sharpest drop in government revenue in the wake of abruptly lower oil prices which has impeded the fundamental structure of the 'sharing' economy.

"Closely related to this was the massive bailout handed by the Federal Government to sub-national governments who could

the war in order to regain control of oil resource, which it had since colonial days.

⁵⁸The Ijaw ethnic minority group is scattered in several parts of the Niger Delta and beyond. As indicated earlier, Bayelsa state is the only pure Ijaw state in Nigeria today

⁵⁹Quoted in SPDC (2003: 4

⁶⁰ It should be remembered that colonialism started well before the ultimate formation of the Nigerian state in 1914.

⁶¹The Niger Delta was famous for its palm oil products.

⁶²Robinson, D., *Ogoni: The Struggle Continues* (Geneva: World Council of Churches, 1996: 9).

⁶³Comparatively, the oil industry employs fewer people. According to one observer, 'unlike agriculture...oil production employs a relatively small number of workers, and accounts for only 1.3 percent of the total modern sector employment in Nigeria' (Ikein 1990: 19-20). In the same vein, another author has noted that, 'the [Nigerian] oil dominated economy is an enhanced enclave economy. Oil production is necessarily a high technology, capital-intensive enterprise that cannot generate either jobs or direct ("forward" and "backward") linkages with the other sectors of the economy...' (Graf 1988: 221).

⁶⁴According to Karl, T.L., *The Paradox of Plenty: Oil Booms and Petro-States* (Berkeley: University of California Press, 1997: 5), 'Dutch disease' [named by economists after Dutch elm disease] is 'a process whereby new discoveries or favourable price changes in one sector of the economy – for example, petroleum – cause distress in other areas – for example agriculture or manufacturing'.

⁶⁵<http://www.iproject.com.ng/economics/project-topics/the-impact-of-oil-sector-on-the-nigerian-economy>, last accessed 3/2/2016

⁶⁶<http://www.ngrguardiannews.com/2015/05/dwindling-oil-revenue-rekindles-need-to-diversify-nigerias-economy/> last accessed 3/2/2016

not pay salaries for an average of six months due to lower federal allocations and poor capacity to generate internal revenues.”

It added: “With unrelenting downward pressure on crude oil prices and the continuous strengthening of the dollar, we opine that the pressure on the naira may likely continue unabated. We believe that the current stance of the apex bank on the foreign exchange rate is unsustainable in the wake of the higher interest rate environment in the United States, weaker global outlook on oil prices and reduced accretion to the reserves.”

Also commenting, the Chief Economist, PWC Nigeria, Mr. Andrew Nevin, warned that growth headwinds will persist in Nigeria as low oil prices present fiscal and current account challenges.⁶⁷ The Vice President, Prof. Yemi Osinbajo, has said that the country had everything needed to build and sustain a vibrant economy in spite of the drop in global oil prices. The vice-president said this during an interactive meeting with a group of international investors at the State House, a statement issued by the Senior Special Assistant, Media and Publicity to the Vice-President, MrLaolu Akande. Akande stated that the interaction involved global investors from companies, including Renaissance Capital, Russia-China Investment Fund, China Africa Development Fund, Invest Abu Dhabi, Actis, Emerging Capital Partners, ECP, KKR & Co. LP, Old Mutual of South Africa. The senior special assistant quoted Osinbajo as saying “this country has practically what it takes to run a solid economy that is not dependent on oil, but on business and commerce.”⁶⁸ Looking at what this portends for the nation should this trend continue unchecked, experts have called on the government not to fold its hands, but to explore other potential sources of revenue through the diversification of the nation’s economy. While some urged the government to redirect its focus to the agriculture sector, others asked the government to explore the numerous mineral resources for alternative source of income. Yet, few others said Nigeria, like many other advanced countries, can rely on tax revenue for survival.⁶⁹

IMPACT OF OIL OPERATIONS ON THE NIGER DELTA ENVIRONMENT AND ON THE PEOPLE

Introduction

Environmentally, modern mining operations have been destructive. The removal of a non-renewable resource [such as oil] usually causes some environmental damage. For aboriginal peoples the effects on native fauna and flora, on which the subsistence component of their economy depends, are of grave concern. While catastrophic events such as the effects of the Exxon Valdez oil spill on wildlife of the Alaskan coast are widely publicised, smaller-scale problems such as the destruction of local fish stocks in small creeks near a mine [oil-field], etc. – occur more. Chapter 2 has shown that oil is of central importance to the Nigerian economy. Yet oil operations can cause tremendous damage to the environment of the area from where it is extracted as well as to the inhabitants of the area. As one scholar has rightly observed: ‘As minerals have

been developed in increasingly remote parts of the world, their exploitation has had a growing impact on “indigenous”, “native” or “aboriginal” peoples, on groups which have had only limited contact with industrial society and which retain a significant part of their pre-industrial economic, social and cultural structures’ (O’Faircheallaigh (1991: 228)⁷⁰. Hence there is need to pay serious attention to ‘the impact of large mining projects [such as oil mining] on the areas in which they are actually located, and on the people, who live close to them’. Such impacts, which may be classified as environmental, social, cultural, and economic. This Chapter will commence with the definition of certain key concepts or expressions, namely, ‘environment’ and ‘environmental pollution’), and proceed to examine the environmental characteristics of the Niger Delta.

Definitional and Foundational Issues

Definition and Meaning of Environment: Any major discussion of issues bordering on the ‘environment’ should properly take as its point of departure a consideration of the meaning of ‘environment’. At least, this will set the focus and determine the boundaries of the discourse. Accordingly, this Chapter commences with a brief examination of the meaning of ‘environment’. Over the last few years, scholars, international bodies, statutory and treaty provisions, all over the world, have furnished several different definitions of ‘environment’. A few of these will suffice for the needs of the present purposes. Environment in ordinary is defined as our surroundings, especially material and spiritual influences which affect the growth, development and existence of a living being.⁷¹ Environment has also been defined as a product of man’s understanding and experience of his surroundings and is perpetually shaped by man’s usage and interaction with it. The United Nations Stockholm Conference on Human Development asserts, “man is both creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth”⁷². In the United Kingdom, it seems the most relevant statutory definition is that contained in the Environmental Protection Act 1995 where ‘environment’ is defined as consisting of ‘all, or any, of the following media, namely the air, water and land’.⁷³ The sparseness of this definition may be contrasted with the elaborate definition under Section 2(1) of the New Zealand Resource Management Act,⁷⁴ where ‘environment’ is defined as including:

- Ecosystems and their constituent parts, including people and communities;
- All natural and physical resources;
- Amenity values; and
- The social, economic, aesthetic and cultural conditions which affect the matters stated in paragraphs (i) to (iii) of the definition or which are affected by those matters.

⁷⁰ O’Faircheallaigh, C., ‘Resource Exploitation and Indigenous People: Towards a General Analytical Framework’ in Jull, P. and Roberts, S. (eds.), *The Challenge of the Northern Regions* (Northern Territory: North Australia Resource Unit, Australia National University, 1991)

⁷¹ Black’s Law Dictionary, (Minnesota: Thomson West Co., New York 2004, 8th edition.

⁷² Preamble, para 1, Report of United Conference on Human Development and Environment, Stockholm, 1972, A/CONF.48/Rev.1 (New York, 1972) 3.

⁷³ S. 1(2).

⁷⁴ No. 69 of 1991.

⁶⁷ <http://www.vanguardngr.com/2016/02/oil-crash-nigeria-risks-social-instability-analysts/> last accessed 3/2/2016

⁶⁸ <http://www.tv360nigeria.com/osibanjo-nigeria-can-revitalize-economy-without-oil-revenue/> last accessed 3/2/2016

⁶⁹ See foot note 66

In treaties provisions, the International Convention on Civil Liability for Oil Pollution Damage 1969, for example, includes in its definition of 'environment' natural resources both 'biotic' and 'abiotic' – thus covering not only the natural environment but also the manmade landscapes, buildings and objects which form part of man's natural heritage.⁷⁵ In Nigeria, the concept of 'environment' is defined in a number of statutes. For example, in the Federal Environmental Protection Agency (FEPA) Act Cap F10 LFN 2010, 'environment' is defined as including 'water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them'.⁷⁶ In other words, the 'environment' is composite in nature – involving three inter-related media. Lastly, environment has also been defined simply as 'where we all live'.

What, then, is 'environmental pollution'?

This is the next inquiry.

Definition and Meaning of Environmental Pollution: Like the concept of 'environment', there are several definitions of 'environmental pollution' given by scholars, intergovernmental/international bodies, statutory and treaty provisions. However, for the present purpose, only a few will be considered here. An instructive and probably one of the earliest definitions of 'environmental pollution' was provided in 1965 by the US President's Science Advisory Committee: Environmental pollution is the unfavorable alteration of our surroundings, wholly or largely as a by-product of man's actions, through direct or indirect effects of changes in energy patterns, radiation levels, chemical and physical constitution and abundances of organisms. These changes may affect man directly or through his supplies of water and of agricultural and other biological products, his physical objects or possessions, or his opportunities for recreation and appreciation of nature.⁷⁷ In the UK, the Environmental Protection Act of 1990 (c 43) defines 'pollution of the environment' as 'the release into any environmental medium from any process of substances which are capable of causing harm to man or any other living organisms supported by the environment'.⁷⁸ For the World Health Organisation (WHO), the environment is considered polluted when it is altered in composition or condition directly or indirectly as a result of activities of man so that it becomes less suitable for some or all of the uses for which it would be suitable in its natural use.' According to (Raimi and Ezekwe, 2018), pollution is the introduction of substance, materials, energy and sound into the environment either by man or by nature and either deliberately or accidentally in such an extent that the physical, chemical and biological characteristics of the environment are altered or degraded, affecting the quality, health, use and occupation of the environment, natural resources and their use, man-made materials, human activities and socio-economic wellbeing, posing danger to human health and other life on the earth surface. Under Section 38 of Nigeria's FEPA Act, 'pollution' is defined as 'man-made or man-aided alteration of chemical, physical or biological quality of the environment to the extent that is detrimental to that environment or beyond acceptable limits'. It is important to observe that all of these definitions

have one thing in common they all emphasise the alteration of the natural environment as a result of man's activities. Nevertheless, it must not be supposed that natural events cannot alter the environment. Indeed, this sometimes happens; but the greatest source of environmental pollution remains man's activities. This explains the emphasis on human activities, especially as man's activities may precipitate or aggravate natural reactions.

Ecological and Environmental Degradation: The Niger Delta is highly susceptible to adverse environmental changes occasioned by climate change because it is located in the coastal region of the world. Coastal regions of the world are already experiencing flooding due to rise in sea level. Amid the impact of climatic change, the region is also faced with myriads of environmental problems resulting from oil exploration and exploitation activities. Reports on the environmental state of the Niger Delta are conclusive that the area has become an ecological wasteland. There are serious threats to the livelihood of the coastal communities by the operations of multinational oil corporations in the Niger Delta region of Nigeria. The Niger Delta Ecosystem is destroyed by acid rain due to gas flaring, oil spills and hydrocarbon left after 'clean-ups'; and poor waste disposal by the oil companies. The long-term effect of oil pollution could not be over emphasised. Destruction of habitats, loss of biodiversity and water pollution has extensive implications on the people's livelihood.

Gas Flaring: Gas flaring is the burning of natural gas that is associated with crude oil when it is pumped up from the ground. In petroleum-producing areas where insufficient investment was made in infrastructure to utilize natural gas, flaring is employed to dispose of this associated gas.⁷⁹ The flaring of gas has been practiced in the Niger Delta region for over four decades. Today, there are about 123 flaring sites in the region (Energetic Solution Conference, 2004), making Nigeria one of the highest emitter of greenhouse gases in Africa. Carbon dioxide emissions in the area are among the highest in the world.⁸⁰ Some 45.8 billion kilowatts of heat are discharged into the atmosphere of the Niger Delta from flaring 1.8 billion cubic feet of gas every day.⁸¹ Gas flaring has raised temperatures and rendered large areas uninhabitable and has contributed significantly to the degradation of the environment in the region. Acid rains have been linked to the activities of gas flaring.⁸² Corrugated roofs in the Delta region have been corroded by the composition of the rain that falls as a result of flaring. The primary causes of acid rain are emissions of sulphur dioxide (SO₂) and nitrogen oxides (NO) which combine with atmospheric moisture to form sulfuric acid and nitric acid respectively. The concentration of acid in rain water appears to be higher in the Niger Delta region. Gas flaring

⁷⁹ JINN, Gas Flaring in Nigeria: an Overview, Justice in Nigeria Now. April 2010. Available www.justiceinnigerianow.org.

