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CORPORATE SOCIAL RESPONSIBILITY IN NIGERIA'S OIL AND GAS INDUSTRY: A CRITICAL ANALYSIS

by

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Abstract

The oil and gas industry in Nigeria has been buffeted by lots of problems not limited to violence, kidnappings, eco-terrorism, and maladministration amongst others. As a result, multinationals (MNCs) have increasingly responded to this challenge by adopting partnership strategies as a means of contributing to community development, building a mutually beneficial relationship with local communities and reinventing themselves as a force for good in their host communities. The volatile nature of corporate-community relations, which has meant significant loss in oil revenue for government and decline in corporate profit for oil multinational (MNCs), has elevated obtaining of a 'social licence to operate' from the periphery to the heart of strategic business thinking within the Nigerian oil industry. The aim of this paper is to examine the nature of corporate social responsibility (CSR) programmes in Nigeria's oil and gas industry. This paper has as its objectives amongst others, to ascertain whether there exists a proper legal framework in the oil and gas industry regulating the performance of corporate social responsibility in Nigeria, and to further probe the possibility of its enforceability. The doctrinal research method was adopted as both the primary and secondary sources of law were relied upon. It was found that there was no clear-cut legal framework guiding multinationals in embarking on corporate social responsibility therefore giving the multinationals the discretion to either embark on same or not. The paper recommended that proper implementation of CSR by oil companies has the potential to remedy the findings and prevent or minimize its prevalence, thereby contributing significantly to the sustainable development of the region.

Keywords: Corporate Social Responsibility, IOC's, Host Communities, Oil and Gas Industry

INTRODUCTION

Contemporary exigencies due to globalisation, the end of the cold war, information technology revolution and the bifurcation of world politics have all necessitated the re-evaluation of business-society relationship,[1] and facilitated innovative business social responsibility practices. The re-emergence of the idea that business has social responsibility that goes beyond profit making, to include helping to solve societal social and environmental problems (Corporate Social Responsibility [CSR]), has provided a fertile ground for the debate that has shaped the present direction now assumed by business-society relationship. Critics have argued that CSR is a distraction for business from meeting its primary goal of profit making, an inefficient means of allocating scarce resources, and that business lacks the legitimacy and competency to take on any such responsibility outside its primary area of expertise. In contrast, proponents of CSR have responded that the monumental increase in business power, the widespread incidence of corporate misdemeanours, issues of ethics and the increasing inability of governments to meet their basic responsibility to society as well as regulate business activities have meant that the acceptance of social responsibility by business was both inevitable and a necessity.[2]Oil and gas production is one of the key businesses in the world; due to high demand for

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[1] G. O. Yomere, 'Corporate Social Responsibility of Oil Companies in the Niger Delta' in C. O. Orubu and others (eds), *The Petroleum Industry, The Economy and the Niger Delta Environment* (Abraka: Delta State University Press 2002)

[2] K. Davis, and L. R. Blomstrom, *Concepts and Policy Issues: Environment and Responsibility* (New York: McGraw-Hill 1980)

energy for domestic, transportation and industrial usage.[3]Today, the demand for oil and gas is not only restricted to energy supply, but it serves as input for the production of medicines, plastics and fertilizers, as well as animal feed stock.[4]Oil and gas reserves are found across the globe, notably in countries like Saudi Arabia, Russia, Venezuela Norway, Canada and Nigeria.[5]

The demand for petroleum and its products is on the increase, so is the competition among oil companies for dominance and a substantial share in petroleum, hence the presence of oil multinationals in the oil producing region of the Niger delta, Nigeria. Oil and gas production and exportation became a major source of revenue for many oil producing countries, Nigeria inclusive thereby provided potent opportunity to support and accelerate development.

Since the exploration of petroleum hydrocarbon which began in the early 1950s, it has generated over $1 trillion revenue to the government of Nigeria.[6]Estimates from the IMF indicate that oil and natural gas exports accounted for 96% of Nigeria's export revenue in 2012. The Gross Domestic Product(GDP) of Nigeria was equal to $522.64.[7]Nigeria is one of the largest oil producing countries in the world, with the majority of this resources located in the Niger Delta Region (NDR). The indigenous people of the NDR are living in appalling conditions with lack of basic amenities such as clean water, effective health care facilities, electricity, and roads. The inhabitants of the region are living below the poverty line; while over $35b has been generated from Ogoni land alone since the commencement of oil production in the area. The communities of the region have seen no significant change in their living standards when compared to 1953 the year oil production began, as 70% live less than $1 a day.[8] It seems as if the social contracts between the government, society and businesses in this region are non-existent. However, key oil producing companies such as Shell, Mobile and Texaco, reportedly spend hundreds of millions of dollars to protect staff, installations and equipment in the Niger Delta Region. Between 2007 and 2009 Shell spent $383M to protect its installations and staff in NDR.[9]This begs the question what are the oil production companies doing to protect and improve the living conditions of the citizens of that region as a social responsibility against the negative impact of their operations?

The trend in the oil industries seems to be for a continuous rise in profits by the operators, as a result of increase in the prices of oil in the global market.[10] Whilst the oil companies might be happy with their raised revenues, the indigenes of the NDR are increasingly unsatisfied with their living conditions, considering the huge financial gains accruing to government and the oil companies. The Niger delta people considered the oil resources as an opportunity to better their living standard through sustainable development and the protection of their environment. The quest for sustainable development and the protection of the environment from pollution and oil spills had led to the emergence of various indigenous and militant groups such as Movement for the Survival of Ogoni People (MOSOP) led by Ken Saro Wiwa, Movement for the Emancipation of the Niger Delta (MEND) and Niger Delta Volunteer Force (NDVF). In 2008 there was a massive oil spill from one of Shell's pipe lines that released over 250,000 barrels of oil, affecting more than 5000 inhabitants and their livelihood.[11] In response, some of these groups took up arms against the government and oil companies that led to kidnappings of oil

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[3] A. G. Alkali, 'Corporate Social Responsibility: A Vehicle for Social Development in the Oil Producing Region of Niger Delta, Nigeria' (Unpublished M.Sc. Dissertation, Coventry University 2014).

