

AN EXAMINATION OF THE LEGAL FRAMEWORK FOR ENFORCING CORPORATE ENVIRONMENTAL RESPONSIBILITY OF OIL COMPANIES ON HOST COMMUNITIES IN NIGERIA

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ABSTRACT

The recognition that environmental issues can contribute to violent conflict underscores their importance as avenues of cooperation. This paper examines the legal framework for enforcing the corporate environmental responsibility of oil Companies in order to determine whether the laws are effective enough to solve developmental challenges of the petroleum host communities in Nigeria. The Nigerian petroleum laws contain provisions that prohibit oil companies from polluting the environment in the course of their operations. The Petroleum Industry Act (PIA) 2021 requires the oil company to set up a trust fund on behalf of the host communities and also provides a percentage to be invested to meet the needs of the host communities. However, there is no adequate involvement of agencies in carrying out investigation and projects due to a lack of adequate funding. The Petroleum Industry Act (PIA) 2021, like the National Oil Spill Detection and Response (Establishment) Act (NOSDRA), has placed so much trust in the polluter (Oil Company). Despite stringent laws, it is not always easy on the part of host communities to contest the statutory provisions that impose corporate environmental responsibility on oil companies for violation of such CER to aggrieved community litigants. This paper therefore concluded that there is a need to have a proper funding mechanism such as Green Financing specifically stated in the laws to achieve environmental and economic benefits simultaneously.

KEYWORDS: Corporate Environmental Responsibility, Oil and Gas, Host Communities, Green Financing.

1.0 INTRODUCTION

The crises in the Nigerian petroleum host communities have continued to reoccur, this is primarily due to poor infrastructural development and non-responsiveness to the needs and aspirations of the indigenes of the host communities.¹ Olawale² explained that environmental

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¹ C I. Okonkwo and E Ezekwe, 'Environmental Management and Sustainable Development in the Niger Delta' (2017) *South East Political Science Review*, 1(1). <<https://journals.aphriapub.com>> Accessed 11/2/ 2024.

degradation ushered in by the petroleum industry worldwide has been described as a necessary price for cultural modernization and advancements in state infrastructure. The persistent contamination of rivers and the seas by oil operations particularly spillages and increased turbidity of the water bodies caused by dredging or traffic of large motor-powered vessels, causing pollution of the freshwater for drinking and other domestic uses, the fisherman complains of reduced catches in recent years as a direct result of the pollution.³

Since inception, the petroleum laws in Nigeria contain provisions prohibiting oil corporations from polluting or degrading the environment in the course of their operations.⁴ Despite these provisions in place, coupled with various governmental agencies charged principally with the responsibility of managing the development of the Niger Delta (host communities) region.⁵ Violence has been on the increase and indeed has assumed more sophisticated dimensions in addition to hostage-taking as a means of negotiation.

The laws in place to enforce the corporate environmental responsibility of oil companies on the petroleum host communities have only solved little, of the problems bewildering the communities. The objective sought to be achieved by the Petroleum Industry Act (PIA) 2021, is laudable, as it introduces a framework where the oil companies can administer their corporate environmental responsibilities directly to the host communities.

However, PIA, just like the National Oil Spill Detection and Response (Establishment) Act (NOSDRA) has put so much reliance on the polluter (oil companies), such that, there is no proper involvement of the agencies, due to a lack of proper funding to carry out investigation and projects. Although, the PIA provides for the oil company to set up a trust fund on behalf of the host communities, and also earmarks a percentage to be invested to cater to the needs of the host communities.

The provision for investment in green finance, which is recently designed to address community issues in an environmentally sustainable manner, is lacking. These loopholes in the legal provisions, accusations of exploitation, corruption,⁶ and inability to fund aspirations highlighted in developmental plans, poor funding of entities with environmental sustainability objectives, are however addressable by the Green Financing investment

² A Olawale, 'An overview of the Legal Framework for Oil Pollution in Nigeria' (2015) <<https://reserchgate.net/publication/281102>> Accessed 13/3/2021; O.E Ambrose, 'Environmental impact of Oil on water: A comparative overview of the Law and Policy in United State and Nigeria' (1995). *Denv.J.int'l L& Pol'y* 55. *Journal of International Law & Policy*, 24. <<https://digitalcommons.du.edu/djilp>> Accessed 13/3/2021.