⁸⁰ Iyayi, F. (2004). *An integrated approach to development in the Niger Delta*. A paper prepared for the Centre for Democracy and Development (CDD)

⁸¹ Agbola, T. and Olurin, T. A. (2003) *Landuse and Landcover Change in the Niger Delta*. Excerpts from a Research Report presented to the Centre for Democracy and Development, July 2003

⁸² FOE (Friends of the Earth), Gas flaring in Nigeria, 2004. [E-book] Available: <http://www.foe.co.uk>. Medilinkz, Nigeria: Focus on the environmental impact of gas flaring, 2010. Retrieved from: <http://www.medilinkz.org/news/news2.asp?NewsID=294> [Accessed on February 13, 2016].

⁸² Essential Action and Global Exchange, *Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta 4 (2000)*, available at <http://www.essentialaction.org/shell/Final_Report.pdf (last visited February 10, 2016)

⁷⁵ Renewed in 1992, and often referred to as the Convention

⁷⁶ Section 38

⁷⁷ US President's Science Advisory Committee, Environmental Pollution Panel (1965) – Quoted in Hodges (1973: 1).

⁷⁸ S. 1 (3).

constitutes one of the monstrous human rights abuses in relation to human and environmental abuse. In an interview conducted by a U.S. Non-Governmental Delegation to Nigeria, Grace Ekanem reported, '*acid rain not only deprives people drinkable rain water and stuns crop growth (as we found in Eket and other communities of Akwa Ibom State), it is also affecting people's homes.*'⁸³The practice may have altered the vegetation of area, replacing local vegetation with "stubborn" grasses, a grass that can grow in very harsh environment. The presence of these grasses connotes that the soil where it grows is no longer fertile for cultivation of crops⁸⁴.The location of gas flaring sites close to inhabited areas is an important environmental anomaly. In Rumuekpe Community in Emuwa Local Government Area of Rivers State, the community hosting ELF collection centre, AGIP collection centre and Shell Petroleum Development Company (SPDC) flow station and booster station, a flaring site was located about 250 meters from inhabited houses in the community. The community members complained of high ambient temperature from the flaring site. The farm lands of local people have been taken from them to flare gas. Vertical gas flaring was previously practiced by the oil companies. This method involved raising the flaring nozzle high up into the sky. This method makes the practice conspicuous. Due to opposition to gas flaring in the region, the oil companies now use the horizontal flaring method to obscure the practice. A researcher from the institute of Oceanography, University of Calabar indicated that rain water samples at Ekpene Obo town of EsitEket Local government area, contained high levels of acidity resulting in corrosion of corrugated roofs. The study revealed that '*an acid rain of pH 5.4 was measured in a sample from Eket. A comparison roof rainfall showed a marked drop in chloride content from 1,050 mg/l in the direct rain water to 28.4 mg/l in the roof rainwater. This drop is attributed to the reaction between HCL in rain and zinc in roofing material. The main source of these acids in rain water at Eket is the Exxon Mobil gas flaring operations at onshore and offshore locations. During the wet season, flare gases are carried inland through Eket and its environs by South West Trade winds leading to persistent acidic rain in these communities with attendant infrastructural damages.*'⁸⁵

The U.S. government's Energy Information Administration also supports the conclusion that gas flaring causes acid rain. It states that 'The continued process of gas flaring has not only meant that potential energy source – and source of revenue – has gone up in smoke, but it is also a major contributor to air pollution and acid rain.'⁸⁶Gas is being increasingly seen as a viable source of energy to speed up developmental needs in Africa. In Nigeria, while gas is wasted through the air, creating harmful air pollutants, biomass is still the mainstay of cooking and other heating⁸⁷. As a matter of fact, the natural gas

currently flared in Nigeria can serve the cooking needs of 320 million people not served by modern fuels⁸⁸.

Oil Spill: Oil spill is one of the major environmental hazards in the Niger Delta. This particular cause of environmental hazard contaminates water, destroy plants and animals. The causes of oil spill have been attributed to poorly maintained pipelines and 'blow-outs' of poorly maintained oil well.⁸⁹ Some pipes are rusty, some reportedly forty years old and needs major repairs. The Niger Delta environment is continually degraded by frequent oil spills. Seismic blasts and the discharge of untreated effluents directly into water bodies, some of which serve as the only source of water for the people are common in the region. Water bodies polluted with oil affects the amount of dissolved oxygen in the water, which consequently impacts the lives of aquatic plants and animals. Oil spreads over the water surface preventing contact with atmospheric oxygen. Oil spills occur with high frequency in the region. Records revealed that between 1976 to 1990, the region experienced 2676 cases of oil spills (Civil Liberties Organization report, 1996) and an annual average spill in Rivers, Bayelsa and Delta States are 300 cases. The resulting ecological devastation as a result of these spills could not be measured easily, some oil explosions cause death mostly women and children. The oil film in water prevents natural aeration killing fish and other aquatic animals. The resulting impact on the residents is enormous but yet the amount of wealth generated from these areas is more than enough to be reinvested in order to lesson these environmental impacts. This clearly could culminate into environmental racism and discriminatory acts, a systematic denial of rights. The devastating impacts of these incidents on the farmlands, crops, economic trees, creeks, lakes, fishing equipment is such that the people can no longer engage in productive farming and fishing.

Costal Erosion and Floods: The Niger Delta region is a coastal environment. The rise in sea level has been linked with global warming by the IPCC⁹⁰. According to the IPCC (1990), working with records over the last 100 years, have shown that a strong correlation exists between greenhouse gases emission and climate change and between global temperature and sea level rise. Global temperature is expected to rise by between 0.20C to 0.50C per decade. The rise in temperature is expected to cause thermal expansion of sea and melting of polar ice. These will cause the sea level to rise for about 3-10 cm per decade during the next century. According to the International Federation of Red Cross (IFRC, 1999), sea level rise and flooding are already affecting millions of people worldwide. IFRC report revealed that an estimated 10 million people are at constant risk of coastal flood and floods in general are making 3 million people homeless every year, and that the number of people affected by sea level rise is on the increase annually.⁹¹Sea level rise and repeated ocean surges will not only worsen the problems of coastal erosion that are already a

⁸³ Essential Action and Global Exchange, *Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta 4* (2000), available at <http://www.essentialaction.org/shell/Final_Report.pdf (last visited February 10, 2016)

⁸⁴Orimoogunje, O. I., Ayanlade, A., Akinkuolie, T. A. and Odiong, A. U. "Perception on the effect of gas flaring on the environment," *Research Journal of Environmental and Earth Sciences*. 2(4). 188-193. 2010.

⁸⁵ Akpan, E.R. (2003) 'Acidic precipitation and infrastructural deterioration in oil producing communities of Akwa Ibom State: a case study of Eket, South Eastern Nigeria,' *Global Journal of Environmental Sciences*, 2(1): 47-42

⁸⁶ Available at <http://www.eia.doe.gov/emeu/cabs/nigenv.pdf>

⁸⁷ERA/FOE Nigeria (Environmental Rights Action/Friends of the Earth Nigeria), *Gas Flaring in Nigeria: Human Rights Environmental and Economic Monstrosity*.2005. Retrieved from: http://www.foe.co.uk/resource/reports/gas_flaring_Nigeria [Accessed February 14, 2016].

⁸⁸Goldenberg, J, *Rural Energy in Developing Countries*. In: *World Energy Assessment: Energy and the Challenge of Sustainability*. UNDP. NY. 2000.

⁸⁹ Human Rights Watch, *Africa, Nigeria: The Ogoni Crises: A Case-Study of Military in South-eastern Nigeria* 8 (1995)

⁹⁰ The Intergovernmental Panel on Climate Change (IPCC), a body set up in 1988 by the World Meteorological Organization (WMO) and the United Nations Environmental Program(UNEP) to provide authoritative information about climate change phenomenon

⁹¹EtiosaUyigwe and Matthew Agh, 'Coping with Climate Change and Environmental Degradation in the Niger Delta of Southern Nigeria' *Community Research and Development Centre Nigeria* (2007)

menace in the Niger Delta, the associated inundation will increase problems of floods, intrusion of sea-water into fresh water sources and ecosystems destroying such stabilizing system as mangrove, and affecting agriculture, fisheries and general livelihoods.

Flooding: While climate change will lead to increase aridity and desertification in northern Nigeria, it will lead to increase in flooding in the southern part especially in the coastal regions. Adverse impact resulting from the phenomenon will increase if sufficient effort is not made globally to tackle the problem. Apart from coastal erosion, flood in general has impacted negatively the livelihood of many communities in the region. Flood and erosion remove top soil, destroy roads, affect fresh water resources and threaten lives and properties. Many people have been rendered homeless by floods and several roads have been made impassable. The usefulness of several roads has become seasonal, only passable during the dry months of the year. In Egor and Ogida communities in Edo State, several houses have been abandoned by the owners due to floods and many more areas in the region are vulnerable to floods. Owners of the affected houses did not anticipate the problem they now find themselves when their houses were being built. For occupants of some of the affected houses who are unable to relocate for financial reason will have to cope with the situation. This makes them vulnerable to different kinds of water-related disease such as malaria, dysentery, cholera, and diarrhea. Trauma resulting from the problem can lead to non-pathogenic diseases such as hypertension and diabetes. In some other instances, some areas are cut off from other parts of the community as a result of flood⁹². Floods paralyze economic activities in many towns and cities in the region. Major roads, some linking states are flooded causing hardship to motorists. When these roads were constructed, the flooding problems were not there, and the companies that constructed the roads probably did not anticipate the problem. One common consequence of flooding is increase in transport fare. Commercial drivers, to make up for the distance they drive to avoid flooded roads, usually increase their fare putting the burden on their passengers causing the general increase in the cost of goods and services.

Change in Rainfall Pattern: Meteorological data have shown that rainfall pattern in Nigeria has changed in the past decades.⁹³ The Niger Delta lie predominantly in the tropics having two seasons – the wet and dry seasons. The wet season occur from May to September, while the dry season begins in October and ends in April. The agricultural sector in Nigeria is highly sensitive to rainfall pattern especially in southern Nigeria where rain-fed agriculture is mainly practiced. It has been predicted that climate change will pose serious threat to food security. Climate change creates uncertainty in the rainfall pattern (timing and amount) and affects agricultural activities. Agriculture in the Niger Delta is highly dependent on rain and irrigation is seldom practiced. The changes in the rainfall pattern have greatly affected the agriculture in the region. Farmers in the region begin cultivation at the end of the dry season, when the rain begins to fall. They plant their crops after the first or second rain in the month of March, and sometime in April. After the first rain, the rain falls

periodically till the months of June/July (the peak of the rainy season), when rain fall more or less continually. The periodic rainfall pattern before the peak in June enables farmers to cultivate various crops. Because of the change in rainfall pattern, farmers who plant after the first or second rain in run into huge loss when the rains are delayed beyond the usual due to climatic changes. The crops are scotched causing huge economic loss. Before this time farmers can predict the rain and they know precisely when to plant their crops. The crops after they are planted are watered periodically by rain before the peak of the rainfall in June. The amount of rainfall within the period before the peak is necessary for the optimum performance of many crops most especially the maize which is widely consumed in every part of Nigeria.⁹⁴

Change in Vegetation: One important feature observed in the region is the almost complete absence of primary forests. This may be partly due to climate change and partly due to human activities. Vegetations are removed to make way for seismic lines and sites. Storage, distribution and transportation of oil and gas using Tankers and pipeline network result in some quantities of petroleum products being released into the environment⁹⁵[17]. Uncontrolled logging, agricultural activities, acid rain, oil exploration and exploitation, urbanization and mining activities contribute to lose of vegetation. The vegetation of some part of the Niger Delta is dominated by grasses, sedges and shrubs with few scattered trees and they were mainly palm trees. In other parts, trees grow close to one another to form thick canopy over undergrowth's. The changes in vegetation will have great implication for biological productivity consequently affecting biomass production. It will lead to the impoverishment of biodiversity and various plant species presently growing in the region may die off. The regeneration rate of biomass may also decline significantly affecting the amount of fuel wood available for local people. Fall in the availability of biomass for local energy generation will bring more hardship to local people. Many have to travel long distance in search for fuel wood, women and children are affected the most since they are traditionally charged with the responsibility of fetching fuel wood for the house.⁹⁶ The mangrove forests of the Niger Delta are important ecological resource as they provide essential ecosystem including soil stability, medicines, healthy fisheries, wood for fuel and shelter, tannins and dyes, and critical wildlife habitats. Oil spills contributes to degradation and destruction of this mangrove forests. Endangered species such as Delta elephant, the white monkey, the river hip-popotamus, and crocodiles are increasingly threatened by the activities of the oil companies.⁹⁷

Social Impacts of Oil Operations: It has been suggested that 'large mining projects [like oil mining] have severe and adverse social and cultural impacts on indigenous peoples', and 'in some cases these are so severe as to threaten social and cultural survival'. The environmental effects of oil operations having economic and social consequences. In any case, for the purposes of convenience and clarity, the social impacts of oil operations are considered here as a separate category. Among others, there is evidence to suggest that the social impacts of

⁹² See foot note 88

⁹³ Oladipo, E.O. (1995). An indication of abrupt change of rainfall and its potential impact on energy development in Nigeria. In: Umolu, J. C. (ed). *Global Climate Change: Impact on Energy Development*. DAMTECH Nigeria Limited, Nigeria.