[4] K. B. O. Ejumudo, 'Government Tax Policy, Oil Industry and Corporate Social Responsibility in Nigeria' in A. S. Akpotor and others (eds), *Sustainable Environmental Peace and Security in the Niger Delta* (Abraka: Delta State University Press 2010)

[5]Yomere (n 1) 48

[6] R. Jenkins, '*Globalization, Corporate Social Responsibility and Poverty'* available at<http://earthmind.net/fdi/misc/ia-globalisation-csr-poverty.pdf> accessed 26 January 2020.

[7]*Ibid*

[8]Yomere (n 1) 48

[9] J. Frynas, *Beyond Corporate Social Responsibility* (1st edn, Cambridge: Cambridge University Press 2009)

[10] Y. Koestoer, '*Corporate Social Responsibility in Developing Countries'* available at <http://developmentinstitute.org/member/koestoer/koestoer_outline.pdf> accessed 27 January 2020.

[11]Alkali (n 3) 65

workers and the destruction of oil installations in the region. Following this incident, there were pressures from the media, indigenous groups and environmental activists for the oil companies to act responsibly. In response, these oil companies began to engage in a wide array of Corporate Social Responsibility (CSR) programmes, in an effort to show they are acting responsibly thus presenting themselves as benign companies. However, the oil producing companies in the NDR are profit making organisations; as a consequence, there is an expectation from the people in the NDR that these companies should act responsibly which raises the question of what action by a company is considered responsible? Who defines the company's responsibility? What framework defines what oil producing companies should engage in to show their corporate social responsibility? These are some of the questions this paper seeks to provide answer to. This paper began by defining CSR and introduces the concept of CSR in the oil and gas industry from a legal perspective, it also appraises the impact and significance of CSR with respect to the operation of participants, host communities and the environment. It further reviews the current legal framework for the delivery of corporate social responsibility in Nigeria and made recommendations.

DEFINITION OF CSR

Like other complex phenomena in the context of law and social sciences, it is difficult to define corporate social responsibility in a precise and concise manner due to it conceptual nature.[12]There is absence of consensus as to what forms a universally acceptable definition of CSR. This has led to the emergence of different definitions of the concept.[13]However it is useful to identify some ways the concept has been used by academics, corporate bodies and international organisations. The European Union Commission defined CSR is as a voluntary engagement by corporations that endeavour to integrate social and environmental concerns in their business pursuits, involving interactions with their stakeholders for the benefit of the society.[14] The EU Commission added that businesses should maximise the creation of shared value for their owners/shareholders and society at large as well as identify, prevent, and mitigate their possible adverse impacts.[15]Corporate Social Responsibility (CSR) is the idea or theory that companies have a duty towards the society beyond its primary obligations to shareholders or owners and it is said to be voluntary. CSR is an increasingly important part of the international business environment. Globalisation of world trade and the rise of powerful companies are mainly responsible for the rise of CSR practices. Thus, CSR is "a business approach for addressing the social and environmental impact of company activities".[16]The World Business Council on Sustainable Development identified CSR as ``the commitment of business to contribute to sustainable economic development, working with employees, their families and local communities''.[17]

CSR makes corporations responsive to a lot more stakeholders other than just its shareholders. These stakeholders could include suppliers, customers, shareholders, and the environment, and communities amongst others. Thus, the corporations are expected to take responsibility for their actions (if any) on the aforementioned stakeholders. CSR explores issues relating to human rights, labour rights or standards, bribery and corruption amongst others.[18] In essence, CSR extends beyond the traditional and legal requirements expected of corporations with regard to its impact on its stakeholders.

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[12] K. Ejumudo, 'Air Pollution and Health Challenges in The Niger Delta: Desirability of a Collaborative Policy and Action' available at <http://africanajournal.org/wp-content/uploads/Air-Pollution-and-Health-Challenges-in-the-Niger-Delta-Desirability-of-a-Collaborative-Policy-and-Action-AFRICANA-Vol5-No3.pdf> accessed 25 January 2020.

[13] Ibid

[14]European Union, *EUR-Lex - 52011DC0681 - EN - EUR-Lex*. available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0681> accessed 26 January 2020

[15]*Ibid*

[16] J. Frynas, 'The False Developmental Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies' (2005) 81(3) *International Affairs*, 581-598.

[17] (WBCSD 2001)

[18] O. Amao, 'Corporate Social Responsibility, Multinational Companies and the Law in Nigeria: Controlling Multinationals in Host States' (2008) 52(1) *Journal of African Law*, 89-113.

