



DIVESTMENT OF ASSETS BY MULTINATIONAL CORPORATIONS TO NATIONAL CORPORATIONS IN THE OIL AND GAS INDUSTRY: DECOMMISSIONING AND ENVIRONMENTAL JUSTICE TO THE HOST OIL AND GAS PRODUCING COMMUNITIES UNDER THE NIGERIAN REGULATORY REGIME

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Abstract

It is trite that the declining trend in the use of fossil fuel resources due to associated environmental destruction, has given rise to the demand and investment in a more environmentally friendly energy sources to meet global energy demand. Within the oil and gas industry, the life cycle of its projects involves four fundamental stages which are: exploration, development, production, and decommissioning. Each of the stages bears with it environmental challenges that have occasioned dimensional crises and affected the commercial viability of smooth and continuous operations in most nations including Nigeria. This has resulted in the shift waves of asset divestment by multinationals to national corporations because they (the MNCs) consider divestment as crucial aspect of their strategy to renew and enhance their portfolio. This is because it fits into their objective of net-zero emission energy companies. The host communities of the oil and gas industry attribute the environmental harm caused to national corporations who have a controlling stake in oil and gas assets whereas, national corporations lack the sustainability practices, environmental commitments, and reporting standards that the multinationals have. On the basis of the above, this paper appraises divestment, decommissioning of oil and gas installations, and environmental justice therefrom to the host communities under the Nigerian regulatory regime in the context of existing challenges and gaps with a focus on accountability and best management practices as applied in a range of international jurisdictions and practices.

Keywords: Abandonment, Divestment, Decommissioning, Environmental Justice, Environmental Protection, and Oil and Gas

1.0 Introduction

This paper discusses the Nigerian state and the Niger Delta region as the host community to the oil and gas multinational corporations due to it abundant endowed natural resources. It offered factual presentation of the impact of the multinational corporations' operations activities specifically in the upstream sector of the petroleum industry in the Niger Delta region resulting degradation of the environment with its consequential human rights violations through physical military suppression of the inhabitants. Demonstrated and presented are some incidents of oil spills and their respective impacts, judicial calls for corporate accountability for environment and human rights violations in national and foreign jurisdictions. Also discussed are divestment, abandonment and decommissioning of oil and gas assets by multinational corporations their reality on environment and human rights of the host communities. Challenges of these are also demonstrated with recommendations aimed at sustainable environmental justice to the oil and gas host communities for environmental degradation, divestment and abandonment and decommissioning.

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2.0 The Nigerian State and the Niger Delta Region

Nigeria is one of the countries in West Africa on the Africa Continent. It is in the Gulf of Guinea on the Atlantic Ocean. She is one of the nations endowed with crude oil found within her 9 (nine) coastal states namely, Abia, Akwa Ibom, Bayelsa, Rivers, Delta, Cross River, Imo, Edo, and Ondo States. These states are in the southern part of the country called the Niger Delta region. The region is a home to minority ethnic group like the Ogonis, Ijaws, Itsekiris, Ibibios, Efik, and the Urhobos among others. It is one of the densely populated regions in Africa². Historically, the area was referred to as the 'Oil Rivers' because it was a major producer of oil palm. Peculiar and unique to the Niger Delta region is the involvement of several multinational corporations in oil and gas operations in the area from as early as the 1903³. Oil and gas operations has placed Nigeria in an enviable position as the largest producer of sweet oil within the Organisation of Petroleum Exporting Countries (OPEC). The grade of crude oil in this category is known as Brent Oil due to its relatively low density, and low sulphur content. In 2018, Nigeria has approximately 37 billion barrels of 31% of the global crude oil reserves, ranking it presently in the 8th position of OPEC⁴ and 13th position worldwide with 1,999.885 BBL/D. Oil remains Nigeria's principal export and major source of foreign exchange, accounting for 80% of the federal government's source of revenue and 95% of her export earnings⁵ despite the decrease in crude oil production to 1780 BBL/D/1K in October from 1796 BBL/D/1K in September 2019. The Niger Delta by its human and natural blessings⁶, serves as the natural homes for some very rare species⁷, animate

² The Niger Delta occupies 75% of the total land area of Nigeria and is a home thirty-one million of mainly impoverished people and account for more than 23% of Nigeria total population. The density is among the highest in the world with 265 people per square kilometre. This population expands at a rapid of 3% per year. See UNEP Nigeria Report on the Niger Delta. Human Development Report (2006), p.43, World Bank. Found on www.worldbank.org/en/country/nigeria. <Accessed 11-12-2019>, and Ebegbulem, J.C *et al.*, Oil Exploration and Poverty in the Niger Delta Region of Nigeria: A Critical Analysis, *International Journal of Business and Social Sciences*, Vol. 4.3. (2023), Pp. 279-287

³ The history of oil exploration in Nigeria dates to 1903 when Nigeria Bitumen Corporation conducted exploration work in the country, at the onset of World War I that eventually brought the firms' corporations to a stop. This was due to lack of technological and financial resources by small oil companies, and large companies took over the exploration of commercial oil in the country. Thereafter, licences were given to D'Arcy Exploration Company and Whitehall Petroleum, but neither company found oil of commercial value and they returned their licences in 1923. A new licence covering 920.00 square kilometre (357 square miles) was given to Shell and British Petroleum (then known as Anglo-Iranian). The company began exploration work in 1937 and thereafter was granted licence to explore oil all over the territory of Nigeria, but in 1951, the acreage as allotted to it was reduced. Drilling activities commenced in 1951 with the first test well drilled Owerri area. To note is that non-commercial quantity oil was discovered in Akata, a community near Eket in the present Akwa Ibom State in 1953 despite that the company had spent about 6million pounds on exploration activities in the country. Shell in the pursuit of economically available petroleum, found Oil in Oloibiri in the present Bayelsa State in 1956. Other oil wells discovered within the period were Afam and Bomu in Rivers State. Crude oil production began in 1957 and in 1960, a total of 847.000 tonnes of crude oil was exported. See Ebegbulem, *ibid*.