³ UN Environment Inquiry Report: Design of a Sustainable Financial System, Nigerian Sustainable Finance Roadmap. *United Nations Environment Program*, December 2018. <<https://www.greenfinance.com>> Accessed on 9/2/2024.

⁴ A K. Usman, *Nigerian Oil, and Gas Industry: Institutions, issues, law and Policies*, Lagos, Malthouse Press Limited Nigeria (2017), 362.

⁵ M E. Makpor and R Leite, 'The Nigerian Oil Industry: Assessing Community Development and Sustainability' (2017) 12 (7) *Canadian Center of Science and Education International Journal of Business and Management*. <<https://doi.org/10.5539/ijbm.v.12n7p58>> Accessed on 20/10/2023.

⁶ S A. Zuru, *Critical Discourse on Strategic Legal issues in Natural Resources Law and Policy*, Kaduna, Faith Printers International Nigeria (2007) 162.

mechanism.⁷The growing sustainability advocacy has inspired the growth of communities with green objectives and created investment opportunities for every nation.

2.0 CORPORATE ENVIRONMENTAL RESPONSIBILITY OF OIL CORPORATIONS IN NIGERIA

One of the effects of Oil Corporation operations in Nigeria is its negative effects on the environment.⁸ The exploration of natural resources by man is symbolically related to man's exploitation of the environment, as there can be no natural resource without the environment as its platform.⁹

The environment in this context includes 'water, air, land and all plants and human beings or animals living therein and inter-relationship which exist among these or any of them.'¹⁰How the environment is managed has a direct bearing on the quality of life of every living being. Thus, a poorly degenerated and polluted environment is bound to cause irreparable damage to human existence and could make the earth uninhabitable to a man if measures are not implemented to control the effect of pollution on the environment.¹¹

Corporate environmental responsibility (CER), a component of corporate social responsibility (CSR) is the commitment and practice of firms to adopt responsible actions to protect and improve the natural environment.¹² The corporate environmental responsibility of oil and gas corporations is their duty to prevent environmental pollution or degradation in the course of their operations. Where environmental pollution or degradation occurs as a result of oil or gas operations, it has the corporate environmental responsibility to clean up or restore the environment to its original state.¹³ The concept of corporate environmental responsibility for oil and gas operations has a valid legal backing that imposes responsibility on international oil corporations no less than the more popular corporate social responsibility concept,¹⁴in most cases, oil and gas corporations come under corporate social responsibility only after failing to perform their corporate environmental responsibility.¹⁵

The Constitution of the Federal Republic of Nigeria, 1999 (CFRN) which is the supreme law of Nigeria and the basis of all legislations provides for environmental objectives to the effect that: 'the state shall protect and improve the environment and safeguard the water, air, land,

⁷ M Kadiri, 'Nigeria as a Global Hub for Traditional and Islamic Green Financing' (2021) <<https://ssrn.com/abstract=3862687>> Accessed 13/2/2024.

⁸ L Atsegbua, V Akpotaire, F Dimowo, *Environmental Law in Nigeria. Theory and Practice*, Lagos, Ababa Press Ltd (2004) 3.

⁹ Y Oke, *Nigerian Energy Resources Law and Practice*, Lagos, Princeton and Associates Publishing Co. Ltd (2019), 247.

¹⁰ Ibid.

¹¹ Ibid.

¹² D Holtbrugge, and C Dogl, 'How International is corporate Environmental Responsibility? A Literature Review (2012) 18 *Journal of International Management*, 180-195. <https://econpapers.repec.org/article/eeeintman/v_3a18_3ay_3a2012_3ai_3a2_3ap_3a180-195.htm> Accessed on 11/6/2023.

¹³ Usman (Note 6), 361.

¹⁴ Ibid.

¹⁵ Ibid.

forest, and wildlife of Nigeria'.¹⁶ Accordingly, all organs of government are to conform to, observe and apply the provisions of the Fundamental Objectives and Directive Principles of State Policy,¹⁷ which includes environmental protection, in otherwise corporate environmental responsibility in the oil and gas sector. However, the plain wording of 6 (6) (c) CFRN 1999 removes the court's competence to consider the fundamental objectives entrenched in Chapter II CFRN 1999 as they pertain to environmental objectives under Section 20. This suggests that the CFRN establishes environmental rights under Section 20 while negating their enforcement under Section 6 (6)(c).

