



AN APPRAISAL OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS REGULATING CORPORATE SOCIAL RESPONSIBILITY IN THE PETROLEUM INDUSTRY IN NIGERIA

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Abstract

The Oil and Gas industry in Nigeria has gone through modifications since oil was discovered in commercial quantity more than four decades ago. The sector has become the mainstay of the nation's economy, pivoting other sectors, and accounting for about 85 percent of Nigeria's foreign earning, and it makes up about 88 percent of the Federal Government collectable revenue. It is, therefore not unexpected that the industry has become central to the economic growth and development of the country. The relationship between the oil companies and some of their host communities to say the least has not been cordial in recent years owing to perceptions to the role oil and gas companies are expected to play in the progress process of their host communities. In March 2007, the first attempt to introduce the Corporate Social Responsibility (CSR) Bill was initiated by the late Senator Uche Chwukwumerije but it failed to pass the second reading. Further attempts to reform the industry in 2009, 2012 and 2018 also failed until the National Assembly passed the 2021 Petroleum Industry Bill now known as the Petroleum Industry Act 2021 (PIA). Section 240 (2) of the PIA made CSR contribution a mandatory levy on corporations, has changed the voluntary and self-regulatory element of CSR to hard law legislation. It is on the basis of the above that the central aim of this thesis is to appraise the corporate social responsibility of multinational corporations in the Niger Delta Region of Nigeria. The specific objectives of this thesis amongst others include appraising the extent in which multi-national corporations operating within the Niger Delta Region has impacted their host communities and to examine the adequacy of the legal and institutional frameworks in protecting the interests of host communities with respect to the corporate social responsibilities of multinational corporations. The doctrinal research methodology was adopted in this thesis as both the primary and secondary sources of law were relied upon. This thesis found that the Petroleum Industry Act, 2021 which is the primary legislation governing the oil industry in Nigeria has made far-reaching provisions in mandating multinational corporations to engage their host communities by creating a host community funds for the development of their host communities. This thesis recommended that upon the failure of the IOC's to comply with the provisions of the PIA should be actionable in court.

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

1.0 Introduction

The Nigerian economy is heavily reliant on the revenues accruing from the oil and gas sector.¹ The Niger Delta region where oil MNCs maintain a significant presence has become a theatre of incessant violent conflicts or crisis.² Some of the negative consequences of the MNCs in the oil sector in Nigeria

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¹ E O Ekhaton, 'Corporate Social Responsibility and Chinese Oil Multinationals in the Oil and Gas Industry of Nigeria: An appraisal' [2014] (28) *Cadernos De Estudos Africanos*; 119 - 140.

² *Ibid*



include gas flaring, oil spills, environmental pollution, negative social impacts, conflict and violence. Thus, due to these negative impacts arising from the activities of oil MNCs, many oil companies in the country have developed CSR initiatives in an effort to mitigate these negative consequences.

MNCs operating in the oil and gas sector in Nigeria have engaged in a series of initiatives to enhance community development in the Niger Delta.³ This is anchored on the premise that ‘... if oil MNCs can contribute to community development via CSR, it will help to address local grievances, improve community development and promote positive corporate-community relations’.⁴ Many oil MNCs (and other companies) are involved in a plethora of CSR initiatives in the Niger Delta and other parts of Nigeria. CSR initiatives in Nigeria may include the building of schools, hospitals, markets, and provision of pipe borne water amongst other initiatives.⁵ Nevertheless, ‘the extent to which the CSR initiatives have contributed to community development in the region remain contested’.⁶

Some scholars including Edoho,⁷ Frynas,⁸ Akpan,⁹ Tuodolo,¹⁰ and others have contended that the CSR process in Nigeria is not far reaching or deeply entrenched.¹¹ Thus, it has been contended that some of these CSR initiatives are not carried out on a coherent basis and not always sustained.¹² Arguably, despite the adoption of various CSR mechanisms by oil companies in Nigeria, the oil-producing communities ‘have received a proportionately low amount of benefit compared to the high social and environmental costs of extractive activities’.¹³ Notwithstanding the minimal contributions of CSR to oil-producing communities in the Niger Delta, many communities still suffer from various ills including gas flaring, oil spillage, and violence.

In Nigeria, there is no specific law regulating the practice of CSR. However, there are several laws which directly or indirectly contain provisions ensuring the protection of the interest of not just shareholders, but employees, customers, host communities and the environment. Thus, there is no single institution responsible for the implementation of these laws. Each of these laws established its own

³ O Egbon and Others, ‘Shell Nigeria’s Global Memorandum of Understanding and Corporate-Community Accountability Relations: A Critical Appraisal’ [2018] (31)(1) *Accounting, Auditing & Accountability Journal*; 51 - 74.

⁴ *Ibid*

⁵ K Amaeshi and Others, ‘Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences?’ [2006] (24) *The Journal of Corporate Citizenship*; 83 - 99.

⁶ U Idemudia and N Osayande, ‘Assessing the Effect of Corporate Social Responsibility on Community Development in the Niger Delta: A Corporate Perspective’ [2016] (53)(1) *Community Development Journal*; 155 - 172.

⁷ F M Edoho, ‘Oil Transnational Corporations: Corporate Social Responsibility and Environmental Sustainability’ [2008] (15)(4) *Corporate Social Responsibility and Environmental Management*; 210 - 222.