CSR IN THE OIL AND GAS INDUSTRY

The idea of organisations being responsible has sparked numerous debates amongst stakeholders; in the case of the Niger Delta Region (NDR), it is between the indigenes, government and the oil producing companies. It can be argued that the expectation of these three stakeholders differs and these differences arguably raise issues of corporate responsibilities. The protests by the indigenous people and civil society groups against the oil spills and other related forms of environmental pollution have persuade the IOC'S to pay a considerable attention to CSR than any other industry. The literature of Fraynas equally identified that CSR in the oil and gas industry are designed and executed to impact positively on development and environment.[19]Multinational corporations are involved in a plethora of CSR activities in the Niger Delta and other parts of Nigeria. CSR initiatives in Nigeria may include the building of hospitals, schools, markets and provision of pipe borne water amongst others.[20] In Nigeria, academics such as Edoho,[21]Frynas,[22]Akpan,[23]Tuodolo[24] and others have argued that the CSR process in Nigeria is not far reaching or deeply entrenched. Thus, it has been contended that some of these CSR initiatives are not carried out on a coherent basisand not always sustained.[25] Arguably, despite the adoption of various CSR mechanisms by oil companies in Nigeria, the oil-producing communities have received a proportionately low amount of benefit compared to the high social and environmental costs of extractive activities. Notwithstanding the minimal contributions of CSR to oil producing communities in the Niger Delta, many communities still suffer from various ills including gas flaring, oil spillage and violence amongst others. On the other hand, Idemudia and Ite and Eweje support CSR initiatives, arguing that CSR is making tremendous progress in the area of local community initiatives in Nigeria. To further elucidate these assertions, Eweje illustrates that it is becoming increasingly apparent to oil companies that pollution prevention pays while pollution does not, and under pressure from stakeholder groups, oil companies now routinely incorporate environmental impact assessments into their corporate strategy.[26]

Factors that affect the CSR activities of oil MNCs in Nigeria may include the ideological and political system and the economic system of the oil MNC's home state. Amaeshi and Amao argued that in respect of codes of conduct of Nigeria, declarations by such firms are affected by the economic system in the home country of the MNC.[27] Thus, if the home country is a mixed economy, its codes of conduct operational in Nigeria will be influenced by its political or economic background.

The issue of sustainability, community development and poverty reduction have in the recent past becomes the focal point of CSR engagement of oil companies in Nigeria. This, according to Idemudia,[28] has transformed strategies of business thinking in the oil and gas industry in Nigeria. The recent effort to develop the NDR through the CSR of oil companies came in form of the Global Memorandum of

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[19] Ibid

[20] K. Amaeshi, B. Adi, C. Ogbechie, & O. Amao, *Corporate Social Responsibility (CSR) in Nigeria: Western Mimicry or Indigenous Practices?* (2006) International Centre for Corporate Social Responsibility, Research Paper no. 39, pp. 1-44.

[21] F. M. Edoho, 'Oil Transnational Corporations: Corporate Social Responsibility and Environmental Sustainability' (2008) 15(4) *Corporate Social Responsibility and Environmental Management*, 210-222.

[22] J. Frynas, 'The False Developmental Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies. (2005) 81(3) *International Affairs*, 581-598.

[23] W. Akpan, 'Between Responsibility and Rhetoric: Some Consequences of CSR Practice in Nigeria's Oil Province' (2006) 23(2) *Development Southern Africa*, 223-240.

[24] F. Tuodolo, '*Corporate Social Responsibility, Local Communities and TNCs in the Oil and Gas Sector of Nigeria. (*Unpublished PhD Thesis, University of Liverpool, United Kingdom 2007); F. Tuodolo, 'Corporate Social Responsibility: Between Civil Society and Oil Industry in the Developing World' (2009) 8(3) *ACME: An International E-Journal for Critical Geographies* 530-541.

[25] Amaeshi and others (n. 19)

[26] G. Eweje, 'Environmental Costs and Responsibilities Resulting from Oil Exploitation in Developing Countries: The Case of the Niger Delta of Nigeria' (2006) 69(1) *Journal of Business Ethics*, 27-56.

[27] K. Amaeshi, & O. Amao, 'Corporate Social Responsibility in Transnational Spaces: Exploring Influences of Varieties of Capitalism on Expressions of Corporate Codes of Conduct in Nigeria' (2009) 86(2) *Journal of Business Ethics* 225-239.

[28] U. Idemudia, 'Oil Extraction and Poverty Reduction in the Niger Delta: A Critical Examination of Partnership Initiatives' (2009) 90(1) *Journal of Business Ethics.* 91–116.

Understanding (GMOU) by Chevron and Shell. However, Draper,[29]Dumpe and Ereba[30] argued that the GMOU represents a radical departure from the past in terms of participation and ownership of development project. Aaron highlighted community development spending by Shell Petroleum Development Company (SPDC) increased substantially from $32 million in 2004 to $84 million in 2008. Furthermore, NNDC report indicated that SPDC phenomenally increased its statutory contribution to NDDC to $158.2million as of 2008. In a related development, Shell Petroleum Company also contributed to some community development programmes which include the provision of water, constructions of schools and health care facilities. It has also constructed 27 clinics in Delta state alone and over 17,000 children were awarded scholarship. In 2010, Shell has trained 1,900 service providers in general contracting (local content development), established eight dredging companies and award 10 student scholarships to study in the United Kingdom and trained over 3000 youth on project management, scaffolding, entrepreneurship, welding and catering. However, the communities in the region denied the existence of such projects claimed by Shell, even if they do they are poorly implemented.

According to Idama Community Report,[31] Chevron has demonstrated commitment for sustainable development of NDR and CSR projects claimed to have been executed by the company is a reflection of the reality.

LEGAL FRAMEWORKS FOR THE DELIVERY OF CSR IN NIGERIA

The following legal frameworks have been found to be critical in the delivery of CSR by multinational corporations in Nigeria.

1. The Land Use Act[32]

The Land Use Act (LUA) is the pillar of the Nigerian legal structure related to the management of land. It has a remarkable impact on the regulation of oil activities, given the characteristics of this sector. Emerging from the scrutiny of the LUA, it is possible to say that it systemically transfers the land rights from the local communities to the national and state governments: this has led to a situation in which oil multinationals take advantage of the national low standards in the field of compensation, thus avoiding to comply with the standards set at the international level. To be more precise, the reference, here, is to Section 28, which states that land may be appropriated from the Federal or State for "overriding public interest", and provides that the central government can require the land "for mining purposes and oil pipelines or for any purpose connected therewith."