⁹⁴ See foot note 88

⁹⁵ Tolupe, A. O. "Oil exploration and environmental degradation: the Nigeria experience," *International society for Environmental Information Science*. 4(4). 34-36. 2004.

⁹⁶ See foot note 88

⁹⁷ Interview with Professor Turner Isoun of the Niger Delta Wetlands Centre, Sept. 9, 1999 Port Harcourt and Eket Community Members, Sept. 13, Eket

oil operations in the Niger Delta include: the social and cultural effects of loss of land and resources; impacts of immigrant population; loss of self-esteem; and social dislocation and social disintegration. All these will be briefly considered here in turn.

Loss of Land and Resources: Land is of especial importance to indigenous peoples, like the Niger Delta people of Nigeria. Their whole life depends upon land and its resources. Specifically, on the Niger Delta people, it has been seen that their subsistence economy is based on land and water resources; they are predominantly farmers and fishermen. In this regard, any adverse impact on land is bound to affect them socially (and otherwise). According to O'Faircheallaigh (1991: 243)⁹⁸: 'Such impacts arise partly because the damage to land often associated with mineral exploitation has profound social, cultural and spiritual ramifications. Land and the plants and animals it supports occupies a central position in the lives of all indigenous peoples, and is tied intimately to their social, cultural and spiritual well-being.' As has been seen above in discussing the environmental impacts of oil operations, the activities of oil companies in the Niger Delta have resulted in loss of land or land use: to oil spillage, soil infertility, acquisition of land for the construction of oil infrastructure (flow-stations, flow-lines, pipelines, etc). The Ogoni community of the Niger Delta exemplifies this point. As one observer puts it: While the environment was undergoing...steady degradation, substantial parts of the land were being gobbled up by pipelines, laid on the surface, and not buried. Land loss has brought about very severe social consequences for the people. For example, it has led to hunger and starvation; it has resulted to the contraction of several diseases as a result of starvation, and it has resulted to school drop-outs (with consequent social or deviant behaviours). Most parents who were interviewed in Ekpeye-land, Ogba-land, Engenni-land, Ogoni-land, Umuechem community and in Yenagoa town, suggested that they are now unable to train some of their children in schools because low crop yields and low fish catch has made it impossible for them to sell some of their farm products/fish catch to raise money to train their children. A sudden increase in criminal and anti-social behaviours (such as stealing and indecent assaults) were also reported, and these were blamed on the fact that the youths involved were not in schools nor do they have jobs.⁹⁹ Similar findings were reported by the Human Rights Watch in 1999, leading it to surmise: Whatever the long-term impact on the environment, spills can be devastating for those directly affected, especially in the dry land or freshwater swamp areas where the effects are concentrated in particular locations. Oil leaks are usually from high pressure pipelines, and therefore spurt out over a wide area, destroying crops, artificial fishponds used for fish farming, 'economic trees'(that is economically valuable trees, including those growing 'wild' but owned by particular families) and other income-generating assets. *Even a small leak can thus wipe out a year's food supply for a family, with it wiping out income from products sold for cash. The consequences of such loss of livelihood can range from children missing school because their parents are*

unable to afford the fees, to virtual destitution. Even if the land recovers for the following year, the spill has consequences over a much longer period for the families directly affected (Emphasis added).¹⁰⁰ Mention should also be made of the fact that the continuing threat to land and to flora and fauna by the activities of the oil companies – whether through acquisition of land for the construction of oil company facilities, or damage through oil spillage or gas flare – appear to cause great anguish and fear among the Niger Delta people. An NGO – the Constitutional Rights Projects (CLO) – has also found that the 'greatest concern' of the Yenezuagene people of Bayelsa state 'was the fact that their spiritual link to the land [has been] broken'. According to its report, the people claimed that 'since they have been prevented [by the activities of oil companies] from performing their annual fishing (religious) festival [in their forests], during which they appeased their gods, they have noticed strange and unusual phenomena, such as children suddenly dying while out in the bush without any apparent cause whatsoever'. The report rightly concluded that 'whether one believed their metaphysical afflictions or not, the claims still demonstrate the depths of their grievances' (CLO 1999: 18). For instance, a community sued Shell for the desecration of their ancestral and juju shrines.¹⁰¹

Impact of In-migration: Over the years, studies worldwide have shown that mining projects inevitably attract population to the region of operation. In Nigeria, there is abundant evidence to suggest that the exploitation of oil in the Niger Delta has resulted in the influx of people from different parts of the country and abroad into the region. Some of these immigrants are oil company workers, while others have come in search of jobs. Co-existing in the same area, social intercourse is unavoidable. In the result, socio-cultural conflicts are inevitable. The cultural and social characteristics of the newcomers, their lifestyles and expectations have generally been very different from those of aboriginal people and resultant misunderstandings have led to conflict initiated from both sides. Social problems for the aboriginal groups have also arisen because some of them, often the younger and more highly educated individuals, have wanted to adopt many of the practices and advantages which they perceive the newcomers to have, and this has disrupted traditional forms of social control. Although a job or the prospect of job may be a good reason for immigration, it would appear that some of the immigrant population in the Niger Delta region are neither workers nor job-seekers, but outright criminals. It was found during field survey that most families live up to 10 persons in a small room (some as tenants; some are relations from other places who have come in search of elusive jobs). Perhaps in order to meet the housing problems, there are several slum settlements in the region. It is noteworthy, as suggested by some natives, that the slums are the commonest abodes of criminals who terrorise the people daily. One common feature of the slum settlements (which it shares with similar ones in other parts of Nigeria) is the lack of social facilities such as electricity, pipe-borne water, good roads, hospitals and schools. Definitely, the social and environmental problems associated with this development and situation must be considered as one of the fall-outs of oil operations in the region.

⁹⁸O'Faircheallaigh, C., 'Resource Exploitation and Indigenous People: Towards a General Analytical Framework' in Jull, P. and Roberts, S. (eds.), *The Challenge of the Northern Regions* (Northern Territory: North Australia Resource Unit, Australia National University, 1991)

⁹⁹Author's interviews with members of local communities on 14, 15, 21 and 22 January 2002; 21 December 2004. Apart from Yenagoa Town (Capital city of Bayelsa state), the other communities are located in Rivers state

¹⁰⁰Human Rights Watch (1999: 66).

¹⁰¹*Shell v. Tiebo VII* [1996] 4 NWLR (Pt. 445) 657.

Loss of Self-Esteem: From a social angle, self-esteem is a very valuable personality attribute. A person without self-esteem may well be a psychological wreck. Yet it has been found that in many cases the combination of loss of land and the influx of foreigners, with scant respect for indigenous peoples and their culture, has served to undermine self-esteem at the levels of the individual and the community.¹⁰² From every indication, the feeling of 'worthlessness' is pervasive among the Niger Delta rural people (over 90 per cent of the people live in rural communities, and that is precisely where oil operations take place). Respondents to recent interviews in the region point to the contrasting social status of the locals and the immigrants. For example, whilst the locals remain in perpetual darkness and drink water from wells or streams (with all the risk of contracting water-borne diseases), the immigrant oil company workers enjoy constant light, mostly generated from private electric generators, and have water bore-holes that supply them with potable water. Further, the indigenous residents consider the immigrants as 'Big Men' (wealthy men), whereas they are 'poor men'; and they would not dare to 'annoy' the 'Big Men', lest they get brutalised by the police at their instance.

Social Dislocation and Social Disintegration: In many cases it has been found that the combined effect of land loss, immigrant population and loss of self-esteem create severe social dislocation. This leads in turn to serious problems at the individual, family and community level associated with, for example, alcohol abuse, violence, sexual promiscuity, family break-ups, mental illness and suicide. Already, there are visible signs in the Niger Delta of social dislocation and social. Unlike before, now a youth can openly abuse an elder or the Community Head and get away with it; the traditional system of discipline through the Council of Elders/Chiefs has crumpled...anarchy now reigns everywhere in our village. Another important manifestation of social dislocation and social disintegration is in prevalent intra- and inter-communal conflicts. The villagers claimed that the oil companies employ divide and rule tactics within and between the communities, with the result that often disputes arise over alleged favours by the oil companies to some elements within the communities or to some communities, to the exclusion of others. Sometimes it may be due to the sharing formulae for compensation due to the communities/families, or over the issue whether or not oil operations should continue in its 'unsustainable' manner. This situation was exemplified by a division within the Movement for the Survival of Ogoni People (MOSOP) – a socio-cultural organisation that has been campaigning for environmental sanity, sustainable development in the Niger Delta and fairness in the sharing of oil revenue. Ken Saro-wiwa, who was executed in 1995 by military rulers in Nigeria, made MOSOP popular.¹⁰³ Shell was accused of complicity in the execution and this further strained its relationship with the Ogoni community, which resolved never to allow Shell into their community until certain demands were met.¹⁰⁴ Importantly, Shell's bid to resume operations in the community has

generated intra-communal conflicts. While some a few favour the return of Shell so many are against it, accusing the others of being 'settled' (bought over) by Shell. Often, the opposing camps had fought, visiting violence on each other. Similar conflict also arose between members of four Ijaw communities who had won a High Court action against Shell for oil spillage.¹⁰⁵ The case lasted for 14 years and had cost the community a lot of money. However, Shell refused to pay the monetary award, opting to appeal the court's decision.¹⁰⁶ According to sources, on 2 July 1997 the communities gave Shell a two-week ultimatum within which to pay the compensation awarded to them or stop further oil production in their area while the appeal was pending (their argument being that appeal was a usual tactic employed by Shell to delay or escape payment).¹⁰⁷ Within this period, efforts were made by the Government of Delta state and some persons to settle the matter amicably. However, representatives of the communities alleged that a 'peace meeting' held on 28 July 1997 was dominated by Shell contractors (members of the communities who have been bought over by Shell and are acting in the interest of Shell). In conclusion, oil operations in the Niger Delta have precipitated a wide-range of social problems. Most of these problems are the direct result of environmental impacts of oil operations, demonstrating the link between environmental, socio-cultural and economic issues.

Conclusion

This Chapter set out to investigate the adverse impacts of oil operations in the NigerDelta region of Nigeria. From the environmental and social angles, it has been found that oil operations have resulted in numerous environmental and social problems, including social dislocations. This is in agreement with the findings of a team of US environmentalists who visited the region in the late 1990s. They summarized their finding thus:

Oil company pollution like oil spills, leaking pipelines and gas flaring harm the environment and wildlife of the Niger Delta. Shell's "clean-ups" are appalling: in Otuegwe, an underground Shell pipeline spilled as much as 800,000 barrels of oil in the area in 1998. This past summer a visiting activist met people who had been hired by Shell to clean up the spill using towels and buckets. Shell's indignities to the people of Nigeria are not limited to oil spills and acid rain. A community in Umuebulu explained how Shell acquired land in their community, promising to build living facilities for employees but instead dug a large pit and began dumping noxious, presumably toxic waste. Nearby residents are experiencing skin rashes and other health problems they blame on the dump. The effects of this pollution on local populations is shocking. Oil spills spread and acid rain damages food, crops, plants and animals vital to local people's survival. Time after time the delegation heard

¹⁰⁵For the account of this, see Civil Liberties Organisation (CLO), *Annual Report* (1997: 205-8).

¹⁰⁶An indication of Shell's arrogance and insensitivity to the adverse impacts of their operations was given when a BBC Correspondent in Nigeria asked its spokesman whether it was negotiating to pay the compensation awarded against it. The representative replied: *'If we were to pay we would not have appealed. The people took us to court. The judgment was given in their favour. So, we appealed. We are not paying anything. If we want to pay, we would not have appealed... We are not negotiating with anybody. Shell has not bowed to any whatever [sic] pressure. We are not paying anything to anybody. We have taken the matter to the Court of Appeal and that is where the matter lies'*

¹⁰⁷See CLO (1997: 207-8).

¹⁰²Dr. Kaniye S.A. Ebeku "Oil and the Niger Delta People in International Law Resource Rights, Environmental and Equity Issues" (February 2005)

¹⁰³The trial of Ken Saro-wiwa and eight others for murder elicited world-wide condemnation for failing to comply with universal standards of fairness and justice. Their execution, despite pleas from world leaders, led to the suspension of Nigeria from the Commonwealth (an association of ex-British colonies) for a period of time.