⁴ Having Venezuela, Saudi Arabia, Iran, Iraq, Kuwait, UAE, Libya, Nigeria, Algeria, Ecuador, Angola, Congo, Gabon, Equatorial Guinea, respectively. See OPEC Annual Statistical Bulletin 2019, Nkem, A.C *et al*, The Impact of Oil Industry-Related Social Exclusion on Community Wellbeing and Health in Africa Countries *Frontiers in Public Health Systematic Health Review*, (October 2022), Pp. 1-3

⁵ Pitkin, J., Oil, Oil, Oil, Every Where: Environmental and Human Impacts on Oil Extraction in the Niger Delta. Being Thesis Submitted in 2013 to Ponom College, Claremont, CA, USA. Also, Organisation of the Petroleum Exporting Countries on Crude Oil Production 2019 Data. Chart, Calendar and Forecast. Found on <http://tradingeconomics.com/nigeria/crude-oil-production?continent=20>. <Accessed 11-12-2019>

⁶ Barbier, E. B *et al.*, Economic Valuation of Wetlands: A Guide for Policy Makers and Planners, (1999), Ramsar Convention Bureau, Gland, Switzerland

⁷ Wetlands International, Conserving and Restoring Wetlands in Nigeria's Niger River Delta. Found on <https://www.wetlands.org/casessands/conserving-an-restoring-wetlands-in-nigeria-niger-river-delta>. <Accessed 12-05-2019>, Malden, M., Nigeria Oil and Gas Revenue: Insight from New Company Disclosure, New York NY Natural Resources Governance Institute, (2017), pp. 24-67

and plants and multinational corporation (as earlier stated) in the oil and gas industry of the economy but has ironically suffered unquestionable damages from the activities of the multinationals' operations in the industry resulted in the hydrocarbon pollution on the environment and causing a negative impact on land, air, aquatic life, and wildlife as well as on human inhabitants. The non-hydrocarbon environmental issues and concerns of the people are deforestation and the acquisition of farmlands, ponds, pollution of fishing waters, sources of their livelihood for field facilities, hydrological changes due to the construction of roads and pipelines, and contamination⁸.

Empirical findings indicate that the experience of the people of the Niger Delta emanate from non-compliance with international standards, operations guidelines⁹. By the operators in the oil and gas industry and perhaps the Nigerian government approach towards environmental measure in her relationship with the multinationals investors countries in entering bilateral and multinational treaties¹⁰. The latter could be explained away due to its quest for economic growth and development through foreign direct investment, particularly in the oil and gas industry and as a nation depending on a mono economy that is crude oil export.

A cursory examination of the Nigerian state from the above reveals that since the discovery of oil in the Niger Delta, the region has contributed immensely to the economic revenues and the openings of several areas to unprecedented development in no small measure. It has also propelled and continued to propel development in other industries during and within its industrialisation regime but with insignificant positive impact in the areas of economic, social, political, and environmental wellbeing of the inhabitants of the Niger Delta region. Quite the contrary to what are obtainable in countries like Iraq, Kuwait, Saudi Arabia, Libya, Singapore among others that have explored and exploited their oil and gas industries to the benefit of their people particularly the host communities where the resources are endowed.

It could be arguably said that the relationship between Multinational oil and gas corporations, the Nigeria state, and the Niger Delta region portrays and presents mutual harmony between the

⁸ United Nations Environment Programme (UNEP) Assessment of Ogoniland, Published in 2011, Pp. 32-41, also, Iheriohanma, V.I., Environmental Impact Assessment of Oil and Gas Industry in Niger Delta, Nigeria: A Critical Environmental and Legal Framework Assessment, 2016, Peggy, S and Zabbey, N., Oil and Water. The Bodo Spills and the Destruction of Traditional Livelihood Structure in the *Niger Delta Community Development Journal*, 48 (3), (2013), Pp. 391-405. Zabbey, N and Uyi, H., Community Responses of Intertidal Soft-Bottom Macro Zoobenthos to Oil Pollution in Tropical Mangrove Ecosystem, Niger Delta, Nigeria, *Marine Pollution Bulletin*, 82, (1), (2014), Pp. 167-174. In the same context, also see Carteno, R.V *et al.*, A Sectorial Analysis of the Role of Foreign Direct Investment in Pollution and Energy Transition in *OECD Countries Journal of Environmental Management*, (2022), 114081, Pp. 2-6.

⁹ UNEP, *ibid*, and Amnesty International: UN Confirms Massive Oil Pollution in Niger Delta. Found on <http://www.amnestyusa.org/news-item/un-confirms-massive-oil-pollution-in-niger-delta>. <Accessed 26-07-2019>. Also, Amnesty International Nigeria. Hundreds of Oil Spills Continuous to Blight Niger Delta, (2015), (26 June 2017). Found on <https://www-amnesty.org/en/latest/news/2015/03/hundreds-of-spills-continous-blight-niger-delta>. <Accessed 04-08-2022>, Kalejaye, K., Nigeria Records 9.343 Oil Spill Incidents in 10Years, (2015), (26 June 217). Found on <http://sweetcrudereports.com/2015/09/02/nigeria-records-9343-oi-spills-incidents-10-years>. Osheinemen, N.A *et al.*, Evaluation of the Impact of Oil Disaster on Communities and its Influence on Restiveness in Niger Delta, Nigeria, *ScienceDirect Procedia Engineering* 212, (2018), Pp.1054-1061. Found on www.science. Akinwunmi A *et al.*, Geospatial Assessment of Oil Spill Pollution in the Niger Delta of Nigeria: An Evidence-Based Evaluation of Causes and Potential Remedies. *Environmental Pollution*, Volume 267, (December 2020), 115545. Found on <https://doi.org/10.115545>. <Accessed 04-08-2022>.

¹⁰ example of such treaty is the Nigeria -Canada BIT that exclude environmental measure.

multinational oil and gas corporations and the Nigeria state on one hand, secured and preserved by investment contracts, agreements or treaties' clauses, provisions, and mutual exploitation of the Niger Delta and its people. On the other hand, these oil and gas contract to have been secured at the expense of environmental interest of the peoples of the Niger Delta region, bereft of corresponding development of the region¹¹. For whilst the multinational corporations continue to make huge profit, and the Nigerian state amasses wealth, the environmental rights of the inhabitants of the Niger Delta region are dealt with perpetual exploitation, under-development, and neglect. Oil proceeds have imbued the Nigerian state and its political and economic elites with unprecedented wealth, affluence, and opulence while the inhabitants of the Niger Delta continue to wallow in abject poverty and subjected to irreparable environmental degradation and deprivation¹².

3.0 The Niger Delta Environment and the Multinational Oil and Gas Corporations Activities

Nigeria's export earnings from crude oil and gas account for over 90% and it's the bedrock of private accumulation by various ethnic wings of Nigeria's ruling class, and existing position in the region is that of contraction as while oil contributes positively to the state, oil operations activities impact negative indelible mark on the Niger Delta¹³. Soremekun and Obadare¹⁴ in their support to the experience in the Niger Delta region, stated emphatically that petroleum operations have engendered massive environmental pollution in the oil producing areas, specifically, there have been pipeline leakages, well blow-outs and spillages which have had severe effects on lands, water resources, micro-climate, and residents.