Ako[33] demonstrates how the historical evolution of the Nigerian nation has led to a subtraction of land's rights from those communities who were traditionally entitled to the ownership and use of the lands and resources by the federal government. According to the author, vesting all rights to lands and natural resources in the government is equivalent to a subtraction of the communities' environmental rights. As also argued by Atsegbua, "the denial of the existence of environmental rights is primarily responsible for the underdevelopment of the Niger Delta area."[34]The 2003 WAC Global Services Report, entitled "Peace and Security in the Niger Delta", recognises that the main cause of conflict is not represented by the corporate policies, but by the actual practices. Nonetheless, the same report also states that "aspects

[29] T. Draper, 'SPDC's Global Memorandum of Understanding' in Shell in the Niger Delta: A Framework for Change. The Ecumenical Council for Corporate Social Responsibility. Available at <www.eccr.org/uk/module-downloads-prep_hand_out_lid_20.html> accessed 26 January 2020.

[30] B. Dumpe, and P. Ereba, 'Shell's Poor Stakeholder Engagement' in Shell in the Niger Delta: A Framework for Change. The Ecumenical Council for Corporate Social Responsibility. Available at <www.eccr.org/uk/module-downloads-prep_hand_out_lid_20.html> accessed 26 January 2020.

[31] *Ibid*

[32] Cap L5 LFN 2004

[33] R. T. Ako, 'Nigeria's Land Use Act: An Antithesis to environmental justice', [2009] (53)(2) *JAL* 289-304.

[34] L. Atsegbua, 'Environmental Rights, Pipeline Vandalization and Conflict Resolution in Nigeria' (2001) 5 *IELTR* 89-92.

of current policies (land acquisition, oil spill compensation, hiring and contracting) may feed into, or *even create conflict*."[35]

The subtraction of the land from the local communities to the benefit of the oil sector constitutes one of the main reasons at the basis of the Nigerian environmental disaster, as well as the main cause of discontent and instability in the Niger Delta region. The main outcome of the above discussion is that, although the MNCs claim their compliance to the law,[36] this is not sufficient to identify corporate good practices, based on justice and equity grounds.

2. Oil Pipelines Act (OPA)[37] 1956 and the Petroleum (Drilling and Production) Regulations 1969

Beside the misappropriation of rights to land and resources, it is appropriate to consider the compensation problem. The domestic Nigerian law is set in order to avoid the payment of fair and adequate compensation for the losses deriving from oil activities, both related to land acquisition and to environmental pollution. When analysing the Nigerian legal framework in the oil sector, it could often appear that the provisions concerning this particular issue are clear enough to solve any dispute arising from eventual pipelines leakage or from any hazardous activity related to the oil industry.
In particular, Section 11(5) of the Oil Pipelines Act prescribes:

> The holder of a licence shall pay compensation to any person whose land or interest in land […] is injuriously affected by the exercise of the rights conferred by the licence […]; and to any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, maintain or repair any work structure or thing executed under the licence […]; and to any person suffering for any damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation.

However, the actual practices regarding compensation work in the opposite direction, since it is not always easy to achieve the agreement on the compensation amount, which is required by the OPA in order to avoid the issue to be brought to court.[38]

Sections 21(2) and 23 of the Petroleum (Drilling and Production) Regulations 1969, enacted pursuant to the Petroleum Act 1956, provides for the payment of "fair and adequate compensation", respectively to the owners of economic trees in the event that these are cut or taken off for oil development purposes, and to fishermen, if the owner of a license *unreasonably* interferes with the exercise of their fishing rights. As argued by various authors,[39] the legal framework on compensation represents an easy viable avenue for oil companies who want to escape liability for harmful consequences arising from oil activities.

According to Ebeku, the *onus probandi*, placed by Sections 21(2) and 23, on farmers and/or fishermen who actually suffer from these damages, turns to appear overwhelming for the claimants: this is an avenue through which "an oil operator [might] escape liability."[40] Ebeku concludes that the wording of

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[35] Z. M. Nyheim, 'Peace and Security in the Niger Delta: Conflict Expert Group Baseline Report,' available at <http://www.npr.org/documents/2005/aug/shell_wac_report.pdf> accessed 27 January 2020.
[36] See, for instance: Shell, 'Politically sensitive regions' (shell.com). Available <http://www.shell.com/global/environment-society/society/business/politically-sensitiveregions.html> accessed 25 January 2020.
[37] Cap O7 LFN 2004
[38] The last line of Section 11(5)(c) of OPA states: "If the amount of such compensation is not agreed between any such person and the holder, it shall be fixed by a court […]."
[39] K. S. A. Ebeku, 'Compensation for Damage Arising from Oil Operations: Shell Petroleum Development Company of Nigeria v Ambah Revisited' (2002) IELTR 155, 156; J. G. Frynas, *Oil in Nigeria, Conflict and Litigation between Oil Companies and Village Communities*. (London: LIT 2000); O. Adewale, 'Oil Spill Compensation Claims in Nigeria: Principles, Guidelines and Criteria' (1989) JAL, 33, 91-104.
[40] Ebeku (n. 42)

this provision "virtually robs the statute of its substance".[41]Frynas maintains that "[in] Nigeria, oil companies have often alleged that damage from oil operations is due to sabotage, which is considered an act of a stranger."[42] The strategy adopted by the multinational companies operating in the country and sued for oil pollution consists in rebutting charges by claiming that the spills were being caused "by the malicious act of third persons."

Multinationals are allowed to do so by the already mentioned Section 11(5)(c) of the OPA, that obliges oil operators to pay compensation for damage resulting from oil spills, unless it occurred on "account of [the suffering person's] own default or […] the malicious act of a third person." This provision, if not amended, deprives the clause contained in the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) – according to which "operators incur responsibility for the containment and recovery for any spill discovered in their area, *whether or not its source is known*"[43] of its significance.