¹⁰⁴Following conflicts with village communities, Shell temporarily stopped operations and pulled out of the community in 1993.

stories of reduced fishing stocks and cassava production after oil exploration began...¹⁰⁸ Although the oil companies argue that their operations in the region 'do not add up to anything like devastation', the findings here have clearly contradicted this argument. Apart from the present environmental and social problems, one other important and critical environmental issue facing the region, as a result of oil operations, is the threat that oil operations pose to the region's wetlands (which is the largest in Africa and third largest in the world). As has been seen, the Niger Delta wetlands are very rich in biodiversity and the rural population (constituting over 90 per cent of the population of the region) is dependent on it for sustenance. In this regard, the issue of protecting the wetlands from environmental degradation (including the depletion of its resources) is very crucial, transcending the interest of the local people because of the national and global importance of biodiversity conservation.

LEGAL FRAMEWORK FOR THE REGULATION OF OIL AND GAS ACTIVITIES IN NIGERIA

Introduction

Prior to the dumping of toxic waste in Koko village, in Delta State, in 1987, there were no institutional arrangements or mechanisms for environmental protection and enforcement of environmental laws and regulations in the country. This incident became the first major catalyst which spurred greater environmental awareness.¹⁰⁹ At each stage of oil and gas activities, gaseous, liquid and solid waste materials are produced and discharged. These can, if not properly discharged and controlled, adversely affect the nation's air, water, and soil. This necessitates legislation for effective environmental protection, planning, pollution, prevention and control and generally inducing responsible attitudes and behaviours towards the environment. In this chapter, focus is on legislation covering pollution in the Niger Delta Region occasioned by oil and gas activities particularly, the basis of environmental policy and legislation in Nigeria. The relevant legislations are highlighted, and analysis of their impact is made with the view to discover how effective these legislations have been in the regulation of the industry. In particular the question arises whether these legislations are weak and therefore obsolete in achieving the goals for which they are set? A critical look is also taken of the approach agencies/bodies take in the enforcement of the environmental laws (compliance and monitoring) and liability of offenders. The judiciary is significant in strengthening the regulatory framework guiding the industry, its role in this regard is also examined.

Environmental Enforcement and Compliance:

Environmental enforcement is the set of actions that government or others take to achieve compliance within the regulated community and to correct or halt situations that engender the environment or public health, while compliance

is the full implementation of environmental requirements.¹¹⁰ In trying to ensure compliance with its environmental standards, government usually employs inspection, negotiations and legal actions or the threat of legal actions. It should be noted that the best of environmental standards in the world will be innocuous if they are not complied with or effectively enforced. Compliance and enforcement therefore ensures good environmental governance, and respect for the rule of law. They equally determine the compatibility of environmental standards with practical realities and to a greater extent provide a yardstick for assessing whether the standards should be maintained, amended or repealed. Regulatory control and enforcement is strictly the responsibility of competent national authorities. International requirements are implemented by national authorities through primary legislation, supported by regulations and guidelines which provide more detailed information on specific requirements.¹¹¹ Despite the tendency to think that enacting a law automatically leads to the rectifications of the problem to which it is addressed, this is not the case. Regulation must be enforced as it is natural for blind pursuit of profit to override environmental responsibility.¹¹² To ensure an effective enforcement regime entails specification of steps for a well calculated enforcement programme,¹¹³ establishment of authorities necessary for the enforcement of the laws,¹¹⁴ as well as an institutional framework specifying in clear terms who and who is responsible for which functions.¹¹⁵ Monitoring and sanctioning are two major steps that can be employed to enhance enforcement and compliance. Monitoring refers to measuring the performance of polluters in comparison to whatever requirements are set out in the relevant law while sanctioning refers to the task of bringing to justice those whom monitoring has shown to be in violation of the law. The emphasis here is that the likelihood that those caught violating the law will be sanctioned will likely reduce the rate of non-compliance.

¹¹⁰ 'Principles of Environmental Enforcement'. (1992). International Network for Environmental Compliance and Enforcement, INECE <<http://www.inece.org/enforcementprinciples.html>> accessed 15/02/16.

¹¹¹ Regulations may in turn be further refined by a framework of standards and consents, determining for instance, quantitative controls on emissions, by prescription, by negotiated agreements, or by goal setting. See Environmental Management in Oil and Gas Exploration and Production: An Overview of Issues and Management Approaches, Joint E&P Forum/ UNEP Technical Publication, 2010, vol. 37.

¹¹² B Field and M Field, *Environmental Economics: An Introduction* (McGraw Hill, Singapore, 2009)

¹¹³ These steps as enunciated by Field are: a) A statement of which polluters are subject to regulation; b) Specification of the units of compliance and what performance is to be measured; c) Specification on how performance is to be measured using what particular technologies and procedures; d) Description of requirement for self-monitoring and record keeping; e) Statement of what performance will constitute violation and what these violations will entail in terms of penalties.

¹¹⁴ The credibility of an enforcement programme will be eroded if violators can successfully challenge the authority of a programme to take enforcement actions. As such, authorities or agencies task with environmental duties, should be empowered to inspect regulated facilities and gain access to their records and equipment to determine if they are in compliance, require that the regulated community monitor its own compliance, keep records of its compliance activities and status and also report this information periodically to the enforcement programme and make the information available for inspection. It is also expected that authorities should be empowered to take legal action against non-complying facilities.

¹¹⁵ The absence of such institutional framework will make it difficult to establish who is responsible for ensuring compliance. In fact, this may lead to duplication of duties as was the case between FEPA and DPR. See Y. Omorogbe, *Oil and Gas Law in Nigeria*. (Malthouse Press Limited, Ikeja, 2001).

¹⁰⁸ See 'Nigeria: Behind the Greenwash' (visited 13 February 2016), <http://www.essentialaction.org/shell/efart2.html>.

¹⁰⁹ This led to the creation of the Federal Environmental Protection Agency (FEPA) by Decree No. 58 of 1988 and in January 1992 the Agency's authority was significantly strengthened through Decree No.59 of 1992 when the Federal Government incorporated FEPA into the Presidency and expanded its mandate to include bio-diversity conservation and sustainable development of Nigeria's natural resources.

Basis for Environmental Policy in Nigeria: Current environmental policy in Nigeria derives from the 1999 Constitution¹¹⁶. Section 20¹¹⁷ empowers the State to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria. In addition to this, section 2 of the Environmental Impact Assessment Act of 1992 (EIA) Act¹¹⁸ provides that the public or private sector of the economy shall not undertake or embark on or authorise projects or activities without prior consideration of the effect on the environment.

Statutes and Regulations in the Nigerian Oil and Gas Industry: Several legislations are promulgated to regulate activities in the oil and gas industry. These have been followed by regulations and guidelines to afford IOCs and other participants in the industry detailed information of specific requirements. Following the Koko Toxic Waste incident, the Harmful Waste Decree 42 of 1988, facilitated the establishment of the Federal Environmental Protection Agency (FEPA), followed by the National Policy on Environment¹¹⁹ setting out the goals of securing and conserving the quality of the environment for health and wellbeing for the benefit of present and future generations. In 1999, FEPA was merged with other relevant Departments in other Ministries to form the Federal Ministry of Environment. Other relevant legislations include;

National Environmental Standards and Regulation Enforcement Agency Act (NESREA) 2007: Administered by the Ministry of Environment, the NESREA Act which replaced the FEPA Act saddles the Agency with the responsibility to enforce compliance with laws, regulations, guidelines policies and standards on environmental matters generally, including pollution abatement. Though its coverage does not include the oil and gas sector, its provisions are instructive in environmental protection.

Environmental Impact Assessment Act 1992: The passing of the Environmental Impact Assessment Act of 1992, based on the principles of the United Nations Conference on Environment and Development, makes it mandatory that before the final decision is taken or approval given for any activity likely to significantly affect the environment, the effect of such activity shall first be taken into account. The Act also provides, among others, the promotion of implementation mechanisms at the federal, state and local governments; any person or community to be affected directly or remotely shall be notified and there shall be "consultations" which means that the person or community affected shall have a say in the final decision regarding the project. Section 60 creates legal liability for any contravention.

Oil in Navigable Waters Act: The Oil in Navigable Waters Act is concerned with the discharge of oil from ships. In particular; section 3 makes it an offence for a ship master,

occupier of land, or operator of apparatus for transferring oil to discharge oil into Nigerian Waters.

Associated Gas Re-Injection Act: The Associated Gas Re-Injection Act deals with the gas flaring activities of oil and gas companies in Nigeria. Significantly, it prohibits, without lawful permission, any oil and gas company from flaring gas in Nigeria and stipulates the penalty for breach of permit conditions.

Petroleum Act 1969: The Petroleum Act and its Regulations remain the primary legislation on oil and gas activities in Nigeria. The Act provides for regulations to be made for safe working of petroleum operations; prevention of pollution of water courses and the conservation of petroleum resources, among others. Pursuant to this the Minister of Petroleum Resources is empowered to make regulations some of which include;

Petroleum Drilling and Production Regulations: Paragraph 25 of the Regulations provides, "The licensee or lessee shall adopt all practicable precautions including the provision of up-to-date equipment approved by the Director of Petroleum Resources to prevent the pollution of inland waters, rivers, water courses, the territorial waters of Nigeria, or the high seas by oil, mud or other fluids or substances which might contaminate the water, banks or shore line 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." This directly covers pollution of rivers and inland waters which invariably disrupts fishing rights. Violators of this provision are liable to pay compensation as has been upheld by in the *Elf Nigeria Ltd V Sillo Operacase* where court awarded compensation to the Sillo family for loss of fishing right occasioned by oil pollution in the form of oil spill which poured silt into the tidal rivers where they carried out their occupation as fishermen.

Petroleum Refining Regulation: Section 43 (3) requires the Manager of a refinery to take measures to prevent and control pollution of the environment and prescribes punishment for contravention.

Oil pipelines act: Section 17 (4) of The Oil Pipelines Act establishes that grant of licenses are subject to regulations concerning public safety and prevention of land and water pollution. The Act creates a civil liability on the person who owns or is in charge of an oil pipeline with regards to anyone who suffers physical or economic injury as a result of a break or leak in his pipelines. In *Shell Petroleum Development Company of Nigeria Ltd. vs. Abel Isaiah and Ors* the court held that installation of pipelines, producing, treating and transmitting of crude oil to the storage tanks is part of petroleum mining operations. Therefore, if an accident happens during the transmission of petroleum to storage tanks, it can be explained as haven arisen from or connected with or pertaining to mines, and minerals including oil fields, and oil mining.

Oil Pipelines Regulations: Deriving from the Oil Pipelines Act, this Regulation establishes the requirement of environmental emergency plans. Section 26 makes punishable any contravention with a fine of N 500,000.00 and/or an imprisonment term of six months.

¹¹⁶ The Constitution of the Federal Republic of Nigeria 1999, Cap C23 LFN, 2004.

¹¹⁷ See also sections 33 and 34 which guarantee fundamental human rights to life and human dignity respectively. These have also been argued to be linked to the need for a healthy and safe environment to give these rights effect.

¹¹⁸ CAP E12, LFN 2004. See also Federal Republic of Nigeria (1992). Environmental Impact Assessment Act No. 86 of 1992. Official Gazette, No 72, Vol. 79, Lagos, Nigeria.

¹¹⁹ <http://www.nesrea.org/environmentalpolices.php> accessed 17/2/16

National Oil Spills Detection and Response Agency (NOSDRA) Act 2006: The National Oil Spills Detection and Response Agency Act is charged with the responsibility for preparedness, detection and response to all oil spills in Nigeria. Section 5 of the Act mandates the Agency to, among other things; ensure a safe, timely, effective and appropriate response to oil pollution and to identify high risk and priority areas for clean-up. The Act provides for the establishment of a National Control and Response Centre charged with the responsibility of acting as a coordinating centre for all oil spills incident. The Centre is to serve as a command and control centre for compliance and monitoring of all existing legislation on environmental control, surveillances for oil spill detection, monitoring and coordination of responses and to receive reports of all spills from zonal offices and control units.