Another dimension is to the effect that the operations of the multinational oil and gas corporations on the environment are not only devastating but have triggered off a series of crises. Explicitly noted by Olorutimehim and Ayoade¹⁵ that most of the conflicts have arisen from complex environmental problems and a long history of basic neglect and the social development of people who have seemed helpless watching their land and water resources continually devastated by intensive exploitation for petroleum and gas without deriving any appreciable benefits by way of investment in their own development. According to Tasie, the Niger Delta environment and its human inhabitants have been be-devilled with several vicissitudes of change from colonial days to contemporary times. From a vantage position of being a frontier of opportunity and a hub of economic activities during the south Atlantic trade era, the Niger Delta is now in the back water and suburbs of development, as compared with other geopolitical zones of Nigeria. Although, it is the goose that lays the golden egg for the economic sustenance of Nigeria, the Niger Delta nonetheless, is the most neglected and worst

¹¹ Due to the operations of the oil and gas multinational corporations and the behaviour of the various governments, two major negative effects are naturally occasioned on the region. First is the environmental pollution which encompasses the territorial atmospheric, and marine environment. Second is that of the proceeds from the exploitation of oil being used to serve other parts of the country to the neglect of the oil and gas producing communities.

¹² Olawuyi, D., Legal and Sustainable Development Impact of Major Spills. *Journal of Sustainable Development*, 9 (1), (2012), Pp. 1-15. Also, Barry, F. B., Environmental Injustice. Conflict and Hazards in Niger Delta, Sustainable Research Paper, Washington DC, (2010), Pp. 1-73. Also, UNEP *op cit*, (note 8), Pp. 1-25.

¹³ Oloredo, O., Imperialism Neo-Colonialism, and the Extractive Industries in Nigeria, (1998), p. 1

¹⁴ Soremekun, K and Obadare, E., The Politics of Oil Corporation in Nigeria cited by Oloredo, *ibid*, Mafiana, M. O *et al*, An Insight into the Current and Onsite Bioremediation Approaches in Contaminated Sites in Nigeria. *Environ. Sci Pollu Res* (2020), 28: 407394

¹⁵ Olorutimehim, B.O and Ayoade, J.A.A., An Overview of Conflict in Nigeria 1984-2000, (Ibadan: Development Policy Centre, 2002), p. 16

underdeveloped region of Nigeria. Amongst intellectuals (especially those of the Niger Delta origin) and others who mean well for the region, the nagging issues of neglect and underdevelopment have aroused much of what is now often referred to as the Niger Delta question¹⁶.

4.0 Specific Case Scenarios of Oil and Gas Corporations Activities on the Environment and the inhabitants of the Niger Delta Region.

Examined here are some factual presentations of the impacts of the multinationals' activities on the environment and human rights in terms of violations and abuses of the people of Niger Delta region.

4.1 The Ejamaa-Ebubu Oil Spill

The Ejamaa-Ebubu oil spill is situated in Eleme Local Government Area within the Ogoni zone in the Niger Delta region of Nigeria. Prior to the installation of oil facilities, the spill affected land had been used for a combination of agricultural holdings and swamps having the nearest housing areas of approximately 30 metres of the 1970 spill point and less than 20 metres north of the compound wall¹⁷. This spill originally occurred over 50 years ago. There have been multiple spills and clean up attempts since then, regardless the land remained contaminated.

A scientific study of the site published in 1992 found that it has still not received some 20 years later¹⁸. At the time of the 1992 study, the oil was still seeping into the nearby water and other domestic uses. Prior to the UNEP assessment of the site after 40 years of the original spill, the site has not been adequately cleaned up. SPDC described Ejamaa-Ebubu spill as 'high risk' site. In 1995, SPDC claimed that it had undertaken a periodic clean-up of the site as oil seeped to the surface¹⁹.

4.2 Oken Oyaa Oil Waste

By UNEP description and report, the Oken Oyaa oil waste site was formerly used for sand mining for construction purposes. At the time of UNEP visit, there was some agricultural, private, and commercial housing and a new real estate project some 500 metres north of the site. It is in Eleme Local Government Area of Rivers State.

The UNEP assessment team²⁰ noted that the waste as observed had evidently been dumped a few days or weeks at the most prior to the site visit as a satellite image dated 12th June 2010 does not show any waste at the location. The waste disposed of in several hundred 'Big Bags' containing small rock fragments. Oil was seeping from the bags, forming puddles on the ground.

¹⁶ Briggs D.A., *Critical Reflection on the Niger Delta Question*, (Larigraphics Printers, 2007), p. 15

¹⁷ Asuquo, E.O *et al.*, *Vegetation Recovery and Herbaceous Production in a Fresh Water Wet Land 19 Years After A Major Oil Spill*, *African Journal of Ecology*, Vol. 30 (1992), Pp. 149-156.

¹⁸ SPDC Nigeria Brief, *The Environment*, 1995.

¹⁹ *Ibid*

²⁰ UNEP sample analysis of the samples taken directly from the waste bags had 54.300Mg/Kg TPH. This is clearly above the EGASPIN intervention value of 5,000Mg/Kg. Some of the bags were broken and oil had already leaked into the soil. Most of the 31 sand samples collected from around the waste were only slightly contaminated with TPH concentration below 500Mg/Kg in 28 samples elevated levels of barium (maximum 2630Mg/Kg), which raises the possibility that the waste may have come from drilling operations (in which barium is used as a weighting agent). See UNEP report *op cit* (note 11), p. 130.

4.3 Ekeremor Oil Spill in 2018

Ekeremor is a local Government Area in Bayelsa State in the Niger Delta region. In May 2018, a reported incidence of oil spill was made by leaders of Aghoro 1 of spill of the Trans Ramos pipeline. The spill caused destruction to aquatic life and hardship for the communities who had no source of fresh water to drink for several weeks necessitated by the spill. It also caused strange illnesses to children as reported. It took the intervention of the then state governor that visited the spill site with some much-needed relief materials for members of community. According to the community leaders, the spill contaminated the community source of drinking water, livelihood as fishes and mangroves died. They were also forced to sign a joint investigation visit (JIV) report which they declined. This spill continued to November 2019 and clean up was done and completed on the 21st February 2020²¹.

4.4 Agba-Ndele Oil Spill 2018

Agba-Ndele is a community of farmers and fisher folks in Emuoha Local Government Council of Rivers State. On 27th June 2018, a major oil spill occurred at the SPDC pipeline facility. The spill impacted heavily on the community source of water as it affected and devastated their River to the point of being denied drinking water, water for processing of oil palm, and fishing. They contacted SPDC and the Local Government Council on the 15th July 2018, a month thereafter. Impact assessment identified from the incident by a team of environmental experts²² characterised and ranked the associated impact as adverse impact²³, direct impact and indirect impact²⁴, short term impact²⁵, long term impact²⁶, reversible impact²⁷, irreversible impacts and residual impacts²⁸. Demands made to SPDC as suggested by the expert team²⁹ but yet to be addressed.