The right to a healthy environment is nowadays classified by international law and conventions as a third-generation human right,¹⁸ while environmental sustainability and sustainable development are the Seventh Goal of the Millennium Development Goals [MDGs]. Therefore, the international oil corporation is under a duty of corporate environmental responsibility to abstain from polluting or degrading the environment and where it fails to do so, to restore the environment to health after polluting it.

3.0 LEGAL FRAMEWORK OF CORPORATE ENVIRONMENTAL RESPONSIBILITY IN THE OIL AND GAS SECTOR

The law imposes responsibility on oil multinational companies to prevent environmental degradation in the course of their operations, however, where such degradation occurs, there are provisions to clean up or restore the environment to its original state. The following is the legal framework of corporate environmental responsibility of oil companies in Nigeria.

3.1 Petroleum Industry Act (PIA 2021)

The Petroleum Industry Act demands more corporate environmental responsibility from oil corporations than previous laws. It is understandable as the PIA was made at a time environmental carnage in oil operations has become more visible.¹⁹ The PIA requires the licensees or leases to submit within one year of the effective date or six months after the grant of the applicable licence or lease, submit for approval an environmental management plan in respect of projects which require environmental impact assessment to the Commission or authority, as the case may be.²⁰

The above environmental management plan shall be following the extant Acts.²¹ The Commission or Authority shall in considering the environmental management plan, take into account the policy thrust of the Government regarding environmental protection and management practices.²² Also, chemicals shall not be utilised for upstream petroleum operations, except the Commission grants applicable permits and approval.²³

¹⁶ Constitution of Federal Republic of Nigeria 1999 (amended), S 20.

¹⁷ Constitution of Federal Republic of Nigeria 1999 (amended), S 13.

¹⁸ K E. Ken, 'The legislative and institutional Framework of Environmental Protection in the Oil and Gas Sector in Nigeria- A review' (2011) <<https://www.ajol.info/index.php/ajol/Gsearch/google>> Accessed on 11/7/2023.

¹⁹ Usman (Note 6), 364.

²⁰ Petroleum Industry Act 2021, S 102(1).

²¹ Petroleum Industry Act 2021, S 102(2).

²² Petroleum Industry Act 2021, S 102(4).

²³ Petroleum Industry Act 2021, S 102(7).

As a condition for the grant of licence or lease and before the approval of the environmental management plan by the Commission or Authority, a licensee or lessee shall pay a prescribed financial contribution to an environmental remediation fund established by the Commission or Authority, for the rehabilitation or management of negative environmental impacts concerning the licence or lease.²⁴

The Petroleum Industry Act also provides for penalties to a licensee or lessee or marginal field operator that flares gas. Such person shall commit an offence under the Act and is liable to a fine as prescribed by the Commission regulations under the Act.²⁵ The Act further provides specifically for the petroleum host communities, that monies received from gas flaring penalties by the Commission under this Act, shall be for environmental remediation and relief of the host communities of the settlers on which the penalties are levied.²⁶

3.2 The Petroleum Industry Act and Host Community

Section 234 (1) of the Petroleum Industry Act provides for the objectives and regulations for the petroleum host communities as follows:

- (i) To foster sustainable prosperity within host communities
- (ii) Provide direct social and economic benefits from petroleum operations to host communities
- (iii) Enhance peaceful and harmonious co-existence between licensees or lessees and host communities
- (iv) Create a framework to support the development of host communities.

3.3 Establishment and Financing of the Host Community Trust

The settlor, on behalf of a collective of settlers, must incorporate and be responsible for trust,²⁷ overseen by a Board of trustees, for the benefit of the host communities. The trust should be incorporated with the Corporate Affairs Commission within 12 months from the effective date of the Act for existing licenses or before the commencement of commercial operations for new licensees.²⁸

The trust shall establish a fund that will be financed by an annual contribution of 3% of the actual annual operating expenses of the preceding financial year of upstream petroleum operations.²⁹ The Fund can also be funded through donations, gifts, grants, or honoraria and also any profits or interests accruing to the reserve of the Fund.³⁰ Under Section 242 (1) of the PIA, the settlor (Oil Company) is responsible to set up the Board of Trustees and in consultation with the host communities, determine the membership of the Board of Trustees to include persons of high integrity and professional standing.³¹

²⁴ Petroleum Industry Act 2021, S 103.