The Guidelines state that MNCs have the duty to implement actions to remedy the oil spillage no matter the cause. But they are no more than soft law, and, as such, not enforceable. Hence, the liability for damages, arising from oil operations, and, as a consequence, the obligation to pay compensation, according to the Nigerian domestic framework, is not strict – being the claimant "required to prove negligence on the part of the operator."[44]

If the common corporate practice, consisting in avoiding negotiation and mediation in order to set the disputes against local claimants in courts or in arbitral tribunals, is also taken into account, it is possible to argue that the burden of proof pending on the plaintiffs is actually unbearable. Local communities and people's interests are not taken into account in the decision to use their land for the purpose of devoting it to oil development, nor in the phase of compensation for eventual harmful consequences arising from oil operations (by means of mediation and negotiation between MNCs and communities themselves): the want of commitment by MNCs to make the local communities participate in the development of their own territory can be regarded as a want of corporate best practices.

3. The Companies and Allied Matters Act (CAMA) 2020

The establishment of parent companies' liability for damage arising from their local subsidiaries' activity is another challenging aspect. Various observers and commentators have highlighted the fact that oil MNCs in Nigeria take advantage of the combination of bad practices and loose legal and regulatory framework. Section 54(1) of CAMA represents a crucial provision in the view of the attribution of liability to MNCs operating in Nigeria. According to it, "[…] every foreign company […] incorporated outside Nigeria, and having the intention of carrying on business in Nigeria shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose […]." *Prima facie*, such provision could be interpreted as the acme of the indigenisation policies, carried out in Nigeria ever since the acquisition of independence, with the principal aim of nationalising the main industrial sectors, fully controlled and managed by the European until then. After a more careful analysis, however, Section 54(1) can be considered as one of the tools that MNCs can rely upon to avoid liability for harmful actions perpetrated within the Nigerian borders. Indeed, the fact that MNCs operate in Nigeria through subsidiaries which are legally incorporated under domestic law, gives way to problems related to the choice of jurisdiction in the event of disputes arising from the breach of the contracts or – as was the case in *Akpan v Royal Dutch Shell Plc*[45] – from the attempt to obtain compensation for damages caused to the communities' livelihoods.

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[41] Ibid
[42]Frynas (n. 42)
[43]Department of Petroleum of the Federal Republic of Nigeria, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria, S 4.1. Emphasis added.
[44]Adewale (n. 42)
[45]*Akpan v Royal Dutch Shell Plc*[2013] No. 337050/HA ZA 09-1580 (District Court of The Hague).

In his commentary to this case, McConnell gives an exhaustive overview of the international doctrine regarding the attribution of such liability. To be more precise, the author underlines that, although the UN Secretary General's 2009 Special Representative for Business and Human Rights' Framework confers to the states the primary "responsibility to protect their citizens from corporate actors'[46] possibly dangerous activities, often states "lack the resources to do so, or may even be complicit in violations."[47]

Despite adhering to the "international trend holding parent companies liable for the harmful practices of their foreign subsidiaries",[48] the Dutch court – in front of which the case was brought by four Nigerian plaintiffs in a joint action with Friends of the Earth Netherlands – manifested doubts to whether, in the case the allegations against the parent company (Royal Dutch Shell) were dismissed, the claims against the Nigerian subsidiary (Shell Petroleum Development Company Nigeria – SPDC) were to be dismissed, too, on the grounds of lack of jurisdiction. Even though the Dutch court decided that such dismissal was not appropriate, this cannot be regarded as a well-established juridical trend.

Furthermore, it has been observed that the fact that the Nigerian government is a partner of the MNCs in their oil development projects (another measure – beside the domestic incorporation of subsidiaries which is supposed to work for the indigenisation of the oil industry in the country),[49] is deleterious for the genuine work of the regulatory agencies, and, as a result, for the genuine enforcement of regulations in the field.[50] This is the reason why the Revenue Watch Institute has observed that, if the proposed Petroleum Industry Bill will fail to amend the disclosure provisions for the state-owned companies, its efforts for a higher transparency in the Nigerian oil sector will be vain.[51]

Beside the issue of foreign businesses' incorporation into Nigerian law, the CAMA also deals with the question of disclosure. Amao observes that the disclosure requirements only encompass duties to the companies' shareholders, evidencing an approach that, more in general, emerges from the typical structure and wording of the investment contracts between MNCs and Nigeria.[52]Amao stresses that, according to Section 279, "company directors owe duties only to the company (interpreted as its shareholders), and therefore have no legal responsibility or capacity to embark on any other duty apart from their duty to the company and its shareholders." Moreover, "the directors' report requirement under Section 342 of the CAMA relates solely to the company's financial performance […]."[53]It is possible to argue that the two above-mentioned provisions reflect a general paradigm in the current trend regarding the drafting of commercial agreements between multinational companies and developing countries. This trend can be described as based on an "overly commercial approach",[54] which does not

[46]Sanctioned, amongst others, by the United Nations Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.

[47]L. J. McConnell, 'Establishing Liability for Multinational Oil Companies in Parent/Subsidiary Relationships' (2014) ELR 50, 51. Pertaining to this – and highlighting the peculiarly intricate situation in the management of the oil sector in Nigeria – Ploch stresses the point of the political complicity in the criminal activities related to oil: the deriving proceeds are used for the funding of electoral campaigns and other political activities. See: Ploch, 'Nigeria: Current Issues and U.S. Policy' (Federation of American Scientists 2012). Available at: <http://fas.org/sgp/crs/row/RL33964.pdf> accessed 26 January 2020.