4.5 The Recent (2023) Okulu River Oil Spill

This is one of the recent spills that occurred on the 11th of June 2023³⁰ on SPDC pipeline facility. The spill polluted the Okulu River that runs through several communities in Eleme Local Area of Rivers State. The impact of the spill has caused about 300 registered fishermen from carrying out their fishing activities that remain their source of livelihood. The Chairman of the Local Government Area Council conforming the incidence on inspection of the spill site and impact therefrom, said preliminary observation shows that the spill was caused by facility failure due to long period of neglect and failure

²¹ An Environmental Genocide: Counting the Human and Environmental Cost of Oil in Bayelsa, Nigeria. A Report by the Bayelsa State Oil and Environmental Commission, (May 2023), p.

²² Expert Assessment Report of Environment and Chemical Services Ltd, Chinda Estate, Mile 3 Diobu Port Harcourt, Submitted to the Chairman, Emuoha Local Government Council, Rivers State, August 2018.

²³ These are impacts that may result in irreversible and undesirable (changes) in the biological environment, decrease in the quality of the biophysical environment, limitation, restriction, or denial of access to or use of any component of the environment to others, sacrifice of terms of environmental viability or integrity for short term economic goals,

²⁴ These are impacts resulting directly from the spill and those that are at least remote and stretches along with the spread of the impacted river.

²⁵ These are impacts that will last only within the period of a specific time.

²⁶ These are impact whose effects remain even after a long time, e.g., human diseases, loss of income, and loss of natural environment.

²⁷ These are impacts whose effects can be addressed on application of adequate mitigation measures.

²⁸ These are impacts whose effects are such that the subject matter cannot be returned to its original state even after adequate mitigation measures are applied.

²⁹ Expert Assessment Report *op cit*.

³⁰ By the petition to the Rivers State House of Assembly Member Hon/Dr Aforji Igwe representing the Local Government Area of the affected communities in the Rivers State House of Assembly days after the spill occurred



to replace overdue facilities in line with international best practices of the industry. The chairman called on SPDC, regulatory agencies and stakeholders for a joint investigative visit (JIV) to ascertain the cause of the spill and extent of its impact in terms of damage. All business activities, source livelihood dependent on the river have been shut down due to the impact of the spill causing losses and devastating experiences to the affected communities.

5.0 Human Rights Violations: State Security Agents Suppression of Environment and Human Rights Protesters

While the inhabitants of the oil and gas host communities receive little in return, education, employment, and health for the environmental degradation and destruction that jeopardises their traditional livelihood. The fishing stocks have been declined, their fields have lost fertility, and their children have been denied opportunity to improve on the economic circumstances of their communities. Meanwhile, foreign multinational corporations have flourished in their midst, protected, and supported in their disputes with the local communities by resources in the form of armed security personnel³¹.

The Nigerian security forces have been regularly used to protect oil installations and to respond to perceived threats, with varying degrees of involvement by the oil and gas corporations themselves. Evidence shows that in the early 1990s, Shell was known to have called on the mobile police force to respond to demonstrators and protesters³². This also apply to other multinationals³³. Shell admitted that it had procured firearms for the Nigerian Police, a fact that was revealed when one of Shell's arm suppliers sued for breach of contract³⁴ by Shell.

Some instances of act of human rights violations and abuses in the Niger Delta are:

5.1 The 1990 Umuechem Massacre

Umuechem massacre is one of the major human right violation cases against oil and environmental rights protesters. Umuechem is a community in Etche Local Government Area of Rivers State in the Niger Delta, and in the fall of 1990 as evidently stated and documented by the Oputa panel, the youths from the community protested at a Shell facility location. The police in a bid to stop the protesters, invaded the community³⁵. A Shell had expressly requested that the notorious mobile police responded to the protesters³⁶. It was testified and generally accepted that eight (8) people were killed in the invasion by the police with about 500 houses destroy.³⁷In the report, the commission set up by the federal

³¹ See the Testimony of Nnimmo Bassey, The Executive Director of Advocacy Organisation Environmental Rights Action (ERA) Friends of the Earth Nigeria (FoEN) to the United State Senate Judiciary Sub-Committee on Human Rights and the Law on the 24th of September 2003. The organisation is dedicated to the defence of human ecosystem in terms of human rights and to the promotion of environmentally responsible governmental, commercial, community and individual practice in Nigeria, and the empowerment of local people.

³² Shell Petroleum Development Company of Nigeria, Response to Human Rights Watch/Africa Publication in The Ogoni Crises: A Case Study of Military Responses in Southern Nigeria, July 1994.

³³ Such as Chevron, Total, and Agip.

³⁴ Ghazi, P Duodu, C., How Shell Tried to Buy Berettas for Nigerians, The Observer, (Feb. 11th, 1996).

³⁵ See The Human Rights Violations/Investigation Commission (HRVIC), Synoptic Overview of HRVIC Report: Conclusion and Recommendations at 13 (May 2002), (Referred and Called Herein as Oputa Panel).

³⁶ Human Rights Watch, *op cit*, (note 31), p. 162.

³⁷ *Ibid*.



government found out that the protesters were neither violent nor armed and that the act of the Nigeria security was a display of reckless regard to lives and property.

5.2 The 1990s Ogoni Crises

Ogoni land is one of the platforms to a large numbers of onshore oil facilities and has experienced several and severe environmental damage from oil spills, gas flaring and other activities.

In 1993, the military commenced campaigns against the people of Ogoni. It was a dimensional campaign against protesters that involved thousands of victims and hundreds of deaths. The campaign started after the emergence of the Movement for Survival of the Ogoni People (MOSOP) led by Ken Saro-Wiwa and presentation of its Ogoni Bill Rights to the Military Government³⁸, followed by a letter with several demands, including compensation and stoppage of environmental degradation to the multinational corporations. Dissatisfied with MOSOP agitation, the federal government in its reaction to the demands issued a decree declaring that disturbance at the oil installations would be considered as treason, punishable by death³⁹. In 1993, MOSOP stepped up its protests and the Nigerian security forces responded with violence shooting. This marked the commencement of the Nigerian security forces raid on Ogoni villages.

In 1994, to quieten MOSOP, Ken Saro-Wiwa and fifteen other leaders of MOSOP were arrested on charges of murdering four prominent sons of Ogoni without any credible evidence connecting them to the murder⁴⁰ and after a sham trial before a special tribunal which was denounced by the international community, Ken Sar-Wiwa and eight other Ogoni leaders were executed. This act, the U S State Department on Human Rights Report described the execution as denial of due process.