²⁵ Petroleum Industry Act 2021, S 104(1).

²⁶ Petroleum Industry Act 2021, S 104 (4).

²⁷ Petroleum Industry Act 2021, S 235.

²⁸ Petroleum Industry Act 2021, S 236.

²⁹ Petroleum Industry Act 2021, S 240.

³⁰ Petroleum Industry Act 2021, S 240(3).

³¹ Petroleum Industry Act 2021, S 242(2).

The objective sought to be achieved by the PIA is laudable. It introduces a framework by which oil corporations can administer their corporate environmental responsibilities.³² However, the provision is not structured in response to the recent United Nation Environmental Summit on Green Economy, otherwise known as the Rio+20 Conference (2012). The 'Rio+20' Conference on Sustainable Development did not build on the concepts of corporate responsibility and accountability. Attention was rather focused on the theme 'a green economy in the context of sustainable development and poverty eradication.'³³

The green economy offers opportunities in green financing (GF). GF is an investment or a funding mechanism created to finance a transition to a low-carbon economy. It includes green bonds (GB). GB is a debt instrument that must be used for renewable and sustainable energy. Clean transportation, sustainable water management, climate change, and adaptation, energy efficiency and sustainable land use, biodiversity conservation, etc. subject to approval by Security and Exchange Commission.³⁴

4.0 NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY (ESTABLISHMENT) ACT

This is a specialized and principal statute in Nigeria dealing with environmental protection in the oil and gas sector in Nigeria. It established the National Oil Spill Detection and Response Agency with responsibility for preparedness, detection, and response to all oil spillages in Nigeria.³⁵ It also established the advisory, monitoring, evaluating, meditating, and co-ordinating arm of NOSDRA known as the National Control and Response Centre (NCRC).

The constitution of the Governing Board of the Agency³⁶ and operational modus of the Agency in the event of a major or disastrous oil spill³⁷ takes into account the multi-sectoral demand for environmental protection in the oil and gas sector³⁸. Accordingly, the NOSDRA Act provides that the objectives of NOSDRA shall be to coordinate and implement the National Oil Spill Contingency Plan for Nigeria³⁹ which may be formulated or revised from time to time, by the Federal Government.

NOSDRA acts as the lead Agency for all matters relating to spill response management and can make regulations to protect the Nigeria environment.⁴⁰ In pursuance of this, NOSDRA promulgated the Oil-spill Recovery, Clean-up, Remediation, and Damage Assessment

³² R El-Rufai, T Yusuff & M Cokey, 'Host Community Relations, Sustainability, and the Environment. The Petroleum Industry Act, Redefining the Nigerian Oil and Gas landscape' (2021), *Petroleum Industry Act Insights Series* <https://pwcnigeria.typepad.com/files/the-petroleum-industry-act-insights-series_august-2021.pdf> Accessed 12/3/2024.

³³ See Implementation Agenda 21, the Programme for the Further Implementation of Agenda 21, and the outcomes of the World Summit on Sustainable Development (UNGA Resolution A/RES/64/236, 24 DECEMBER 2009) Para. 20(a).

³⁴ H Martins, Developing green investment market in Nigeria (2020). *Financial Nigeria*. <www.financialnigeria.com/developing-green-investment-market-in-nigeria-blog-566-html> Accessed on 5/6/2024.

³⁵ NOSDRA (Establishment) Act, CAPNN 157, LFN 2006, S 1.

³⁶ NOSDRA Act, S 2(1) and (2).

³⁷ NOSDRA Act, S 19(1) and (2).

³⁸ Ken (Note 21), 44.

³⁹ NOSDRA Act, S 5. (a-n)

⁴⁰ NOSDRA Act, S 638

Regulations, 2011. Section 5 of the Regulation is on Oil Spill Joint Investigation Visit (JIV). A joint investigation team comprising the owner or operator of the spiller facility, Community and State Government representatives, and the Agency, shall be constituted immediately after an oil spill notification, visit the spill site and investigate the cause and event of the spillage and a report of their findings prepared by the Agency following the Fourth Schedule to these Regulations.