Impact of Environmental Legislation on the Oil and Gas Industry: There are a myriad of arguments proffered as to why pollution control in the Niger Delta is seemingly a herculean task and why IOCs offer defences for environmental degradation.¹²⁰ However, this work only examines the gap in the law resulting in its failure to restrain the continued environmentally damaging activities of these companies and the leverage this gives. At the commencement of oil exploration, the Mineral Oils Ordinance 1914¹²¹ regulated the “right to search for, win and work mineral oils”¹²² Nothing in the legislation covers environmental protection but empowers the Governor General to make regulations,¹²³ following which came the Mineral Oil (Safety) Regulations 1952.¹²⁴ For environmental protection, this Regulation only offered that “all operations of drilling shall conform with good oil field practice”¹²⁵ The interpretation of “good oil field practice” was left to the discretion of the industry. The Petroleum Act 1969 contains no substantive provisions on prevention of pollution but empowers the Minister to make Regulations.¹²⁶ Section 24(1) of the First Schedule to the Act, empowers the Minister to revoke an oil licence if the holder of the licence, among other things, “is not conducting operations continuously and in a vigorous and business-like manner and in accordance with good oilfield practice.” Again, the phrase “good oilfield practice,” is not subject to any definition in the Act. The Petroleum Regulations 1967, improving on the Mineral Oil

(Safety) Regulations 1963¹²⁷ made provision for prevention of pollution.¹²⁸ However, its provision regarding abandonment contains a proviso dispensing with legal requirement where the Director of Petroleum Resources permits.¹²⁹ The Oil Pipelines Act covers licences for the establishment and maintenance of pipelines incidental and supplemental to oilfields and oil mining, and for purposes ancillary to such pipelines.¹³⁰ It requires such holder of permit to take all reasonable steps to avoid unnecessary damage to any land entered upon and any buildings, crops or profitable trees thereon, pay compensation for any damage done¹³¹ and make good any damage done to the land expiration or termination.¹³² The Act aims to respond to the needs of the host communities, empowering the court to determine issues of compensation.¹³³ In *Shell Petroleum Development Co. Of Nigeria Ltd v Isaiah*¹³⁴ court held that only the Federal High Court, and no other court, has jurisdiction under Section 251(1) of the 1999 Constitution, to entertain claims arising from oil spillage and pollution caused by broken pipeline. While the Oil Pipelines Act provides for compensation for the host communities, it leaves a gap regarding environmental protection. The target here should be preventive rather than give room for IOCs to juggle issues of compensation. Also arising from issues of compensation are instances where IOCs blame major oil spillages on sabotage to avoid paying compensation as provided by the Petroleum (Drilling and Production) Regulation.¹³⁵ Though it can be said that OPA is a commendable step in protection of individual interests of members of host communities, it fails to make the restoration of land upon which compensation is paid mandatory. The incentive for this is that legally in an event of oil spill attributable to sabotage, victims are not entitled to compensation. Furthermore, though the Regulations provide contingency planning for oil spill prevention, control, and removal, it became apparent, from the *Shell Forcados Tank* failure of 1980, that oil companies do not have effective plans for dealing with oil spill emanating from their operations.¹³⁶

¹²⁷ Section 7 provides that “... all drilling, production, and subsequent handling of crude oil and natural gas shall conform with good oilfield practice which for the purposes of these Regulations shall be considered to be adequately covered by the appropriate current Institute of Petroleum Safety Codes, the American Petroleum Institute Society of Mechanical Engineers Code.”

¹²⁸ Regulation 25 provides that “The licensee or lessee shall adopt all practicable precautions including the provision of up-to-date equipment approved by the Director of Petroleum Resources, to prevent the pollution of inland waters, rivers, water courses, the territorial waters of Nigeria or the high seas by oil, mud and other fluids or substances which might contaminate the water, banks or shore line 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.”

¹²⁹ See Regulation 35 (1) and (2)

¹³⁰ See preamble to the Oil Pipelines Act

¹³¹ Section 6(3)

¹³² Section 28

¹³³ Section 19 and 20

¹³⁴ (2001)11 N.W.L.R.(Part 723) 168. See also *S.P.D.C. V Maxon* (2001) 9 N.W.L.R. (Part 719) 541. For compensation for oil spills see *Shell Petroleum Development Company, Nigeria Ltd v. Tiebo Vii & Others* (2005) 3-4 S.C., *Elf Nigeria Ltd V OpereSillo*(1994) 6 N.W.L.R. (Part 350) 258, *Shell Petroleum Development Company, Nigeria Ltd v. Ambah*(1991) 3 N.W.L.R. (Part 593) 1, *Shell Petroleum Development Company, Nigeria Ltd v. Farah* (1995) 3 N.W.L.R. (Part 382) 148

¹³⁵ See Regulations 23 and 25 Petroleum (Drilling & Production) Regulations 1969.

¹³⁶ J. Nwankwo, and C. Ifeadi, (1995), ‘The Guidelines and Standards for the Petroleum Industry in Nigeria: The 1998 Revision’, Paper presented at the 9th International Seminar on the Petroleum Industry and the Nigerian Environment, Abuja,

¹²⁰ Until recently, the oil companies in Nigeria would appear to have directly or implicitly opposed anti-pollution regulations on a number of grounds. For one, they insist that oil pollution is only one aspect of the pervasive human and industrial pollution in Nigeria and not necessarily the worst. Furthermore, increase in the cost of investment in Nigeria, as a result of unreasonable anti-pollution legislation, would discourage overall investment and by implication, retards economic growth and development. Another argument is that the cost of pollution control equipment is primarily of a fixed nature, so that decreases in capacity utilization tend to increase the cost-burden of pollution equipment sharply. Under Nigerian condition, all equipment and chemicals are to be imported and possibly stored for a long period with associated dangers. See E. Hutchful, ‘Oil Companies and Environmental Pollution in Nigeria’, in Claude Ake, *Political Economy of Nigeria* (Longman, London, 1985) cited in S. Aghalino, ‘Corporate Response To Environmental Deterioration In The Oil Bearing Area Of The Niger Delta, Nigeria, 1984–2002’ *Journal of Sustainable Development in Africa*, Clarion University of Pennsylvania, Clarion, Vol 11, No 2, 1999-<[http://www.jsdafrica.com/.../Corporate%20Response%20to%20Environment...>](http://www.jsdafrica.com/.../Corporate%20Response%20to%20Environment...) accessed 20/2/2016

¹²¹ Cap.20, Laws of the Federation of Nigeria and Lagos, 1958.

¹²² See preamble to the Mineral Oils Ordinance 1914

¹²³ Section 9 empowers the Governor General in Council to make regulations for any matter connected with carrying the Ordinance into effect.

¹²⁴ Subsidiary Legislation, Cap.120, Laws of the Federation of Nigeria and Lagos, 1958 (repealed).

¹²⁵ Regulation 7

¹²⁶ Section 9

The Environmental Impact Assessment Act¹³⁷ makes it mandatory for an EIA report to be prepared in respect of all major projects and approved by the Federal Ministry of Environment and the environmental agency of the State in Nigeria in which the project is located. In addition, for oil and gas projects, the requisite environmental permit must be granted by the DPR.¹³⁸ However, this is not always the case.¹³⁹ Section 7 provides an opportunity for government agencies, members of the public, experts in any relevant discipline and interested groups to make comments on the EIA of the activity before the Agency gives its decision. While section 11 provides that host communities be notified of an adverse effect of a Project as may be indicated by the EIA, the Act does not provide for a cancellation of such projects that are likely to affect host communities adversely. Though gas flaring is prohibited by law, yet IOCs pay little attention to its damaging effects. The Associated Gas Re-Injection Act¹⁴⁰ requires oil corporations operating in Nigeria to guarantee zero flares by January 1, 1984. Rather than comply, IOCs continue to flare gas, merely paying nominal fines for contravention. In *Gbemre v Shellcase*¹⁴¹ court ruled flaring by Shell and the NNPC, with which oil in Nigeria companies jointly operate, illegal and a violation of the rights to life and

dignity.¹⁴² Furthermore, some situations where the penalty is low it incapacitates the law and IOCs would rather pay a weak penalty than abate a harmful occurrence. For instance, section 6(2) of National Oil Spill and Detection Response Agency (N.O.S.D.R.A.) Act provides that default in reporting an oil spill attracts merely a fine of N500,000.00 for each day of failure to report the occurrence. Several regulatory agencies with oversight over specific industries have also issued guidelines to regulate the impact of such industries on the environment, however, limited manpower and financial resources, hampers their ability to carry out their mandate effectively. Another fact giving leverage employed by IOCs are the issues arising from the Land Use Act¹⁴³. The Act vests ownership of all land in Nigeria in the government¹⁴⁴ and as such the IOCs absolve themselves of responsibility to the Niger Delta people, claiming instead to be tenants of the Federal Government which has responsibility to its people. The judicial process in obtaining relief has also fundamental challenges. First, burden of proof of pollution or environmental degradation is placed on the plaintiff community or individual.¹⁴⁵

Conclusion

Nigeria's oil and gas legislations suffer a fundamental challenge of cohesion as it is fragmented in several legislative acts and regulations. In addition, inherent in these legal requirements are barriers that militate against the achievement of environmental sustainability, by providing defences to the IOCs. This further heightens the distrust between government, regulatory agencies, petroleum industry operators and communities that even the best intentions are often misunderstood. In any case, these regulatory agencies are not independent of government, which itself is a shareholder¹⁴⁶ in the major upstream oil and gas companies. This issue arose in

¹³⁷ See section 2(2) Environmental Impact Assessment Act provides that "where the extent, nature or location of a proposed project or activity is such that is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of this Act".

¹³⁸ The Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2002, published by the Department of Petroleum Resources (DPR) sets out a list of activities in the oil and gas sector that require environmental assessment. They include all seismic operations; oil and gas field developments onshore, nearshore, offshore and deepshore; hydrocarbon processing facilities; construction of waste treatment; and/or disposal facilities. After project completion, regular environmental audits must also be carried out. The FME requires an environmental audit to be carried out every 2-3 years. The DPR also carries out regular environmental audits of oil and gas installations, stations, depots, etc.

¹³⁹ In 1991, as part of the development of Gbaran Deep Oil Field, in Bayelsa State, a causeway to carry a road to the well heads was built on behalf of the SPDC by Willbros West Africa Inc., a US-based contractor to the oil industry. This road construction which was mainly by dredging and sandfilling with several branch-offs leading to the numerous locations caused the blockage of seasonal creeks, lakes, swamp pools and other water bodies. Before this road construction, hardworking fishermen and women from the Gbaran field communities enjoyed the benefit of catching a lot of fishes, shrimps and lobsters during the flood season to enhance our economic base. Being a major project in a delicate ecological system, construction of the road should normally have been preceded by a detailed Environmental Impact Assessment (EIA) which would have highlighted the possible impact of the project and environment, and also suggest mitigation measures. For an oil company, proper base line studies, EIA and a daily monitor of its operations ought to be a routine. Investigation in the Gbaran field revealed that no proper baseline study was conducted by Shell. The completely watered-down version which SPDC accepted cannot pass any test as a baseline study, let alone an EIA. Tari Dadiowei, Niger Delta Fund Initiative - Women, Environmental Impact Assessment (EIA) And Conflict Issues In The Niger Delta: A Case Study Of Gbaran Oil Field Communities In Bayelsa State, Earth Rights Institute, <<http://www.earthrights.net/nigeria>> accessed 24/3/2016

¹⁴⁰ No. 99 of 1979. Section 3 (1) prohibits, without lawful permission, any oil and gas company from flaring gas in Nigeria. Section 4 stipulates the penalty for breach of permit conditions.

¹⁴¹ *Jonah Gbemre v. Shell Petroleum Development Company (Nigeria) Limited & Ors.* Unreported suit No. FHC/B/CS/5305. The applicant, Gbemre, on behalf of the Iwhrekan community of the Niger Delta claimed, inter alia, "a declaration that the actions of the 1st and 2nd defendant (i.e. SPDC and Nigerian National Petroleum Corporation (NNPC) respectively in continuing to flare gas in the course of their oil exploration and production activities in the Applicant's Community is a violation of their fundamental rights (including health environment) and dignity of human person guaranteed by sections 33(1) and (34(1) of the Constitution of the Federal Republic of Nigeria, 1999 and reinforced by Articles 4, 16 and 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement)Act." Court granted all the reliefs as prayed. This decision has been appealed against.

¹⁴² Section 33 (1) of the Constitution of the Federal Republic of Nigeria, 1999 provides that "every person has a right to life. This is in consonance with Article 4 of the African Charter on Human and Peoples' Rights which provides that "Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right". These provisions impose a duty on government not only to ensure respect for the right to life but also to take effective measures towards ensuring that that right is not violated by either State or non-state actors. Right to dignity, is also provided for under section 34 of the 1999 Constitution

¹⁴³ Cap 202 of LFN 1990

¹⁴⁴ Section 1 of the Land Use Act provides, "Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of Nigerians in accordance with the provisions of this Act."

¹⁴⁵ For proceedings under the common law of negligence for losses suffered as a result of oil operation, plaintiff must establish that the discharge or escape of oil was as a result of the wrongful act of the oil company, viz failure to comply with good oil field practice, which resulted in a breach of duty of care. See *Anthony Atubie v Shell B.P. Development Co. Of Nigeria Ltd.* (Unreported) UCH/48/73 of 12th November 1974, a claim for damages arising from defendant's oil operations which led to the escape of crude oil, gas and other chemicals from their pipelines and consequently polluted the plaintiff's farmland and lakes and killing the fishes therein, failed for lack of evidence of negligence on the part of the defendant. However, in *Chief Simon Onajoke v Seismograph Service Ltd.*, the claim for damages for negligence succeeded after the court found that there was evidence of same on the part of the defendant in the course of blasting operations which resulted in damage to the Plaintiff's buildings. Consequently, led to injury of losses. See also *Shell Petroleum Development Co Nigeria Ltd v Ambah* (1999) 3 N.W.L.R. (Part 593) 1, *Elf Nigeria Limited v OpereSillo*(1994) 6 N.W.L.R. (Part 350) 258, *Otoko v S.P.D.C.* (1990) 6 N.W.L.R. (Part 159) 693.