Other similar forms of human rights abuses by the state security agents include the 1994 Chevron, Parable community protesters attack⁴¹, 1994 Total (Elf) Egi community protesters attack⁴², 1996 Agip, Egbema community protesters attack⁴³, and 1998 ExxonMobil, Qua Ibo terminal protesters attack⁴⁴.

6.0 Judicial Calls for Corporate Accountability and Justice for Environment and Human Rights Violations

For over five (5) decades, many communities and individuals in the oil and gas producing communities of the Niger Delta region have sought legal redress in the Nigerian courts. This is not limited to individuals and communities alone as non-governmental organisations have taken up steps and sought redress on behalf of individuals or communities on issues that violate environment and human rights.

In most of these cases, they seek financial compensation for the frequent damage caused by oil operations through oil spills⁴⁵ as well as abuse, injury, and death on sponsorship of the multinational oil

³⁸ Human Rights Watch, *op cit* (note 34), p. 24, Ibeanu O., Oiling the Friction: Environmental Conflict Management in the Niger Delta Nigeria, 6 Environment Change and Society Project 19 (2000), p. 26.

³⁹ Oputa, *op cit*, (note 34), Pp. 29-30.

⁴⁰ Human Rights Watch, *op cit* (note 36), p. 13.

⁴¹ *Ibid*, p. 162.

⁴² *Ibid*, p. 34.

⁴³ *Ibid*, p. 131.

⁴⁴ *Ibid*, p. 135

⁴⁵ Frynas, J.G., Legal Change in Africa, Evidence from Oil-Related Litigation in Nigeria, *Journal of Africa Law*, Vol. 43, No. 2, (1999), p. 54



and gas corporations to suppress the agitations and struggles by the communities to protect their environment or be paid adequate compensation for damage and deprivation suffered from negligence in their activities. Some of the cases in this respect decided within Nigerian and foreign jurisdictions are examined hereunder.

6.1 Ejamaah-Ebubu v Shell

This case⁴⁶ was initiated by the people of Ejamaah-Ebubu, the affected community of Shell oil spill. The spill is one of the famous of oil spills in Ogoni land (facts previously stated in detail in 1.2.1, I.) above.

The Ejamaah-Ebubu commenced the lawsuit that went through the trial court to the Supreme Court which upheld the decision of the trial court after 30 years of litigation. The court ordered for payment of 17Billion Naira for the long-term impact on the community and on their livelihood. The oil seep had denied individual and community their sources of livelihood.

6.2 Four Farmers & Stitching Milieudefensie v Royal Dutch Shell & Shell Petroleum Company of Nigeria

This case⁴⁷ was instituted in the Netherlands. Th Claimant sued both Royal Dutch Shell and Shell Petroleum Development (SPDC) as Co-defendants. The suit encompasses three claims made by the farmers and supported by a non-governmental organisation (NGO) Milieudefensie in respect of the three separate oil spills from Shell operated pipelines and wellheads in the Niger Delta which resulted extensive damage to the Claimants' farmlands and fishing grounds. The Defendants denied the allegations, arguing that the spills were caused by sabotage and that in any event, they had adequately responded to the spills by shutting off the pipelines, closing off the leaks and cleaning the polluted soil. The lower court held that the spills were indeed likely caused by sabotage, but the Defendant did not take sufficient measures to protect the infrastructure against sabotage. on appeal, the Court of Appeal agreed with the judgement of the lower court and ordered an interlocutory decision⁴⁸.

6.3 Okpabi & Others v Royal Dutch Shell & Shell Petroleum Company of Nigeria Limited

In this case⁴⁹, the Claimants about 42, 500 Nigerians citizens of Niger Delta region filed the suit in the United Kingdom in respect of areas allegedly affected by oil leaks from pipelines and associated infrastructure operated by SPDC.

The leaks are alleged to have impacted their lives, health, and local environment and thereby contend that the Defendant are responsible. RDS is the parent company of the Shell group of companies incorporated in the UK. The Shell Petroleum Company of Nigeria is a subsidiary of RDS. The claims

⁴⁶ *SPDC v Agbara*, (2001), 7 NWLR. (Pt 1775), 356, *SPDC v Agbara*, (2016), 2 NWLR, (Pt 1496), 353, *SPDC v Agbara*, (2019), 6 NWLR, (Pt1668), 310.

⁴⁷ Known and called *Four Nigerian Farmers v Shell* (2015), ECLI: NL GHDHA: 2015:3538

⁴⁸ As it agreed with the trial court's (District court) findings that the cause of this spill was sabotage and ordered the parties to produce further evidence on the extent of the Defendants' precautionary measures and the consequences of the spills. See *Friday Alfred Akpan and Others v Shell and Another*, (2013), ECLI: RBBHA; 2013, 9-45, and *Four Farmers* ECLI: NLGHDHA: (2021), 134.

⁴⁹ *Okpabi & Others v Royal Dutch Shell & Another*, (2021), UKSC 3



against RDS and SPDC are based on the tort of negligence under common law of Nigeria as applicable to England and Wales.

The trial court held that, there was no arguable case that RDS owed the Claimants a duty of care. On appeal, the Court of Appeal upheld the decision of the trial court, but the Supreme Court overturned the decision as it reiterated it holding in the *Vedanta* case⁵⁰ that parents companies owe duty of care. The decision was premised on grounds of control, supervision, and management of the affairs of the subsidiary by the parent company.

6.4 Kiobel & Others v Shell (Proceeding in the Netherlands)

This is one of the suits instituted outside Nigerian jurisdiction against Royal Dutch Shell⁵¹ for human right violation. It was a civil case commenced by Mrs Kiobel and three women in the Netherlands having lost the one she previously lunched in the United States for lack of jurisdiction. They claimed that Shell was complicit in the 1995 killings of their husbands, part of the Ogoni 9 activists who contested Shell's operations and the Nigerian government over the effect of oil pollution. In 2019, the Dutch court said it has jurisdiction to hear the case and ruled that Shell should handover confidential internal documents to the Claimants. This suit was dismissed in The Hague in 2022 on grounds of insufficient evidence to link Shell to bribing witnesses to give false testimony at the 'Ogoni nine' trial that led to their execution.

A suit in similar respect is the *Bowoto v Chevron Corp.*⁵² instituted in the United States that sought to hold Chevron accountable for the killing and causing bodily harm to unarmed protesters by Nigerian military forces contacted by Chevron.