However, the statutory Joint Investigation Visit has been the subject of controversy over the years.⁴¹ Although, the JIV process is participatory in approach, by enabling the local people to express and analyse the realities of their lives and conditions to plan for themselves what actions to take, monitor and evaluate the result,⁴² thereby getting communities involved. The following weaknesses have been discovered as follows:

4.1 Weaknesses in Joint Investigation Visit

4.1.1 Lack of Independence and Oversight

Oil spill investigations are organised and led by oil company personnel. Despite its title, the National Oil Spill Detection and Response Agency (NOSDRA) do not initiate oil spill investigations. It is usually dependent on the company (the spiller) both to take NOSDRA staff to oil spill sites and to supply technical data about spills. NOSDRA is told when it would be done by oil companies either by text or a letter.⁴³ The government agency responsible for monitoring and regulating the industry only investigate when an incident is reported, this is a result of poor funding of the agency.⁴⁴ JIVs are frequently carried out in days and some cases weeks after oil are spilled, as against the provision of the Environmental Guideline and Standard for Petroleum Industry in Nigeria, which stipulates that clean-up should commence within 24 hours of the occurrence of the spill.

The weaknesses of the regulatory agencies mean that, in effect, the company which is the potentially liable party, has substantial control over a process that sets many of the parameters for liability. This includes the cause of the spill, the volume of oil spilled, the area affected and the scale and extent of the resulting impact, hence the company's dominant role in the investigation process represents a conflict of interest.⁴⁵

⁴¹ Amnesty International Report (2013) Bad Information—Oil Spill Investigation in the Niger Delta, Report index: AFR 44/028/2013 in A Rim-Rukeh, *Oil Spill Management in Nigeria: SWOT Analysis of the Joint Investigation Visit (JIV) process* (2015). *Journal of Environmental Protection*. <<https://www.scirp.org/journal/paperinformation.aspx?paperid=55130>>. Accessed on 3/12/2023

⁴² R Chambers, 'Participatory Rural Appraisal: Challenges, Potentials, and Paradigm World Development' (1994) 22, 1437-1454 <<https://www.sciencedirect.com/science/article/abs/pii/0305750X94900z302>> Accessed 4/12/2023.

⁴³ A Rim-Rukeh, 'Oil Spill Management in Nigeria: SWOT Analysis of the Joint Investigation Visit (JIV) process' (2015) *Journal of Environmental Protection*. <<https://www.scirp.org/journal/paperinformation.aspx?paperid=55130>>. Accessed 3/12/2023.

⁴⁴ Mongabay Latest Nigeria Oil Spill highlights 'wretched' State of the Industry (2022). A statement by Nnimmo Bassey, an environmentalist and founder of the Health of Mother Earth Foundation. <<https://news.mongabay.com/2022/02/latest-nigeria-oil-spill-highlights-wretched-state-of-the-industry/>>. Accessed on 4/12/2023.

⁴⁵ Rim-Rukeh. (Note 49).

4.1.2 Lack of Technical Competence on the Part of Regulatory Bodies

The technical capacity of regulatory bodies is also a matter of concern. In the 2011 environmental assessment of Ogoni land, the United Nation Environment Programme (UNEP) found that NOSDRA suffers from a shortage of senior and expert staff who understand the oil industry and can exercise effective technical oversight.⁴⁶

4.1.3 Lack of Technical Competence on the Part of Community Representative

Oil companies claim that the involvement of community members in the JIV process is intended to improve the credibility of the process. However, the lack of technical competence on the part of community representatives has been reported.

4.1.4 Lack of Transparency on the Part of Oil Companies

Lack of transparency is the relatively limited involvement of community representatives in the JIV process. In most cases, very few members of the community can participate in the process, and others are asked to sign incomplete JIV forms, in some cases, community representatives are denied a copy of the JIV form even after signing it.⁴⁷

4.1.5 Lack of General Procedure for Determining the Actual Cause of Spill

Establishing the cause of an oil spill has long been the main focus of the JIV process. However, how the cause of an oil spill is decided during the JIV is deeply flawed. Different oil companies have the method of establishing the cause of a spill, because of the lack of an acceptable procedure for determining the actual cause of a spill. The current method of using the position or point of the leak is loaded with controversy. i.e if spills are at 12 o'clock it is sabotage, it is almost always sabotage. Even at nine, ten, eleven, or three, two, or one o'clock, it is, but if it is 6 o'clock, it is corrosion.⁴⁸