¹⁴⁶ SPDC is the operator of a Joint Venture Agreement involving the Nigerian National Petroleum Corporation (NNPC), which holds 55%, Shell 30%, EPNL 10% and Agip 5%. See <<http://www.shell.com.ng>> accessed 27/2/16

the Ozoro Waste Injection Facility incident where it appears that the mandatory EIA was ignored in the permit process that authorized the injection of supposedly oil field wastes brought into the site from elsewhere. The Ozoro community's immediate protest was given relatively shabby treatment by the regulatory agencies. Nonetheless, the upcoming Petroleum Industry Bill¹⁴⁷ is proposed to address these issues and strengthen the legal framework for effective monitoring and compliance.

CORPORATE SOCIAL RESPONSIBILITY BY IOCS IN THE NIGER DELTA

Introduction

Corporate Social Responsibility (CSR) by multinationals and other corporate bodies, including International Oil Companies (IOCs) has become a trend in corporate governance.¹⁴⁸ One may argue that this is not unconnected with public outcry over the adverse effects of business activities of these companies on the environment, economy and the lives of the host communities. It is true that fossil fuel has driven economic growth for more than a century, enabling people to achieve higher standards of living. On the other hand, oil and gas production imposes significant costs on society, costs that include air pollution, oil spills, injuries, and deaths.²⁰⁷ The perception by host communities is that IOCS are not doing enough regarding development based on the consideration of amount of oil wealth taken from their lands. On the other hand, IOCs feel that they are doing enough and, have, in fact gone beyond the realm of normal CSR towards these communities.¹⁴⁹ In the face of these divergent issues lies the question of the ambit of CSR in relation to law, protection of the environment and sustainable development. If the CSR practices of multinational firms operating in Nigeria reflect the national business systems of their home countries, or is this an acceptable standard or is the Nigerian brand? This chapter offers an examination of the above questions, including the concept of corporate social responsibility, its role in the Niger Delta particularly considering the host communities' needs, and more significantly, whether its application erodes conformity with legal requirements and standards.

Concept of Corporate Social Responsibility: Corporate Social Responsibility is an essential tool to complement government efforts in the development of our communities, provision of necessary amenities, jobs and infrastructural facilities. This, even more significant because of the pervasive influence of large corporations such as IOCs, and the dynamics of their operations in communities where they are domiciled. Yet the traditional role of corporations has been profit maximization with little or no corporate obligations to its

¹⁴⁷ The Petroleum Industry Bill (PIB) is an Act to establish the legal and regulatory framework, institutions and regulatory authorities for the Nigerian petroleum industry, to establish guidelines for the operation of the upstream and downstream sectors, and for purposes connected with the same. <http://www.nnpcgroup.com/.../PetroleumIndustryBill.aspx> accessed 27/2/16

¹⁴⁸ CSR is more popular than ever in the business world. One would be hard-pressed to find a Fortune 500 company that does not publish some form of annual CSR report touting its investments in environmental sustainability, social progress and the like.

¹⁴⁹ David Spence, *Corporate Social Responsibility In The Oil And Gas Industry: The Importance Of Reputational Risk* The Chicago-Kent Law Review Vol. 86, No. 1 <cklawreview.com/issues/archive-vols-84-8/vol-86-no-1/> accessed 29/2/16

employees, consumers, customers or even the community and the State in which they operate. In 1970, free-market economist Milton Friedman wrote that "the one and only social responsibility of business" is to increase its profits.¹⁵⁰ His argument can be traced back to Adam Smith, who recognized that in the pursuit of self-interest the businessperson is "led by an invisible hand to promote an end which was no part of his intention."¹⁵¹ While this view is less prevalent today than it was 30 years ago, many business leaders and economists still take the view that the best way for companies to promote social development in a particular country is simply by increasing the overall level of economic activity through trade and investment.¹⁵² Following the global view on sustainable development, sensitized by the Brundtland Report¹⁵³ the more prevalent view is that CSR is action taken by corporations that benefit the society beyond the needs of those corporations. Though CSR is voluntary¹⁵⁴ and largely propelled by soft law,¹⁵⁵ certain scholars believe it is required by law.¹⁵⁶ This notion, perhaps stems from legal recognition given to it in certain jurisdictions. Significantly the gradually shift in CSR strategies now encompasses environmental issues. According to RémiClavet,¹⁵⁷ et al at the International Institute for Labour Studies, if one had to explain the scope of CSR, the whole philosophy behind it could be summed up in the "triple bottom line" theory ("people, planet, profit"): a business, no matter where it – directly or indirectly – carries out its activity, must be judged according to three criteria: how it treats its employees, how its activity affects the environment, and how much profit it makes.¹⁵⁸ Increasingly, several international bodies have set the principles of CSR as a means of self-regulation and a corporate performance guide. However, what still remains to be seen is whether these CSR strategies meet the needs of the particular society or are handed down as

¹⁵⁰ M Friedman, 'The Social Responsibility of Business Is to Increase Its Profits,' New York Times Magazine, 13 September 1970. See also Milton Friedman, *Capitalism and Freedom*, (University of Chicago Press, Chicago, 1962)

¹⁵¹ Adam Smith, 'The Wealth of Nations' Everyman, London, Vol. 1 1971

¹⁵² Bronwen Manby, Shell in Nigeria: Corporate Social Responsibility and the Ogoni Crisis: Case Study 20. The Carnegie Council on Ethics and International Affairs 2000 <<http://www.carnegiecouncil.org/education/003/cs/020/>> accessed 3/02/13

¹⁵³ The 1987 Brundtland Report of the UN World Commission on Environment and Development came up with the term "sustainability", defining it as development "that meets the needs of the present without compromising the ability of future generations to meet their own needs".

¹⁵⁴ The EU's Green paper on CSR defined it as 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis'. See <http://europa.eu.int/comm/employment_social/socdial/csr/csr2002_col_en.pdf pg 4> accessed 29/02/16

¹⁵⁵ Maria Gjørlberg, 'Explaining Regulatory Preferences: CSR, Soft Law, or Hard Law? Insights from a Survey of Nordic Pioneers in CSR', *Business and Politics*: Vol. 13: Iss. 2, Article 4, 2011 <<http://www.bepress.com/bap/vol13/iss2/art4>> accessed 29/02/16

¹⁵⁶ McWilliams and Siegel define it as "... actions that appear to further some social good, beyond the interests of the firm and that which is required by law". See A. McWilliams and D. Siegel, *Corporate Social Responsibility: A Theory of The Firm Perspective*. Academy of Management Review, Vol. 26 No.1, 117-127 1 January 2001 <<http://amr.aom.org/content/26/1/117.abstract>> accessed 29/02/16

¹⁵⁷ RémiClavet, *Governance, International Law & Corporate Social Responsibility*, International Labour Organization International Institute for Labour Studies, Research Series 116, 2008 <<http://www.ilo.org> > ... > Publications > Research series -> accessed 29/02/16

¹⁵⁸ See also Laura Quinn and Jessica Baltes, 'Leadership and the Triple Bottom Line: Bringing Sustainability and Corporate Social Responsibility to Life', Center for Creative Leadership, 2007 <<http://www.ccl.org>> accessed 1/3/16.

philanthropic gestures or employed as palliative¹⁵⁹ or cloak in countries where inadequate regulations does not allow for best standards monitoring and compliance with legal requirements. Corporate social responsibility is a useful framework for exploring businesses attitudes, strategies and relationships with the society, environment and stakeholders. However, in the Niger Delta, this agenda is fraught with misgivings, following a shroud of suspicion, distrust and perceived wrongdoing on the part of IOCs.¹⁶⁰

Environmental Degradation in the Niger Delta: The reason for this is not far-fetched. Since commercial discovery of crude in Oloibiri, E&P activities have continued in the Niger Delta for over five decades resulting in colossal degradation of land, forest and water resources including pollution of the air occasioned by gas flaring. The degradation includes oil spills, gas leaks, blowouts, canalization and the discharge of wastes and effluent from oil and gas operations directly into surface water bodies and the land surface. Oil spills occur due to a number of causes that include corrosion of pipelines and storage tanks, sabotage, and accidents in oil production operations. A World Bank survey¹⁶¹ estimated that about 2.3million cubic metres of crude oil is spilt in about 300 separate incidents in the Niger Delta region each year; observed that oil companies deliberately understate the incidents of oil spillage, and that the total volume of oil spilt might be as much as ten times the official figures. The official figures of SPDC (2004)¹⁶² show that 3 million barrels were spilled in 6,187 incidents between 1976 and 2001, in which according to UNDP report¹⁶³, greater than 70 per cent of this volume went unrecovered. Drawing from the World Bank Survey, it may be concluded that more than 30 million barrels have been spilled into the region in the same period. Significantly, the Funiwa 5 oil wells blowout in 1980 and Jones Creek oil spillage of 1998 resulted in greatest mangrove devastation ever recorded worldwide.¹⁶⁴ Oil spills deplete aquatic fauna as they interfere with biological life in surface waters creating unsightly floating matter and film. The consumption of dissolved oxygen by bacteria feeding on the spilled hydrocarbons also contributes to the death of fishes.¹⁶⁵

¹⁵⁹ F. Emiri and G. Deiduomo, *Law and Petroleum Industry in Nigeria: Current Challenges, Essays in Honour of Justice Kate Abiri*, (Malthouse Press Limited, Lagos, 2009).

¹⁶⁰ The United Nations' Human Development Report of the Niger Delta among several alarming declarations on the state of the region's environment asserts that "there is a strong feeling in the region that the degree and rate of degradation are pushing the delta towards ecological disaster". U N D P (2006), Niger Delta Human Development Report. Pp United Nations Development Programme 229<<http://www.hdr.undp.org/.../reports/nationalreports/.../nigeria/name,3368>> accessed 1/03/16.

¹⁶¹ P. Grevy, 'The Niger Delta in Nigeria: A Pollution Assessment Study', World Bank, Washington D.C. 1995.

¹⁶² Shell Petroleum Development Company (2004), Annual Report

¹⁶³ UNDP op cit 180

¹⁶⁴ For adverse effects of crude oil, engine oil and spent lubricating oil on soils and the suppression of germination of seeds, regeneration as well as stomata abnormalities in diverse food crops, see M. Rowell, 'The Effect Of Crude Oil On Soils: A Review Of The Literature', in J. Toogood, (ed.), *The Reclamation of Agricultural Soils After Spills*, Part 1, Edmonton Publishers, Canada, 1977. See also E. Atuanya, 'Effects of Waste Engine Oil Pollution on Physical and Chemical Properties of Soil: A Case Study of Waste Oil Contaminated Delta Soil In Bendel State', Nigerian Journal of Applied Science, Vol 5, 1987.

¹⁶⁵ Niger Delta Environmental Survey (NDES) Environmental and Socio-Economic Characteristics, Lagos, 1997, A. Egborge, et al 'Thermal and Chemical Pollution of Benin River and its Tributary, the Jamieson river in Nigeria', Nigerian Journal of Applied Science Vol 4, 1986, Otukunefor, and C. Biukwu 'Impact of Refinery Influent on Physico-chemical Properties of a Water body on the Niger Delta', Applied Ecology and Environmental

These are direct violations of paragraph 25 of the Petroleum (Drilling and Production) Regulation¹⁶⁶ which states that "The licensee or lessee shall adopt all practicable precautions including the provision of up-to-date equipment approved by the Director of Petroleum Resources to prevent the pollution of inland waters, rivers, water courses, the territorial waters of Nigeria, or the high seas by oil, mud or other fluids or substances which might contaminate the water, banks or shore line 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." In the event of occurrence of any spill adequate compensation shall be paid to the victims.¹⁶⁷ In *Elf Nigeria Limited v Opera Sillo*,¹⁶⁸ the Court awarded compensation to the Sillo family for loss of fishing right occasioned by oil pollution in the form of oil spill which poured silt into the tidal rivers where they carried out their occupation as fishermen.