6.5 Divestment

Nigeria currently has five international oil companies operating in the country. They are Shell, Chevron, TotalEnergies, ExxonMobile, and Eni. Empirical finding shows that most of these companies are now divesting their interest to national companies. Shell-Join Venture (TPDCJV), the largest oil operator and majority owner of the business now has the state-owned Nigerian National Petroleum Corporation its main shareholder with 55% equity interest and the rest owned by subsidiaries of international oil companies. Shell, through its wholly owned subsidiary SPDC Limited owns 30%, the French company Total 10%, and the Italian company Eni (Elf) 5%. Shell is responsible for the operations and maintenance of the wells, pipelines, and transportation of the oil. The partners fund the operations and maintenance in proportion to their share in the joint venture.

During the past decades, the SPDC Joint Venture has divested much of its business, including oilfield to several Nigerian-owned companies. This trend extends to other multinational, with their onshore and shallow water oil and gas assets, and total of 26 oil mining licences have been divested within the period. While Shell intends to sell off approximately £1.8 billion worth of oil and gas assets, Eni divestment plan amounts to about £4 billion, and ExxonMobil is looking at £11.9 billion of its assets.

⁵⁰ *Vedanta Resources Plc v Lungowe*, (2019), UKSC 20

⁵¹ This case was launched against Shell in the Netherlands by Mrs Esther Kiobel and three other women alleging the involvement of Shell in the execution of their husband, part of the 'Ogoni nine'.

⁵² (99.02506 SIC ND)



This wave triggered and attracted interest from Nigerian oil companies such as Seplat, Aiteo, and Eroton among others and is encouraged by the Nigerian government. Recently, the Nigerian government led the bidding of 57 marginal oilfields with approximately 130 firms being granted petroleum prospecting licences to develop the field

Divestment of oil assets according to the IOCs is in keeping faith with their pledges to reduce their share of carbon emission hopeful of net zero by 2050⁵³. This assertion, stakeholders tend to fault it as they argue that divestment by the IOCs particularly Shell are that, considering the stretch of the Trans Niger Pipeline (TNP) that is conveying oil to the export terminal, Bonny, has been corroded because there were laid in the 50s, and up the now, they have not changed the stretch of that pipeline. What they do is a random sectional replacement of the pipes where they were heavily corroded. They are divesting as a means dodging being held liable for any pollution that may arise from their corroded facilities. The multiplicity of litigations against IOCs is another reason they are divesting their onshore assets and liabilities to offshore where although, there will be oil spills and pollution, communities will have limited claims over the area where the spills occurred, and the 2021 ruling of the Dutch court in The Hague against Shell that placed a condition of installation of spill detection system in all their facilities. This Shell has not been able to meet, and the said judgment has open doors for more litigations against the IOCs in their home countries. These are in addition to Shell claims of incessant sabotage of their facilities, leading to loss of revenue to them and kidnapping of their personnel are responsible for their divestment.

Despite these pledges, host communities to the divested assets in addition to existing degraded state of their environment prior to divestment continue to experience extensive and massive damage inflicted on their coastal and marine ecosystem which are attributed to national companies that presently possess the controlling stake in the assets. This experience is argued is necessitated by lack of sustainable practices, environmental commitments, and reporting standards that the IOCs have. These were not considered as prerequisite conditions for divestment approval and conclusion. A dimensional injustice to the host communities by the Nigerian state and the IOCs.

Evidence of this is the Aiteo Exploration and Production Company Limited crude oil spill into the Santa Barbara River that lasted for about one month unabated due to of lack of environmental credential by Aiteo. While the spill was offshore, the impact extended to shallow waters, mangroves roots, and thereby affected the livelihood of the inhabitants of the surrounding communities of the affected areas.

Aiteo and the regulatory agencies attributed the spill to sabotage, but the residents and local authorities and environmental organisations such as UNEP⁵⁴ prior to the incidence have emphatically pointed to defective facilities as underlying causes of oil spills in the Niger Delta which the national companies have inherited from the IOCs. These facilities require maintenance and replacement in line with international best practice and guidelines of the petroleum industry.

⁵³ For instance, Shell considers divestment a crucial aspect of its strategy to renew and enhance its portfolio, as it works towards its objective of becoming a net zero emissions energy company.

⁵⁴ See UNEP, *op cit* (note 19) on major cause of oil spills in addition to others causes in the Niger Delta region of Nigeria.

6.6 Abandonment and Decommissioning

The oil and gas industry is one of the sensitive and technically oriented sectors with arrays of infrastructure such as wells, drill plants, rigs, pumps, vessels, platforms, pipelines, barges, and buildings among others, of which each has its significant use, application, and peculiar challenges after their deployment. This makes it imperative to be attended to in terms of displacement and recycled to prevent danger to its personnel or and the ecosystem or environment. To put this in place, various stakeholders in the industry such as the IOCs, government, and the host communities being major stakeholders as in Nigeria need a robust legal regime for abandonment and decommissioning of oil and gas facilities and assets as globally required of oil and gas nations.

6.7 Abandonment

The concept 'abandonment' is not defined under Nigerian law. It is used in the statute conjunctively with decommissioning. Abandonment simply put is the act of stopping an activity with no intention of returning to it⁵⁵. In the oil industry, abandonment is the procedure that an operator uses to secure important requirement from the regulator when the operator wishes to temporary abandon a well, or other oil and gas facilities⁵⁶. According to Black's Law Dictionary, abandonment is the surrender, relinquishment, and disclaimer of cession of property or of rights, voluntary relinquishment of all rights, title or claim to property⁵⁷. Mention of abandonment within the legal framework in Nigeria is made under Petroleum (Drilling and Production) Regulation⁵⁸ and the current Upstream Decommissioning and Abandonment Regulation⁵⁹ that provide for decommissioning and abandonment jointly as shall be examined hereunder.

6.8 Decommissioning

Decommissioning is not clearly defined in any international and many national legislations. It is the physical removal and disposal of obsolete installations at the end of their working life, and this include the plan of action as formulated by the operators and the government⁶⁰. A formidable decommissioning law or regulation will always provide for an operators plan of action which must be reviewed from time to time. It shall also envisage an approval by the government through a designated agency as in the case of Nigeria that the Petroleum Industry Act provide for Upstream Regulatory Commission responsible for the implementation of decommissioning and abandonment.

Within the oil and gas industry, decommissioning is the process whereby abandoned disused and obsolete installations and facilities are dismantled and the land or sea reclaimed as much as possible to their original situation, so that they can be used again for other purposes⁶¹.

Decommissioning is classified into Onshore and Offshore decommissioning. Onshore decommissioning involves the plugging down of oil and gas assets located onshore. Offshore decommissioning is however more technical as it has various stages such as planning process to

⁵⁵ Etekerentse, G., *Nigeria Petroleum Law*, 2nd ed. (Lagos: Dredew Publishers, 2006), p. 37.