4.1.6 Lack of general Procedure for Determining the Actual Volume of Oil Spilled

Accurate measurement of the volume of oil spilled is important for two reasons: firstly, it can affect the assessment of the damage done and therefore compensation people receive and the nature of the clean-up undertaken; secondly, it is the basis for the overall figures that companies put into the public domain on a volume of oil spilled due to operational failures, sabotage and theft.⁴⁹

4.1.7 Determination of the Size of the Impacted Area

Current method of determining the area impacted by the spill is based on estimation.⁵⁰ However, JIVs consistently fail to capture photos displaying the real extent of the oil spill impact areas. This is a serious concern as there is no record of the impact to challenge what is recorded. Moreover, while estimation may capture the most affected areas,

⁴⁶ Amnesty International and CEHRD (2011). The True Tragedy, Delays and Failures in Tracking Oil Spills in the Niger Delta, Amnesty International Index No. AFR/44/018/2011.

⁴⁷ Nigerian Agip Oil Company (NAOC) Oil Spill Statistics 1990-2004.

⁴⁸ Amnesty International and CEHRD (2011). The True Tragedy, Delays and Failures in Tracking Oil Spills in the Niger Delta, Amnesty International Index No. AFR/44/018/2011.

⁴⁹ Rim-Rukeh (49).

⁵⁰ Ibid

it will likely fail to identify impacts not visible including the impacts on water systems and downstream communities.

As it is seen from above, despite the Joint Investigating Visit for checking oil spills in place, the process is flawed for lack of credibility, there is no meaningful check on the oil companies' operations, also, and lack of transparency around oil spill investigation process is one of the factors that contribute to heightened tensions in the host communities in Nigeria.

5.0 ECONOMIC AND ENVIRONMENTAL IMPACT OF THE OIL AND GAS INDUSTRY ON HOST COMMUNITIES

The Niger Delta in Southern Nigeria is one of the most polluted places on earth. Decades of spillages from over 50 years of operations continue to erode local communities' health, well-being, and livelihoods.⁵¹ Ogoniland, located in Rivers State, has a complex history of exploration fraught with environmental, social, and political problems. While the region doesn't currently produce oil, incessant spills from the pipelines running through it and looming plans by the Nigerian Petroleum Development Company to resume operations threaten any hope of long-term restoration.⁵²

Most oil extraction from the sensitive ecological area of Ogoniland stopped in the early 1990s. Despite subsequent clean-up efforts, the region is constantly set back by spillages from pipeline sabotage, theft, artisanal refineries, and pipeline corrosion. This has caused conflict between local communities and multinational oil companies.⁵³ The resultant degradation of the surrounding environment has caused significant tension between the people living in the region and the multinational company operating in the region.⁵⁴ Despite stringent legal framework to deter offenders,⁵⁵ Oil spillages due to sabotage by criminal groups, corruption, and collusion by state security officials are increasing in the Niger Delta. Nigeria lost an estimated US\$4.5 billion in 2020 due to petroleum pipeline vandalism and crude oil theft. These crime leads to large-scale spills and environmental destruction, jeopardizing clean-up efforts.

The crimes are enabled by the weak implementation of laws, inconsistent oil spill data (which hampers monitoring), accidents, and corporate negligence by oil companies, likewise, old and poorly maintained infrastructure as a result of a lack of commitment among some oil corporations. The Nigerian state, especially the Niger Delta area is heavily polluted. A refreshed and dedicated approach has to be taken with a holistic view to address the dreadful

⁵¹ O Oluwole & L R. Alize, 'Endless Oil Spills Blacken Ogoniland's Prospects' (2022). *Institute of Security Studies (ISS)*. <issafrica.org/iss-today/endless-oils-blacken-ogonilands-prospects> Accessed 1/12/2022.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ P C. Nwilo & O U. Badejo, 'Impacts and Management of Oil spill Pollution along the Nigeria Coastal Areas' (2005), in Ewulim, Okaphor & Okoli, *An Appraisal of the Impact of the National Oil Spill Detection and Response Agency on Environmental Pollution in Nigeria*, (2020) International Journal of Comparative Law and Legal Philosophy, 2 (1) <https://www.fig.net/resources/publications/figpub/pub36/chapters/ chapter_8.pdf> Accessed 2/12/2023.