[48]*Ibid*

[49]In this regard, it is possible to link the discussion to the opinion of Ogutuga, who argues that the transposition of international law instruments into national law has to be carried out in a particularly careful way in the developing countries. See: M. Ogutuga, 'CSR obligations of Transnational Corporations and Legal Enforcement Mechanisms in Extractive Industries: How Effective are these Mechanisms in the Protection of Human Rights in Africa?' (2009) 13 CELMPM Annual Review.

[50]As an example, see: E. Oshionebo, 'Transnational Corporations, Civil Society Organisations and Social Accountability in Nigeria's Oil and Gas Industry' (2007) AJICL 107, 108.

[51]M. H. Sayne, 'The Petroleum Industry Bill and the Future of NNPC' (RevenueWatch.org 2012) available at<http://www.revenuewatch.org/publications/petroleum-industrybill-and-future-nnpc> accessed 27 January 2020.

[52]See Amao (n. 14); O. Ejims, 'The Impact of Nigerian International Petroleum Contracts on Environmental and Human Rights of Indigenous Communities' (2013) AJICL 345, 349; and C. Villiers, *Corporate Reporting and Company Law* (1st, Cambridge University Press, e.g. Oxford 2006).

[53]Amao (n. 14)

[54] Ejims (n 55)

take into account the interests of the communities living in the areas where the development projects take place.

This paragraph has analysed how the CAMA affects, firstly, the attribution of liability to subsidiaries and parent companies in the event of problems arising from oil operations, and, secondly, the possibility to access corporations' documents. The two matters are of crucial importance to understand how multinational oil enterprises behave when faced with claims by local people.

4. The Petroleum Industry Act (PIA) 2021

First proposed in 2007, and finally signed as an Act of the National Assembly in 2021, the PIA seeks to reform the structure and the functions of the Nigeria National Petroleum Corporation (NNPC). One of its main intended outcomes is to enhance the transparency and the accountability of the state-owned oil company, by devolving some of its functions to independent agencies, and, by doing so, to possibly improve the transparency of the whole petroleum sector in the country. This would be a natural consequence of the Petroleum Industry Act (PIA), given the fact that the main avenue for the realisation of oil projects in Nigeria is the formation of joint-ventures between NNPC (i.e. the government)[55] and the foreign MNCs. Thus, reforming the structure and the responsibilities of NNPC would also push the government to assume its own responsibilities: so far, it has taken advantage of the uncertainty surrounding the oil industry in the country, to the detriment of local communities.

However, as the Revenue Watch Institute has argued, there are various loopholes in the Petroleum Industry Act (PIA) provisions, firstly, the National Petroleum Assets Management Corporation (NPAMC) and the National Gas Company Plc. (NGC) "are not subject to the upstream contract-disclosure requirement, which means that joint ventures and gas contracts will *likely remain opaque*",[56] secondly, "the downstream regulator is not required to publish information on downstream activities";[57] thirdly, "there are no auditing requirements for NNPC and NGC, and NPAMC is required to publish only a summary of its audited accounts."[58] In conclusion, the Petroleum Industry Act (PIA) did not seem to bring the much needed comprehensive reconsideration of the current applicable disclosure requirements provisions into the Nigerian law.

5. Niger Delta Development Commission (NDDC) Act 2000

The NDDC was created in 2000 with the basic aim of establishing a new regulatory body for an enhanced effectiveness in the management of oil development in the region. In particular, the title of the Act highlights the importance of addressing the "ecological problems which arise from the exploration of oil minerals in the Niger-Delta area […]."[59]

Section 2(1)(b) of the NDDC Act sets the rules for the composition of the Commission. Such rules reflect the need for a stronger representation of the oil producing states; Section 2(1)(d) calls for a deeper integration and cooperation between these states and oil operators. In addition, Section 2(1)(c) provides for the representation of non-oil producing states.[60]

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[55]As noted by Oshionebo, "Because […] the government is in joint-ventures partnership with oil and gas [MNCs] enforcement of regulation is sometimes viewed by the government as detrimental to its investment in its joint-venture projects. Thus, in order to safeguard their position, regulatory officials have to be careful not to step on government toes." See E.Oshionebo (n 53) 108.

[56]Sayne (n 54)

[57]*Ibid*

[58]*Ibid*

[59]Niger Delta Development Commission (Establishment etc.) Act 2000. Available at <http://www.commonlii.org/ng/legis/num_act/ndcea504/> accessed 24 January 2020.

[60]One of the most challenging problems of modern Nigeria, is the division between the northern and the southern part of the country. The concentration of the oil production in the Niger Delta is one of the reasons for the political and social unrest in the North. See for instance: Ahmed, 'Behind the rise of Boko Haram - ecological disaster, oil crisis, spy games Islamist militancy in Nigeria is being strengthened by western and regional fossil fuel interests' (theguardian.com last update 2014).

IMPACT OF CSR ON THE OPERATIONS OF THE PARTICIPANTS, HOST COMMUNITY AND ENVIRONMENT

In spite of the interventions highlighted in the documents the two major oil companies have provided there is still much left to be desired in bringing about a sustainable development in the region. The three key stakeholders; government, IOC'S and local communities have contributed to the socio-economic problems bedevilling the region. The oil companies operating in the NDR are business entities with primary motive of profit maximization. The responsibility of providing social needs of the local communities is purely that of the government. The IOC'S are paying taxes and levies to the government to meet its obligations. The question here is, why are the communities expecting the IOC'S to step in meeting government obligations? As has been mentioned earlier, the communities in the Niger Delta are affected directly by these activities and they respond in various ways, including the resort to protests and other forms of political action and, later, violence against the staff and contractors of the oil companies and security operatives in the region, who are seen to collude with the oil companies. This reflects the psychological and emotional feelings of the indigenous people who felt disregarded, neglected and deprived of their rights by the IOC'S and the government, which often lead to violence. The resort to violence has fatally hampered activities of the oil companies and cost Nigeria's economy huge revenue losses. Shell, which was targeted more, admitted using outdated facilities and equipment in 1995 which contributed to the pollution and promised to replace those and bring its operations in line with the Nigerian rules by 1999.[61]Their operations lead to loss of means of livelihood of the people, causing poverty and unrest. These communities also grant the social licence to operate. As identified by Barnard, CSR emerged as a corporate response to societal revolt regarding the dominance, as well as negative impacts of corporations around the world. This sets the justification for the application of CSR in the oil and gas industry particularly the Niger Delta Region.[62]