⁵⁶ Lowe, J.S., *Oil and Gas Law in a Nutshell*, (New York: West and Thompson Reuters, 2009), Pp. 89.

⁵⁷ Garner, B.A., *Black's Law Dictionary*, 11th Ed. (Sweet & Maxwell: 2019).

⁵⁸ Regulation 36, Petroleum (Drilling and Production) Act, 1969.

⁵⁹ Under Section 232 and 233, Petroleum Industry Act (PIA), (2021).

⁶⁰ UK Energy Act, 2008.

⁶¹ United Nations Conventions on Law of the Sea, 1982.

determine the option, cessation of oil and gas safe plugging of the well, removal of all or parts of the installation and then the disposal or recycling of all the removed assets. In this discussion, interest is on the onshore decommissioning that directly affect the host communities environment and wellbeing.

7.0 Legal Framework on Decommissioning and Abandonment

7.1 International Legal Regime

Generally, the law on decommissioning and abandonment of petroleum installations is evolving in the various jurisdictions globally. Accepted that the law applicable to decommissioning sometimes are relatively complex, they are also vague and even contradictory.

While the framework for decommissioning offshore installation is more complex, it encompasses international conventions, regional conventions, national law, and host government contract, while that of onshore are basically national law and host government contract. Nigeria is a state party to the three global conventions that provide for decommissioning and disposal as responsibility of state governments and not the oil and gas producing corporations. These conventions are, The Geneva Convention of 1952⁶², The London Dumping Convention of 1972⁶³, and The United Nations Convention on Law of the Sea (UNCLOS) 1982⁶⁴.

Still within the international legal regime is International Maritime Organisation (IMO) Guidelines which constitute a critical standard in the international framework on decommissioning as it provides guidelines and standards for the removal of abandoned or disused installations or structures offshore.

Further to the international conventions and guidelines is the applicable regional convention to the Nigerian jurisdiction: The Convention for Co-operation in the Protection of the Marine and Coastal of the West and Central African Region (Abidjan Convention)⁶⁵. This convention does not expressly provide for decommissioning and removal of disposal of offshore installations, infrastructure, platform, or pipelines but its Article 4 requires contracting parties to establish national laws and regulations for effective discharge of the obligations prescribed in the convention. Article 8 of the convention provide for the oil and gas industry⁶⁶.

7.2 Nigerian National Regime

Many countries either do not have laws and regulations in place to manage decommissioning process or if they do, they have not been tested in practice.

⁶² This is the first major international convention concerning the removal of offshore installations. The critical provision is Article 50 (5) which states that: 'Any installations which are abandoned or disused must be entirely removed'. The convention does not identify pipelines as part of the infrastructure to be removed.

⁶³ This is the second major convention concerning the disposal of offshore installations to prevent dumping of waste and other matters from vessels, or aircraft, platforms, and other man-made structure at sea. See Article IV of the convention generally.

⁶⁴ This specifically provide for decommissioning in particular, the removal of offshore installations as it states that, 'Any installations or structures ... which are abandoned or disused shall be removed to ensure safety of navigation... such removal shall also have due regard to fishing.... See Article 60 (3) of the convention.

⁶⁵ Dike, S.C., Decommissioning and Abandonment of Oil and Gas Facilities Legal Frame Regime in Nigeria: any Lesson from Norway, the UK and Brazilian Legal Framework? *Journal of Property Law and Contemporary Issues*, 9 (1), (2018), Pp. 169-183. Also, Azubuike, P. I and Anyogu, F. A., An Appraisal of Sustainable Decommissioning of Petroleum Installations and Environmental Protection in Nigeria. *International Review of Law and Jurisprudence (IRLJ)*, 4 (3) (2022), Pp. 140-147

⁶⁶ The contracting parties shall take all appropriate measures to prevent, reduce, combat, and control pollution resulting from or in connection with activities relating to the exploration and exploitation ... structure under their jurisdiction.

In Nigeria, prior to the recent all-encompassing enacted legislation, The Petroleum Industry Act⁶⁷, the Oil Pipeline Act made pursuant to the Oil Pipeline 1956 and the Petroleum (Drilling and Production) Regulation 1969 were the earliest laws to attempt regulations on the matter of decommissioning and abandonment. Ironically, the provisions of these legislations present vague regulations on decommissioning and abandonment. This was attributed to lack of understanding of the industry and power given to the Department of Petroleum Resources (DPR) to certify abandonment procedure has no requisite sanction for non-compliance. This placed the IOCs in a position to do whatever they consider appropriate on the condition that DPR does not have the requisite technological know-how and financial muscle to prevail on the IOCs to meet the regulations. The birth of EGASPIN which provide for the process of decommissioning and abandonment was faced with the challenges of global concerns on offshore management and major geopolitical conflict from the oil and gas producing communities.

The PIA which was enacted as a major reform of the oil and gas industry provide for key provisions and regulations such as the Upstream Decommissioning and Abandonment Regulations under Sections 232 and 233 of the Act⁶⁸. These regulations concern with decommissioning and abandonment of facilities used in upstream petroleum operations in Nigeria, including wells, all installations and facilities associated with upstream petroleum operations.

It also makes provision for a 'Commission' to administer the provisions of the regulations including the provisions of any guidelines and directives issued by the commission from time to time on implementation of the regulations on decommissioning and abandonment under the Act.⁶⁹ Some fundamental provisions amongst others in the regulations are:

1. Requirement of decommissioning and abandonment plan.
2. Approval of a decommissioning and abandonment plan.
3. Provision to update a decommissioning and abandonment plan.
4. Execution of decommissioning and abandonment pursuant to an approved decommissioning and abandonment plan.
5. Approval of an application to abandon a well.
6. Approval of an application to suspend a well
7. Requirement for public consultation
8. Post-completion of decommissioning and abandonment programme.
9. Enforcement by the commission.

⁶⁷ PIA *op cit*, (note 58).

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*



10. Contribution to decommissioning Fund, and

11. Decommissioning and abandonment liabilities in case of assignment.

Summarily, the PIA provide for rules for decommissioning and abandonment. It also mandates the commission to ensure that decommissioning and abandonment of facilities related to petroleum operations all comply with international petroleum industry best practices and standard in accordance with the guidelines to be issued by the commission.

The PIA, in a bid to attend to the historic underfunding of decommissioning and abandonment of oil and gas installations, provide for a decommissioning and abandonment fund that is to be used exclusively for that costs of the exercise which shall be funded in line with the decommissioning and abandonment plan.