⁵⁵ Nigerian's Petroleum Production and Distribution (Anti Sabotage) Act, (1975) provides that, anyone committing sabotage is liable on conviction to a death sentence or imprisonment of up to 21 years. Section 2

situation the environment is in.⁵⁶ Regardless of the laws in place to address this menace, environmental pollution has not ceased. A copious example is Ayetoro community in Ilaje/ Ese Odo Local Government of Ondo State.⁵⁷ The activities of oil companies have crippled the economy of the area and there is a permanent fire which has been burning on the river for years.⁵⁸

6.0 ENFORCING CORPORATE ENVIRONMENTAL RESPONSIBILITY AGAINST INTERNATIONAL OIL COMPANIES IN NIGERIAN COURTS

As it is seen from the above, Nigerian Petroleum law contains provisions prohibiting oil corporations from polluting or degrading the environment in the course of their operations, however, legal regulations of multinational corporations are generally difficult because they are not under the control of any one jurisdiction.⁵⁹ Rather, they are subject to multiple legal systems, including that of the country of their corporate headquarters as well as those of the countries they operate.

It can be difficult for domestic courts to hold multinational corporations responsible for jurisdictional reasons or because the particular government lacks the legal infrastructure to impose liability.⁶⁰ An example of a jurisdictional shortcoming in the United States is the difficulty of piercing the corporate veil as is seen in the case of *Bowoto v. Chevron Corp.*⁶¹ The fact of the case was that between May 25th and 28th 1998, about 1,900 protesters from Bowoto Community in the Niger Delta occupied a chevron offshore drilling rig and construction barge located in the Niger Delta. The occupation of the barge was a sequel to complaints against Chevron's regional business activities, which the Bowoto community claimed had negative environmental and social impacts on it. The community claimed it has several times sought cessation of Chevron's operations, reparations, and cleanup to no avail. Whereupon, it embarked on the protest that led to the seizure and occupation of the corporation's barge. Thereupon Nigerian government security forces forcefully dislodged the community protesters from the barge. The community alleged that security forces shot four protesters, killing two, and capturing and torturing a fifth⁶². It further alleged that on Chevron's claim that the protesters were kidnappers and extortionists who held 175 people hostage for three days, Nigerian government security forces launched an assault on the villages of Opia and Ikenyan, on 4th January 1999, shooting civilians and setting buildings on fire⁶³.

⁵⁶ A Olawale, 'An overview of the Legal Framework for Oil Pollution in Nigeria' (2015). <<https://www.researchgate.net/publication/281102181>> Accessed 18/11/2022

⁵⁷ CAPPA, Gone, Gone, Ayetoro (2024) *CAPPAONE* <<https://cappaafrica.org/2024/07/06/gone-gone-ayetoro/>> Accessed 7/10/2024

⁵⁸ M A Asani and B F Akinyode, 'Inter-Regional Dimension of Oil Mining and Sustainable Food Security in the Niger Delta Rural Sub-Region of Ondo State Nigeria' (2022) 8 (2) *LAUTECH Journal of Civil and Environmental Studies*, 94.

⁵⁹ Usman (Note 6), 380

⁶⁰ Ibid.

⁶¹ *Bowoto vs. Chevron*, www.bowoto.com

⁶² Ibid

⁶³ Ibid

All the above-alleged acts of Nigerian security forces led the Bowoto community to institute a court action against Chevron in the United States of America where Chevron's parent company is. The community sued Chevron alleging that the corporation was instrumental in the action of the Nigerian government. It alleged that Chevron gave the Nigerian military forces assistance in the form of helicopters and sea trucks, which they used to dislodge its protesters from the barge. Indeed, Chevron hired the security forces and helped them plan the attack on the villages in retaliation for the protesters' activities⁶⁴. On these facts, the American Court held that Chevron was not liable for the acts of the Nigerian security forces. Though the court did not say so, it must have been a consideration in the mind of the court that Nigerian security forces doing what they did were carrying out the Nigerian government's duty to protect and secure foreign investment.