The very old age of the pipelines, some of which were laid fifty years ago¹⁶⁹ and the lack of regular inspection and maintenance contributes to the high incidence of spills. The Niger Delta has an extensive network of pipelines, between the fields as well as numerous small networks of flow lines –that carry oil from wellheads to flow stations, allowing many

Research. Vol. 3, No. 1, 2005 lament the loss of biodiversity, alteration of habitats and deforestation that is associated with petroleum exploitation related canalization. This canalization which is quite extensive in the region opens up previously pristine and inaccessible ecosystems to illegal logging activities. Ndiokwere, C L; Ezehe "The Occurrence of Heavy Metals in the Vicinity of Industrial Complexes in Nigeria" Environmental International, Vol 16, 1990 also report high levels of heavy metals in soils and plants near the Warri Refinery. O. Emoyan 'Water Quality Assessment of River Ijana, Ekpan, Warri, Delta State, Nigeria,' Journal of Chemical Society, Nigeria, Vol 31, No(1&2), 2006 have also confirmed high levels of heavy metal contamination of River Ijana - an effluent receiving stream that flows by the same refinery. A. Spiff and M. Horsfall, 'Trace Metal Concentrations in Inter-Tidal flate Sediments of the Upper New Calabar River in the Niger Delta area of Nigeria'. Scientia Africana. Vol 3, 2004, reported trace metal contamination of the intertidal flats of the Upper New Calabar River in the Niger Delta.

¹⁶⁶ Section 9(1) of the Petroleum Act, empowers the Minister in charge of Petroleum Resources to make regulations on various matters, including prevention in water courses and the atmosphere. See also Impact Assessment of the 1983 Oshika oil spill which confirmed the death of floating and submerged aquatic vegetations especially water lettuce, crabs, fish and birds. Power and White, (1985), An Impact Assessment of the 1983 Oshika Oil Spill in O. Emoyan, The Oil and Gas Industry and the Niger Delta: Implications for the Environment, J. Appl. Sci. Environ. Management, Vol 12 (3) September 2008. <<http://www.bioline.org.br/ja>> accessed 20/11/12 Several other research projects have all shown that the pollution levels of aquatic ecosystems observed in the region are a result of unregulated effluent discharges and unsustainable methods of petroleum extraction. See A. Egborge et al. 'Thermal and Chemical Pollution of Benin River and its Tributary, the Jamieson river in Nigeria'. Nigerian Journal of Applied Science Vol 4, 1986.

¹⁶⁷ Paragraph 23 of the Petroleum (Drilling and Production) Regulation. See also *S.P.D.C. v. Adamkue* (2003) 11 N.W.L.R. (Part 832) 533. In *Shell Petroleum Development Co Nig Ltd V Farah* (1995) 3 N.W.L.R. (Part 382) 48, where the Court of Appeal considered this provision in the Petroleum Act, in awarding compensation to the Respondents who suffered injury and damage as a result of oil spill. See also Section 65 of Minerals and Mining Act, on prohibition of pollution of waters by mining operations. See also sections 1, 3 and 6 of the Oil in Navigable Waters Act.

¹⁶⁸ (1994) 6 N.W.L.R. (Part 350) 258

¹⁶⁹ Many of Shell's rusty, leaky pipelines date back to the 1970s and have been poorly maintained ever since (see pages 31-36 and 43 of Friends of the Earth Netherlands report). It was equipment failure that caused Shell's high-pressure Trans-Niger pipeline to rupture on 28 August 2008, gushing an estimated 2,000 barrels of oil per day into Bodo for weeks. The land and water were covered in thick layers of crude. Shell was also responsible for a second spill from the same pipeline on 2 February 2009. It is also alleged that following this spill SPDC offered bags of rice, sugar and the sum of 3,500 to each affected person. Patrick Naagbantoni, *Shell Has Admitted Liability But Has A Long Way To Go To Make Amends*, The Guardian, 4 August 2011 <<http://www.guardian.co.uk/commentisfree/.../shell-nigeria-oil-spills>> accessed 1/03/16

opportunities for leaks, where maintenance is low.¹⁷⁰ Oil and gas activities also results in gas flaring as discussed causing devastating impact in the region. IOCs in Nigeria engage in gas flaring, burning the associated gas that comes out of the ground when oil is extracted. Some of these flares have burned without cessation for 40 years. People live literally next door to the roaring, ground-level flares that leap as high as a several-story building and belch black clouds of toxic smoke in the middle of, or next door to, their villages.

Corporate Social Responsibility in the Niger Delta: While weighing the balance of shareholders and society, IOCs engage in a broad social contract in order to preserve their legitimacy and license to operate.¹⁷¹ Against a backdrop of environmental degradation within the communities where they operate, these companies are not only assessed by their level of commitment in performing their social responsibilities but also to what extent they have achieved these. While incorporating social goals in their corporate governance agenda, the question arises whether IOCs truly live up to the expectations of the communities where they operate. Protests have been seen by communities as a major way of attracting attention of the oil companies, government and the general public to their plight. In very recent times, this has become the focal point of addressing their grievances. Before now, especially during the military era, Shell, Mobil, Chevron and others respond to these protests by securing the assistance of the Nigerian police or military to terrorize and brutalize the people. Continued degradation has drawn world attention to the Niger Delta and compelled IOCs operating in the region to contribute more to development in the area. For instance, Chevron under the Global Memorandum of Understanding¹⁷², gives communities greater roles in the management of their development through newly created Regional Development Councils (RDCs).¹⁷³ During this period, Chevron in conjunction with NNPC, have awarded several scholarships. Shell, has also shifted its focus from just the provision of infrastructures in host communities (roads, schools, clinics, and the provision of portable water) to specific community development programmes which include micro credit scheme, health scheme and award of scholarships.¹⁷⁴ Despite these initiatives,

many still view CSR as welfare packages which often can only serve as a palliative measure because damages caused by these companies are sometimes irreversible and irredeemable.¹⁷⁵ According to Hennchen,¹⁷⁶ whose study highlights how Shell has manifestly failed to manage the way it operates, despite its own claims to having extremely high self-imposed standards of socio responsibility, "There's a paradox in Nigeria. Shell's CSR efforts are counterproductive because, on the one hand, they build hospitals and schools, but on the other, they are not doing enough to counteract the negative impact their core business has on the environment".¹⁷⁷ Corporate Social Responsibility (in this work closely connected with environmental responsibility), cannot be disconnected from compliance with minimum legal requirements for environment and labour protection, fair competition and corporate governance. CSR therefore advances better compliance and enforcement of minimum standards. Companies operating in both national and global markets are required to balance the social, economic and environmental components of their business, and at the same time build shareholder value. Blomback and Wigren¹⁷⁸ argue that a firm's social responsibility has to do with operational activities ranging from bills payments, abiding by the law and caring for the environment.

Conclusion

Society will constantly seek the means to control oil and gas development so as to minimize the risk of harm and provide redress in the event harm is done, this is typically accomplished through laws and regulations. Requirements that impose limits on emissions of pollutants from projects specify safety standards the project must meet, and so on. Yet we also know that in such a technically challenging industry, accidents will happen. Therefore, societies look to oil and gas companies to self-regulate: to do more to guard against risks to society than merely comply with the law. Perhaps more so than in any other industry, people demand CSR from oil and gas companies. It has been suggested that CSR can only be effective where the human right nature of environmental protection is recognised.¹⁷⁹ Sadly, the Constitution of the

¹⁷⁰ Niger Delta Environmental Survey (NDES) Environmental and Socio-Economic Characteristics, Lagos, 1997.

¹⁷¹ Generally, CSR posits that firms are not just profit-making machines. In other words, companies have wider responsibilities and must treat their workers with respect, limit environmental degradation, protect human rights, operate in an ethical manner and act with integrity to customers.

¹⁷² As at March 2011, Chevron claims the initiative has generated approximately 200 projects in more than 400 communities, villages and chiefdoms and 600,000 community members have benefited immensely from this scheme. See Chevron Nigeria Limited, 'Corporate Responsibility: Making a Difference' 2009. <<http://www.chevron.com/documents/pdf/cnl20>> accessed 5/3/16.

¹⁷³ Chevron has supported small and medium scale enterprise development and micro credit finance giving loans to 160 women between 2008 and 2009 to boost small trading businesses. Also, as part of their CSR, they have empowered local contractors as part of their commitment to Local Community Content Development. In its desire to build human capacity, training of contractors and entrepreneurs has been pursued and as at 2009, 680 community contractors and entrepreneurs have participated in the training.

¹⁷⁴ Such shift in focus has produced 27 clinics in the Delta and over 17,000 children are on Shell scholarship at any point in time. As at 2010, Shell companies in Nigeria had trained 1,900 service providers in General Contracting, developed eight local dredging companies, awarded 10 United Kingdom scholarships and trained more than 3000 people in entrepreneurship, scaffolding, project management, welding, catering and other vocations. See A. Burger, Shell in Nigeria: "Oil, Gas, Development and Corporate Social Responsibility" 2011 <http://www.triplepundit.com/2011/07/shell> accessed 5/3/16

¹⁷⁵ P. Itsueli, Environmental Pollution in Nigeria: An Appraisal of Corporate Social Responsibility for Victims of Oil Pollution in Nigeria in F. Emiri and G. Deiduomo, *Law and Petroleum Industry in Nigeria: Current Challenges, Essays in Honour of Justice Kate Abiri*, (Malthouse Press Limited, Lagos, 2009)

¹⁷⁶ E. Hennchen, 'The role of oil majors in supporting sustainable peace and development in Nigeria: the case of Royal Dutch Shell', in M. Prandi & J. M. Lozano (Eds.), *CSR in conflict and post-conflict environments: from risk management to value creation*. (School for a Culture of Peace (UAB); Institute for Social Innovation (ESADE), Barcelona, 2011).

¹⁷⁷ Article 12 of the United Nations Conference on Economic, Social and Cultural Rights sets a detailed guideline for the Implementation of the Right to Health which includes "the improvement of the environmental and industrial hygiene." This paved the way for subsequent developments in the area of right to a healthy environment.

¹⁷⁸ A. Blomback and C. Wigren, 'Are Not Multinationals Also Community Actors? Challenging the Notion of Small Versus Large Firm Corporate Social Responsibility' (2008) Jönköping International Business School; CIRCLE, Lund University.

¹⁷⁹ At Stockholm, in 1972, nations came together to "delineate the 'rights' of the human family to a healthy environment". Principle 1 of the Stockholm Declaration on the Human Environment provides that "man has a fundamental right to freedom, equality and adequate condition of life, in an environment of quality that permits a life of dignity and wellbeing, and he bears a responsibility to protect and improve the environment for present and future generation". Though there has not been a legally binding document on these rights, the African Charter on Human and Peoples Right (African Charter) provides in Article 24 that "all peoples shall have the right to a generally

Federal Republic of Nigeria only states an unjustifiable duty of the State to “protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria.”¹⁸⁰ It is argued that where environmental rights are recognised and enforced, CSR will become meaningful because liability will be strict and companies made to pay heavy fines to government, pay for restoration and damages to the victims and uphold CSR as a drive for compliance with safety regulations.

CONCLUSIONS AND RECOMMENDATIONS

Recommendations: Towards Peace and Equity in the Niger Delta: Ikein¹⁸¹ rightly observed that ‘any research may be useful in providing new forms of enlightenment about the subject matter, but it would not be of real value without proposing specific ideas as solutions to the problems discussed’. In keeping with the need to propose solutions to the identified problems, the following recommendations are made:

Provision for Participation and Control of Resources: The constitutional and statutory provisions (such as contained in the Petroleum Act and the Land Use Act) result in a situation where the local/indigenous people of the region neither participate in the process of oil operations nor are they entitled to a share of the royalty paid for the exploitation. This situation partly contributes to the protests by local people and the movement for resource control. While ownership may remain with the federal government, it is recommended that provision should be made for the participation of the Niger Delta indigenous people in the exploitation of oil resource, which is found in their homestead. Specifically, as recommended below, the people should be recognized as customary owners of the land as hitherto and should be consulted and carried along by the federal government when any decision is to be made concerning the exploitation of oil. Significantly, this will be in conformity with customary international law relating to the rights of indigenous peoples to land and natural resources as well as be in compliance with Nigeria’s obligation under the African Charter on Human and Peoples’ Rights.¹⁸² Moreover, a provision for meaningful participation in the entirety of oil operations by the indigenous people of the Niger

satisfactory environment favourable to their development”. Nigeria adopted the treaty in 1983 when the National Assembly enacted the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act 1983 (now Cap. 10 Laws of the Federation of Nigeria, 1990). See *General Sani Abacha & Ors v. Chief Gani Fawehinmi* 6 NWLR (Pt.660)228 where court held that “the African Charter which is incorporated into our municipal (i.e. domestic) law by the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act Cap. 10 Laws of the Federation of Nigeria 1990 (hereinafter is referred to simply as Cap. 10), becomes binding and our Courts must give effect to it like all other laws falling within the Judicial power of the Courts. By Cap. 10 the African Charter is now part of the laws of Nigeria and like all other laws the Courts must uphold it. The Charter gives to citizens of member states of the Organisation of African Unity rights and obligations, which rights and obligations are to be enforced by our Courts, if they must have any meaning. See also the 1988 “San Salvador” Protocol to the American Convention on Human Rights. In *Hatton v. United Kingdom* (2002) 34 E.H.R.R., the European court of Human Rights held that state had a duty to take reasonable and appropriate steps to uphold the resident’s rights. A balance had to be struck between the interests of the residents and the international of the community in general and not withstanding concerns for the economic wellbeing of the country, the state had to take measures to try and put an applicant’s right. See also *Lopez Ostav. Spain* (A/305-C) 1995 20 E.H.R.R. 277.