7.3 Divestment, Decommissioning and Abandonment and the Host Communities' Environment

In Nigeria, oil blocks are currently undergoing a high-rate sale and acquisition through divestment, with long-term operators, the OICs selling to new participants, the national companies. No doubt that this development as provided under the law is encouraged by the Nigerian government policy and administration. A fundamental question for answers is, having in mind the clarity of the operators historic versus current operators' liabilities and expected future (decommissioning) liabilities, what are the measures towards balancing the inequalities and environmental injustice between the mutual harmony of the Nigerian state, multinational corporations, and the host communities in the context of divestment, decommissioning and abandonment of oil and gas assets?

Attending to this question requires identification and addressing the host communities' environmental concerns with respect to operations impact of the IOCs as follows:

7.4 Clean-up Standards

Prior to divestment by the IOCs, their operational activities have caused hundreds of oil spills yearly from poorly maintained pipelines and well along with inadequate clean-up practice that have led to widespread oil contamination to ground and drinking water sources, agricultural land and fisheries, damaged health, and livelihood of the host communities' inhabitants. Divestment when these circumstances are unattended to by the polluters, the IOCs believed to be technologically advanced to national companies of lesser technological standard and deficit environmental credential amount to mutual harmony between the IOCs and the Nigerian state to perpetually subject the host communities in a state of abject poverty and irreparable environmental degradation and deprivation.

7.5 Residual Liability

This is the potential obligation remaining after decommissioning and disposal of oil and gas installations. This could be unlimited and somewhat in perpetuity and include environmental impact and damage that extend to future generations. Normally, the tort law provides the liability to be on entities or persons who own property at the time of its shutting down. Divestment relieves the IOCs of this liability leaving the host communities at the mercy and discretion of the national corporations without environmental commitment and technological know-how to tackle operational disasters of long-term impact that is associated with the industry.



7.6 Encumbrance to Use of Land

In the Niger Delta, oil and gas installations are littered all over the IOCs abandoned operational sites and locations occasioned by their disengagement due to host communities protest for non-compliance with international operations standards and guidelines of the industry, sabotage, and attack by militants on their facilities and personnels among others. These left the host communities to proliferation of abandoned oil and gas installations sites which most times get in the way of other alternative use for the land upon which they are abandoned. Storage tanks, pipelines, buildings, and roads takes considerable land space. It also constitutes safety concerns when left unattended to. Pipelines present hazard to future developments, particularly when and where their existence is forgotten or not completely cleaned or vented, such installations take up a lot of space, which should have reverted to the host communities for use.

7.7 Non-Involvement in Equity and Joint Venture Participation

The operations of oil and gas companies by their facilities and activities affects the economic life of the host communities while the IOCs continue to make huge profit, and the Nigerian state amasses wealth, the environmental rights of the host communities are dealt with perpetual exploitation, under-development, and neglect in the affairs of what affect their economic wellbeing. Any divestment plan or policy by the IOCs and the appropriate government agencies should integrate the host communities in the equity and joint venture arrangement. Ironically, this is not the case with the host communities, IOCs, and the Nigerian government. Rather, the experience of the host communities is that of perpetual injustice.

8.0 Recommendations

In the light of the foregoing, and deductively drawing from the environmental and human rights violations from the activities of the multinational oil and gas operators and the state security agents, calls for corporate accountability and justice thereto, divestment, decommissioning and abandonment policy under the Nigerian legal regime, and having demonstrated the level of injustice on the oil and gas host communities consequence of their endowed natural resources, this paper recommends the following measures towards ensuring environmental justice for the host communities.

8.1 Pre-Divestment Assessment and Remediation of Polluted and Degraded Sites

Carrying out this exercise as prerequisite to execution of divestment programme will ensure the host communities' environment is kept better close to the multinational corporation met rather than transferring environmentally polluted sites to national companies that lack environmental credentials to attend to the devastated environment. Pre-divestment assessment and remediation should be made condition for divestment of oil and gas assets and sites from multinationals to national companies to ensure satisfactory remediation of environmental damage.

8.2 Industry Compliance

The regulatory agencies must ensure the divestment assets are up to date compliance with the industry international standards and national legislations respecting replacement and maintenance of oil and gas facilities before relinquishing to national companies. Mandatory 10 years for replacement and maintenance as provided under the Oil Pipeline Act must have been observed. This is to avoid regular incidents of oil spill from corrosion and ruptured pipelines and pumps. Consequences of such incidences



are usually on the host communities as in most instances the strength of the spills are usually not within the management and control of the national corporations for lack of expertise as in the case of Aiteo Santa Barbara crude oil spill that lasted for about a month unabated, impacted, and affected shallow waters, mangroves, and source of livelihood of members of the host communities respectively.

8.3 Equity and Incorporated Joint Venture Participation

The host communities as victims of oil and gas operations hazards that affects their social and economic interest and values should be integrated in the equity and incorporated joint venture participation arrangement of the divestment policy model as provided under the PIA. This model though, appear strange in the oil and gas industry, but it will help to stabilise and reduce the incessant agitation of the host community as it will create in them the feeling of integration and participation in what affect their interest and wellbeing. Application of this model will impress on and possibly eliminate the host communities' agitations, alleged sabotage, and conflicts that characterise the existing hostile relationship. Example of this model is the equity arrangement between Eleme Indorma Petrochemical Company Limited, Federal Government, Rivers State Government, Indorama Staff, and the Host Communities⁷⁰ in the Niger Delta region of Nigeria.

8.4 Guarantee Commitment

There should be in place a statutory requirement for guaranteed commitment by the multinational corporations on behalf of national companies for assurance that the national companies are capable of remediating likely damage that may be caused by any future spills and or of their (the multinationals) intervention where and when possible, to so act in line with international standards and UN Guiding Principles on Business and Human Rights. This commitment shall be within a statutorily specified period for technology transfer to the national companies before total disengagement by the multinationals.

9.0 Conclusion

This paper therefore concludes that the persistent environmental injustice occasioned by the multinational corporations' activities in the form of environmental and human rights violations and the failure and adequacy of the existing legal framework to address is an indicator that nothing short of genuine sustainable development and inclusivity statutory reform founded on environment and human rights-based principles, incorporating the noted recommendations can correct the injustice.

⁷⁰ The ordinary share allotments in terms of their equity involvement and participation are, Indorama Petrochemicals Limited, 3,250,200, Nigerian National Petroleum Corporation, 500,000, Bureau of Public Enterprises, 250,000, Rivers State Government, 499,790, Indorama Eleme Petrochemicals Company Staff Corporative Society Limited, 125, 000, and Elano Investment Limited (the host communities business facilitators), 375,000. Source, Corporate Affairs Commission Headquarters, Abuja, as documented on Form CAC 2 filed on 01 June 2012.