Offshore litigation is a very expensive exercise both for the aggrieved host communities and the oil companies. For the aggrieved host communities, traveling expenses, hotel accommodation, and feeding expenses can be quite staggering. The vandalization of pipelines, oil thefts, and kidnapping of oil workers are equally unhelpful. For oil companies, custodian interviews can be money and time-consuming.⁶⁵

7.0 GREEN FINANCING MECHANISM FOR ENFORCING CORPORATE ENVIRONMENTAL RESPONSIBILITY ON HOST COMMUNITIES IN NIGERIA

The world is entering an unprecedented period. Forces of change, unparalleled in human history will require a pivot towards a new economic era to deal with pressing societal economic, and environmental issues.⁶⁶Consequent to this, the United Nation Conference on Sustainable Development⁶⁷ did not build on the concepts of corporate responsibility. Attention was rather focussed on the 'theme' of a green economy in the context of sustainable development and poverty eradication. This was seen as a lens for focusing on and seizing opportunities to advance economic and environmental goals simultaneously.⁶⁸

Green Finance is an investment scheme that offers environmental benefits. The World Economic Forum defines green investing as a form of socially responsible investing where investments are made in companies that support or provide environmentally friendly products and practices. These companies encourage new technologies that support the transition from carbon dependence to more sustainable alternatives.

According to G20,⁶⁹ green finance in its traditional form is the financing of investments that provide environmental benefits in a broader context of environmentally sustainable development. These include the trade of carbon emissions, green bonds, etc. Countries like

⁶⁴ Ibid

⁶⁵ Ibid.

⁶⁶ UN Environment Inquiry Report, *Design of a Sustainable Financial System*, (2018) *Nigerian Sustainable Finance Roadmap* <<https://www.greengrowthknowledge.org>> Accessed 4/3/2024

⁶⁷ UNCSD [2012].

⁶⁸ E. Morgera, *Corporate Environmental Accountability in International Law*. London (2nd Edn.) Oxford University Press (2020) 9 <<https://global.oup.com/academic/product/corporate-environmental-accountability-in-international-law-2e-9780198738046?cc=us&lang=en&#>> Accessed on 11/7/ 2024.

⁶⁹ The premier forum for international economic cooperation.

Canada, and China have recorded success in the adoption of investment in green financing as a result of the existence of a proper legal framework.⁷⁰

8.0 CONCLUSION

Host communities no doubt are integral stakeholders for successful operations in the petroleum industry. Generally, companies are required to conduct their operations following internationally accepted principles of sustainable development and inter-generational equity, therefore, the peculiarity of green financing is not well captured in the laws enforcing oil corporations' environmental responsibility, however, the overwhelming potentials and benefits resulting from green financial mechanism are enormous. It provides means to address economic and environmental issues simultaneously. The need to exploit natural resources in a manner that is sustainable, prudent, rational, wise, or appropriate forms the basis of the principle of sustainable use which also emphasizes the need to integrate environmental consideration into economic development plans, strategies, programmes, or projects. There should be specific provisions on sustainable projects such as investment in green finance that can reinstate the environment.

In line with the above, the paper finds that despite stringent laws in place to enforce corporate environmental responsibilities of oil Companies on the host community, it is not always easy on the part of host communities to contest the statutory provisions that impose corporate environmental responsibility on oil companies for violation of such CER to aggrieved community litigants. Hence, the clash between the oil companies and host communities persists to date. Also, there is a lack of provisions for proper financing mechanisms in law that are transparent enough and gives proper accountability of projects intended to support the development of the petroleum host communities by oil companies after oil explorations. More so, the procedure employed by the law to carry out investigations that determine the parameters for liability of oil companies, is not adequate, because the agencies, due to lack of funding, place too much reliance on the polluter, i.e oil companies to report itself after any incidence of spillage occurs. This represents a conflict of interest, as a result, leads to a lack of transparency in the investigating process, which unavoidably, affects the financing of projects meant for developing the petroleum host communities.

Consequent to the above findings and to have sustainable laws for enforcing the corporate environmental responsibility of oil companies on host communities, there is a need to have a proper funding mechanism such as Green Financing stated specifically in the laws. Green Financing is the recent investment scheme that offers environmental and economic benefits simultaneously, as it gives room for capacity building, thereby creating employment for community members.

The financing mechanism highlights the need for transparency, disclosure, and proper accountability to ensure funds are used for specific projects. Advocates of green policies have contended that well-implemented green policies can create opportunities for employment in sectors such as renewable energy and sustainable forestry for community

⁷⁰ M kadiri, *Nigeria as a Global Hub for Traditional and Islamic Green Financing* (2021). <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3862687>. Accessed on 13/2/2024.

development. Opportunities for green investment abound in the oil and gas sector through corporate environmental responsibility principles, as it would foster the sustainable prosperity of the petroleum host communities. This can only be achieved when the laws provide specifically for such an investment, thereby creating a proper framework for its success.