The CSR interventions of the IOC'S have at various times bumped into obstacles that include corruption, violence as a result of sustained local discontents and failure on the part of the companies to genuinely apply CSR. Some communities are disputing the CSR reports of Shell on the basis that these projects are not executed. Where these projects are executed, there have been allegations of biased implementation or outright favouritism (divide and rule), on the part of the oil companies. While corruption could be blamed on factors that are sometimes beyond the control of the companies like oil theft or bunkering that leads to spilling of oil and pollution or sabotage that causes the closure of operations, the role of companies in dividing the communities is a major problem.

Protection of the environment is one of the three pillars of sustainable development. The Johannesburg Declaration[63] identified; economic, social and environmental sustainability as the pillars of sustainable development. There has been a remarkable increase in environmental practices by IOC'S through for example, environmental reporting. This has reduced the volume of oil spills globally from 25.2 yearly in 1970 to 3.7 between 2000-2007.[64] The oil spill at the Gulf of Mexico in 2010 had cost BP $32.2 billion for clean-up and payment of compensation to stakeholders. However, Shell has spilled over 250,000 barrels of oil in 2008/2009 at Bodo in Ogoni land in NDR as a result of ruptured pipelines; where over 15000 inhabitants lost their means of livelihood. Shell offered £30 million as compensation which was rejected by the Ogoni people.[65]

Available at: <http://www.theguardian.com/environment/earth-insight/2014/may/09/behind-rise-nigeria-boko-haramclimate-disaster-peak-oil-depletion> accessed 25 January 2020.

[61]W. Visser, 'CSR 2.0: From the Age of Greed to the Age of Responsibility' in William Sun, Jim Stewart, David Pollard (eds), Reframing Corporate Social Responsibility: Lessons from the Global Financial Crisis (vol. 1: Critical Studies on Corporate Responsibility, Governance and Sustainability New York: Emerald Group Publishing Limited 2010) 231 – 251

[62]A. B. Carroll, and A. K. Buchholtz, 'Business and Community Stakeholders. In Business and Society: Ethics and Stakeholder Management (6th ed., OH: South-WesternMason2006)

[63]Johannesburg Declaration, (2002) *Report of The World Summit on Sustainable Development* [online] available at<http://www.un.org/jsummit/html/documents/summit_docs/131302_wssd_report_reissued.pdf>accessed 25 January 2020.

[64]Frynas (n. 12)

[65]Ebeku (n 48) 40

In order to get rid of unnecessary financial losses and loss of business reputations, the Oil companies have espoused foremost international CSR initiatives such as Global Compact (UNGC), Extractive Industries Transparency International (EITI), Global Reporting Initiative (GRI), and ISO 2600.[66]

i. Fault of the Government

On the other hand, one could be tempted to argue that corruption is also an endemic feature of the Nigerian state, which by the implication of operating within the territory; the companies may be pardoned for encouraging it as a survival strategy. This explains why funds meant for projects are misappropriated and initiatives like the Oil Minerals Producing Area Development Commission (OMPADEC) and Niger Delta Development Commission (NDDC) have all ended in dismal failure.[67]

Although states in the region always end up with the largest budgetary allocations, for example Rivers State was allocated $1.3 billion in 2006; they are spent on frivolous activities that do not enhance the quality of life of the majority of the people. It is on record that politicians from the region like James Ibori, DSP Alamieyeseigha and Peter Odili were at various times indicted for corruption.[68]These are Governors from the key oil producing states in the region. As a result of pervasive corruption, the huge oil revenue generated by the government over the years of oil production, have failed to provide development needs of Nigerians and the oil producing communities in the Delta region. Poverty unemployment and absence of social amenities are apparent in the NDR. Prior to the discovery of palm oil and rubber plantation in and exports in NDR contribute significantly to the growth of the economy, later all these potentials were abandoned due to syndrome called` *`Dutch Disease''.* According to Mkandawire and Soludo,[69] ''Dutch Disease'' referred to as ``syndrome caused by the presence of huge natural resource that constitutes serious abstractions to investment and growth''.

ii. Fault of Local Communities

The indigenous people in the Delta region are involved in a state of inter and intra communal conflicts, which results in violence, causing serious security challenges in the region. Peace is bedrock to sustainable development, in some cases the conflict in the regions hampers oil production, reduce government revenue and the IOC'S could hardly design and implement their CSR agenda. The communities felt that government and the IOC'S should bring development to their door steps. There is still agricultural potential such as palm and rubber plantations which the local communities can exploit and invest for the development of the region. The Ogoni people received compensation amounted to millions of dollars from Shell, yet they do not have any investment made out of the funds. The local communities abandoned all these potential and expect the government and the IOC'S to provide for their needs. The mind-set of the people has been geared toward sustainable development. The desire, commitment and investment from the communities are essential for a development to be sustained.