¹⁸⁰ See the Fundamental Objectives and Directive Principles of the 1999 Constitution of the Federal Republic of Nigeria.

¹⁸¹ Ikein, A.A., *The Impact of Oil on a Developing Country: The Case of Nigeria* (New York: Praeger, 1990).

¹⁸² See Article 21

Delta will be in accord with the international human right to development. To be meaningful, apart from participation in the making of decisions concerning oil operations (which should include environmental management), participation should include the right to receive a certain percentage of royalties for oil operations. This will ensure that some cash is put directly into the hands of the local people, and this is important from the perspective of their personal interests and the elimination or alleviation of poverty. In this way, the people would have been given a measure of control over their resources, while the federal government retains ownership and some measure of control as well. This will entail constitutional and statutory amendments or new legal provisions, specifically, on the issue of exclusive ownership of oil. Importantly, this will be in line with recent developments elsewhere in the world. For example, there is evidence that most indigenous communities in Australia and Canada now receive royalties directly and individually for the exploitation of natural resources in their lands.¹⁸³

Repeal of Obnoxious and Contentious Statutes: There is no question that certain oil-related statutes, especially the Land Use Act (LUA), have contributed immensely to the near-crisis situation in the Niger Delta region. Before its promulgation in 1978, there was no evidence of any serious protest against the government and oil company activities, notwithstanding that the Petroleum Act vested the entire ownership of oil in the federal government. The pre-existing land tenure (customary land law) enabled the local people to participate to a certain degree in oil operations. The LUA ended this important position. More than this, the Act has brought about a denial of compensation to persons who suffer loss of their land for the purposes of oil operations or damage to their property as a result of oil operations. So that, the Act operates unfairly on the local people, compelling protests especially from persons who have lost their means of livelihood as a result of oil operations. Accordingly, in order to end the protests, it is highly advisable to repeal the Act which the people consider obnoxious and oppressive, and this is hereby recommended.

Employment of Local People by Oil Companies: The statutory provision for the employment of Nigerians in oil companies should be amended to provide positive discrimination in favour of the Niger Delta people. This is a recommendation for affirmative action in favour of minorities, which is not necessarily against national and international legal provisions of equality and non-discrimination. On the contrary, the idea is to give real equality to the minorities. The Nigerian State should not pretend that it is unaware that the minority status of the Niger Delta people is likely to affect, and indeed has affected their chances, in employment issues. The allegation that Nigerians from the majority ethnic groups in the country dominate employment in the oil companies has never been denied, either by the government or any of the oil companies. Since unemployment in the oil companies is one of the critical complaints of the people, it is important to address this issue by providing for the employment of a certain percentage of the local people at the different cadres of the oil companies. Importantly, employment of indigenous peoples is one of the ‘emerging rights’ of indigenous peoples under

¹⁸³ O’Faircheallaigh, C., ‘Resource Exploitation and Indigenous People: Towards a General Analytical Framework’ in Jull, P. and Roberts, S. (eds.), *The Challenge of the Northern Regions* (Northern Territory: North Australia Resource Unit, Australia National University, 1991)

relevant international instruments,¹⁸⁴ and is an important aspect of the human right to development.¹⁸⁵

Revival of Agricultural Sector: The local/traditional economy of the Niger Delta people was based on farming and fishing. From what has been seen in this book, that economy has been destroyed by the activities of oil operations – particularly the impacts of oil spillage and gas flare. So that most of the people have lost their means of livelihood and have no employment in the oil companies as an alternative means of livelihood. It is recommended that oil revenue should be made to have inter-sectoral impact which has hitherto not been the case; the federal government should invest in projects to revive the country's moribund agricultural sector which has been found capable of employing a large number of people. In Shetland Islands and Malaysia,¹⁸⁶ the governments have successfully adopted this approach to the benefit of the people. It should be mentioned that the revival of the agricultural sector will involve certain actions beyond investment in agricultural projects; it will also involve the implementation of relevant statutes and policies to remediate degraded lands and protect it from future degradation.

Provision for the Payment of Adequate Compensation: Since acquisition of land for oil operations and damage arising from oil operations entail loss to local peoples, it is important that the governments and oil companies should take the payment of compensation very seriously. The present situation, characterized by non-payment of compensation or the payment of inadequate compensation, has largely contributed to the frequent protests in the region and should therefore be reformed. Consistent with the Nigerian Constitution and the principles of fairness and justice, there should be adequate statutory provisions for the payment of compensation, both for land acquired for oil operations and for damage arising from oil operations. The present statutes providing for the payment of compensation do not define 'adequate' or 'fair' compensation, and this has resulted in some difficulties (such as the arbitrary fixing of compensation rates). A statutory definition of 'adequate' or 'fair' compensation should be provided immediately,¹⁸⁷ and there should be no provision restricting the determination of disputes about entitlement or quantum of compensation to government-controlled administrative. In other words, regular courts should be allowed to adjudicate on compensation disputes. And to avoid delay, which is endemic in the Nigerian legal system, a special court should be created to handle compensation claims (this can be called 'Compensation Claims Court' (CCC)), with a provision that its decision up to a certain amount of money is final; beyond that, an appeal will lie up to the Court of Appeal. The CCC should be established in as many areas in the region as necessary, and it should not be buoyed down by technical rules of procedures so as to enable illiterate people to present their case without difficulties. Furthermore, where scientific evidence will be required to establish a claim, the court should appoint an expert in government employ to do that, at no cost to the plaintiff and at no extra cost to the State. This will be a form of legal aid, probably with a provision for contribution by the plaintiff in appropriate cases. The idea of non-payment of compensation for alleged cases of sabotage should be

discarded, and supportive statutory provisions abolished. This is because in cases where innocent victims are affected it could lead them to acts of sabotage in retaliation for the damage they have suffered. While saboteurs should continue to be treated as criminals, victims of any oil operations damage should primarily be entitled to compensation, unless it is proved that they are responsible for the damage. The inability to catch saboteurs is a failing of law enforcement agencies, and this should not be visited on innocent persons. Finally, to ensure prompt and adequate payment of compensation, a 'Compensation Fund' should be created (pursuant to legal provisions) by the oil companies, including the Nigerian-owned Nigerian National Petroleum Corporation (NNPC), into which the companies will contribute a certain percentage of their annual budget in order to defray large compensation claims that might arise in the course of their operations; the minimum amount for the application of this fund should be fixed. This will assist quick response to urgent and large compensation claims, as a result of a large-scale damage (such as the Funiwa-5 oil blow-out of 1980 in Rivers state). Significantly, such a 'fund' will be in accord with Principle 13 of the 1992 Rio Declaration on Environment and Development (the Declaration has arguably become part of customary international law¹⁸⁸), which states in part: 'States shall develop national law regarding liability and compensation for victims of pollution and other environmental damage'.

Recognition of Social Responsibilities by Oil Companies: Oil companies operate within communities and cannot afford to be aloof to the social needs of the people. Granted that it is the primary responsibility of governments to provide social infrastructure for the people, MNCs should see themselves as 'corporate citizens' of the communities where they operate and should recognize the right of the local/indigenous people to development assistance from them. Apart from assisting in promoting cordial community relationship with the companies this policy will assist to track down saboteurs of oil installations. Although oil companies operating in the Niger Delta have in the past assisted local communities in various ways, there is evidence that the claims of the oil companies in this regard are exaggerated and the assistance inadequate. Of importance also is the possibility that the project (s) received by some communities is not what the people really want. Hence, it is necessary that the communities should be allowed to provide a list of projects which they require and from which the companies will choose, having regard to the priorities set by particular communities. Moreover, in executing community-assistance projects, local people should be largely employed – particularly at the unskilled level. In addition, where there are competent local people to handle technical/skilled aspects, they should not lightly be disregarded.

Reform and Enforcement of Environmental Standards: The bane of the Niger Delta environment, as has been seen, is not necessarily the lack of environment protection statutes. Rather, the relevant statutes are inadequate in certain important respects (such as the special defence permitted under section 4(5) of the Oil in Navigable Waters Act) and, more

¹⁸⁴See, for example, ILO Convention No. 169 (Art. 20).

¹⁸⁵See UN Declaration on the Right to Development, Art. 8.

¹⁸⁶See Ikein (1990: 122 – 124).

¹⁸⁷The definition should take account of loss of future earnings in the assessment of compensation payable.

¹⁸⁸See generally, Final Report Prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur, U.N. Economic, Social and Cultural Rights Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities (U.N. Doc. E/CN.4/Sub.2/1994/9 (1994)).

importantly, the statutes are hardly, if ever, enforced. As long as such inadequacies remain, there is no likelihood of effective and proper all-round environmental protection, and this has the potential to generate protests in future. Moreover, the non-enforcement of the statutes for the purposes of protecting alleged 'national economic interests'¹⁸⁹ may be seen in ethnic perspective, thus leading to protests presently and in the future. Hence, it is highly recommended that inadequate or improper environment-related provision should be reformed (for example, by repeal) and the relevant authorities should be made to effectively enforce the relevant statutes. In this context, particularly given the weakness of the Nigerian government in relation to the MNCs, it is important that diplomatic and other channels should be pursued to make MNCs accountable for their activities – particularly in the area of environmental protection and social responsibility. Perhaps one way of achieving this is for example, requiring MNCs to comply with environmental standards in their home countries.

Protection and Conservation of Biodiversity and Wetlands:

The rich biodiversity and the wetlands of the Niger Delta region must not be allowed to be destroyed; already oil operations have adversely impacted on them. The protection of the biodiversity and the wetlands of the region are important for several reasons, including their importance to the local communities (for example, as a source of employment and food). Essentially, protection should involve statutory measures designed to prevent human activities (such as oil operations) from adversely affecting the wetlands or destroying habitats. Presently, the Nigerian law is deficient in this, as in many other regards.

Development Agency and Government Responsibilities:

The need for a development agency, such as the Niger Delta Development Commission (NDDC), cannot be denied; but whether it is the panacea to the development needs of the people is a different issue altogether. The importance of such an agency lies in the need for a specialized body to undertake development of the area; a role which may not properly be discharged by the people directly or by the respective state governments.¹⁹⁰ However, NDDC cannot provide all the development and other needs of the people.¹⁵¹⁴ The different levels of government – local, state, and federal – should not shirk their responsibility to the people in the provision of social infrastructure.¹⁵¹⁵ The agency should be seen as a strategy to more specifically address the developmental needs of the local people, particularly as a benefit of oil operations; it should not replace the responsibilities of governments. As Chief Edwin Clark argued: 'The NDDC...cannot be a replacement of the federal government responsibilities towards the Niger Delta people, particularly in the field of road construction, bridges, major water projects and electricity which are annually budgeted for by the federal government; and...the federal government had budgeted and executed...such projects in other parts of the country, ranging between N16 billion to N200 billion'.¹⁹¹

¹⁸⁹National economic interests are undoubtedly important, but this should be carefully balanced against the interest of the individual or a group (excepting times of extreme national emergency).

¹⁹⁰In view of this, it is further recommended that part of the funds of the agency (NDDC) should come from a percentage of royalties due to the local people directly.

¹⁹¹See 'Clark chides oil firms over excuses on 3% NDDC dues' (*Vanguard*, 6 August 2002). Interestingly,

Development Agency and Participation of the People: It is very important that the local people should have the right to participate in the activities of any agency, such as the NDDC, designed to bring development to them. To achieve this, a statutory amendment will be needed to provide for the oil-bearing communities to elect or select a person who will directly represent their interests in the Board of the Commission, as suggested by the Willink's Commission in 1958. It is improper and undemocratic for the President of the federation (maybe with the input of the governor of the relevant states) to appoint persons into such a body without consulting the people whose interests are to be served. Such exclusive appointees are likely to be seen as representing their 'masters' and not the people. Further, the people should also participate in the determination and execution of relevant projects. As suggested in the case of oil-company assisted community projects, the local people should be invited to submit a list of projects, in order of priority, from which development projects will be selected. In this way, there will be no accusation of execution of irrelevant projects. Moreover, the local people should be engaged in the execution of the projects, particularly at the unskilled level, while ensuring that qualified local people handle skilled jobs as well. Importantly, this will be in accord with the right to participation, which is an important aspect of the human right to development as well as with the emerging rights of indigenous peoples under ILO and UN instruments.

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in his inaugural speech on 21 December 2000 former President Obasanjo underlined that the NDDC was not intended as a replacement of the role of all tiers of governments in the area covered by it (see: <<http://www.nddconline.org/Speeches/president-inaugural.shtml>>

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