THE WAY FORWARD

Applying the stakeholder theory, as a way forward the successful design and application of CSR needs the collaborative efforts of both stakeholders – the influencers and the influenced. The oil companies have everything to lose by not genuinely applying CSR and delivering on their promises. For example, by investing in individuals they fuel more discontent and encourage disgruntled individuals to resort to blackmail. Attacks on oil installations and equipment is a direct consequence for this selective policy of compensation, where individual warlords are given millions of dollars only for more warlords to emerge and ask to be compensated. In the midst of this are the companies who are stuck between paying or not paying and the risk that follows each decision.

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[66]*Ibid*

[67]*Ibid*

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[69]Sayne (n. 54)

The Ogoni crisis of 1995 and that of Rumuolemeniin 2007 all in Rivers State are notable examples of when such insincere policies hit back at the oil companies resulting in the halting of their activities for a long while. Whereas they lay claim to best practices but by not applying global standards to reduce pollution in the Niger Delta, the companies further set themselves up for blackmail or attack from disgruntled or frustrated locals. The stakeholder approach also applies to the communities whose actions have not yielded much positive results for the communities, although a few individuals have corruptly enriched themselves. They need to see themselves as stakeholders alongside the companies and, strive to make the collaboration successful. This is important because, if the claims of the companies that primitive techniques, theft of oil and sabotage are responsible, partly, for polluting the environment then it makes little sense if they make money and permanently hamper others' health. As stakeholders they need to understand, also, the economic implications of losing hundreds of thousands of barrels of oil per day, which if translated into monetary terms could bring about life changing developments to the region. Although the government is presently treated with suspicion by the people apparently because of the docility of officials and corrupt practices, the government loses revenue to bunkering and faces the backlash of the people affected in the region. The government as a stakeholder needs to work with both the companies and communities in encouraging the design and implementation of CSR in line with needs of the people. The oil companies need to apply global best practices in environmental management, installations, and maintenance and abandonment oil facilities in the region.

CONCLUSION

The concept of CSR has evolved over time. While there are different definitions of CSR, they all refer to the ability of organisation to embrace practices that address the well-being of their workforce, the community and the society. CSR has often been considered synonymous with business ethics, but it has a narrower scope. Socially responsible organisations can maintain a sustainable competitive advantage through addressing economic, social, and environmental issues. CSR encompasses issues such as human rights, workplace and employment issues (e.g., employee health and safety), business practices, organisational governance, environmental aspects, marketplace and consumer issues, community involvement, and social development. CSR obligation has two components: affirmative duties and negative injunction or compensative duties. Any CSR initiative in the Niger Delta that fails to take both the two components on board is unlikely to succeed.

This paper has shown that the oil and gas industry in Nigeria certainly appreciates the need for CSR and engages with it, particularly in the Niger Delta region, where the upstream sector of the industry presently lies. In fact, CSR permeates the industry and the industry is moving towards developing and operationalising policies and structures that will facilitate strategic community-state-corporation partnerships for empowering communities on a sustainable basis. CSR can be deployed to effectively empower the population and combat underdevelopment. However, the continuing sustainability and practical value of the industry's CSR initiatives will remain subordinate to the devastation caused by frequent leakages of crude oil and daily gas flaring. The paper argues that the challenges to effective and sustainable CSR performance in Nigeria are multifaceted and lie in several estates: the industry itself, the inadequate enabling environment, youth restiveness, incoherence of the disparate groups and their ambitions, undue expectations, and political manipulation of youths, and machinations in the oil producing regions.

The absence of an enabling environment in Nigeria (to sufficiently mandate, facilitate, partner with, and endorse CSR) stem from the country's culture of underprivileged political governance, lack of transparency and accountability of government agencies, weak institutions, and the attendant government malingering. Making resources and opportunities available to local communities is not enough to procure social license for the corporation. Inequalities and imbalances still ignite frustrations and farm insecurity and hostilities in the Niger Delta, thereby impeding sustainable development. Oil and gas multinationals have to adopt and promote an approach that targets the reduction of the inequalities through strategic community-state corporation partnerships that involve the community in project selection, initiation, design, execution and monitoring and address community's negative

perception of the corporation and CSR projects. Communities must not only have a proprietorial sense of CSR projects but they must also actually take ownership of them. In effect, there is a need for sustainable community development that centres on developing and strengthening institutional capacities of communities, sound governance, and emphasis on the statutory role of government in furthering common good. This is likely to reduce one source of failure of CSR projects in the Niger Delta: the fact that the corporation and the communities had hitherto perceived CSR projects from different perspectives. Strategic initiatives that eliminate sources of intra- and inter-community conflicts associated with developmental projects are also likely to improve the success rate of CSR in the region.

RECOMMENDATIONS

Based on the following observations, the following recommendations are proposed:

The oil company's operation in NDR should adopt the use of stakeholder's engagement in their CSR designing and implementation.

The IOC'S should apply best global practice of the oil and gas industry operations in the areas of exploration, exploitation and decommissions; oil spills clean up and replacement of raptured pipelines in the region. The IOC'S should measure the effectiveness of their CSR programmes either qualitatively or quantitatively in order to identified the extent of its usefulness.

The IOC'S should published all taxes, royalties, fees and payments made to the government of Nigeria in line with the ``Publish what you pay'' campaign. The IOC'S should in collaboration with the NNDC, local and state governments design a framework that will ensure transparency in design and implementation of sustainable development projects in consonance with national development goals.

Each state and local governments in NDR should set up a peace and conflict resolution department charge with the responsibilities of identifying the grievances of various ethnic groups in the regions to avoid inter communal/ethnic conflicts and resolve disputes by the means of dialogue. Where such grievance involves the IOCS, the department should organise a meeting with representatives of each party in order to fine tune the best possible solutions by the use of dialogue.

If the above recommendations are put in place by the IOC'S, it would accelerate trust building between the IOC'S and the host communities, which is essential in realising peace and sustainable development in the region.