⁸ J G Frynas, *Beyond Corporate Social Responsibility: Oil Multinationals and Social Challenges* (Cambridge: Cambridge University Press 2009)

⁹ W Akpan, ‘Between Responsibility and Rhetoric: Some Consequences of CSR Practice in Nigeria’s Oil Province’ [2006] (23)(2) *Development Southern Africa*; 223 - 240.

¹⁰ F Tuodolo, *Corporate Social Responsibility, Local Communities and TNCs in the Oil and Gas Sector of Nigeria* (Unpublished PhD Thesis, University of Liverpool, UK 2007)

¹¹ Ekhaton (n 1)

¹² Amaeshi (n 5)

¹³ F Lisk and Others, ‘Regulating Extraction in the Global South: Towards a Framework for Accountability’ (2013) *Background Research Paper submitted to the High Level Panel on the Post-2015 Development Agenda*. <https://www.post2015hlp.org/wp-content/uploads/docs/Lisk-Besada-Martin_Regulating-Extraction-in-the-Global-South-Towards-a-Framework-for-Accountability_FINALFINAL.pdf> accessed 18 June 2023.



regulatory institutions to see to the implementation of these laws. The following legal frameworks will be examined:

2.0 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

Many of the provisions concerning issues raised in CSR discourse are contained in Chapter II of the CFRN 1999 under the heading 'Fundamental Objectives and Directive Principles of State Policy'. It provides for certain political,¹⁴ economic,¹⁵ social,¹⁶ educational¹⁷ and environmental¹⁸ objectives of the government. However, by virtue of section 6(6)(c) of the CFRN, these rights are non-justiciable. This provision was also confirmed by the courts in the case of *Okojie v Attorney General of Lagos State*.¹⁹ The provision is to the effect that the judicial powers vested in the courts shall not except as otherwise provided by the constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of the CFRN 1999.

An interesting development occurred in 2002 when the apex court ruled for the first time, that rights contained in Chapter II of the CFRN, 1999 may be enforced in certain circumstances and against private persons. In *AG Ondo State v AG Federation and 35 Ors*,²⁰ one of the issues that the Supreme Court had to determine was whether a law made by the National Assembly pursuant to sections 13 and 15(5) of the CFRN, 1999 is beyond the powers of the National Assembly and therefore unenforceable. The court also considered whether the law can be enforced against a private person as the law purported to do. The National Assembly had enacted the Anti-Corruption Bill pursuant to the aforementioned sections of the CFRN in order to deal with the prevalent issues of corruption in Nigeria. The Supreme Court held that even though the provisions of the Chapter are unenforceable, the National Assembly has the power to legislate on the provisions and make them enforceable against government bodies and private citizens.

3.0 Companies and Allied Matters Act, 2020

The CAMA²¹ is the principal legislature regulating the activities of corporate entities in Nigeria.²² Under the provisions of the CAMA, corporations are under no obligation to build schools, health centres, roads or act in an environmentally friendly manner. The provisions of the CAMA appear to prioritize the interest of shareholders and employees more than any other group of people. This can be seen in section 279(4) of the CAMA which requires the directors of the company to have regards to the company's employees and its members in the performance of their functions. The directors' report required in section 342(5) of the CAMA could also contain a report on the employment, training and advancement

¹⁴ CFRN 1999, s 15

¹⁵ *Ibid* s 16

¹⁶ *Ibid* s 17

¹⁷ *Ibid* s 18

¹⁸ *Ibid* s 20

¹⁹ (1981) 2 NCLR 337

²⁰ (2002) 6 SC (Pt. 1) 1

²¹ CAMA, 2020

²² *Ibid* s 7

of disabled persons, the health, safety and welfare at work of the employees of the company and the involvement of employees in the affairs, policy and performance of the company.²³ These requirements however, do not encompass the current disclosure requirements of CSR which is being witnessed in most of the world.²⁴

The establishment of parent companies' liability for damages arising from their local subsidiaries' activity is another challenging aspect. Various observers and commentators have highlighted the fact that oil MNCs in Nigeria take advantage of the combination of bad practices and loose legal and regulatory framework. Section 54(1) of the CAMA represents a crucial provision in the view of the attribution of liability to MNCs operating in Nigeria. According to it, "[...] every foreign company [...] incorporated outside Nigeria, and having the intention of carrying on business in Nigeria shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose [...]" *Prima facie*, such provision could be interpreted as the acme of the indigenisation policies, carried out in Nigeria ever since the acquisition of independence, with the principal aim of nationalising the main industrial sectors, fully controlled and managed by the European until then. After a more careful analysis, however, Section 54(1) can be considered as one of the tools that MNCs can rely upon to avoid liability for harmful actions perpetrated within the Nigerian borders. Indeed, the fact that MNCs operate in Nigeria through subsidiaries which are legally incorporated under domestic law, gives way to problems related to the choice of jurisdiction in the event of disputes arising from the breach of the contracts or – as was the case in *Akpan v Royal Dutch Shell Plc*²⁵ – from the attempt to obtain compensation for damages caused to the communities' livelihoods.

In his commentary to this case, McConnell gives an exhaustive overview of the international doctrine regarding the attribution of such liability. To be more precise, the author underlines that, although the UN Secretary General's 2009 Special Representative for Business and Human Rights' Framework confers to the states the primary "responsibility to protect their citizens from corporate actors"²⁶ possibly dangerous activities, often states "lack the resources to do so, or may even be complicit in violations."²⁷

Despite adhering to the "international trend holding parent companies liable for the harmful practices of their foreign subsidiaries",²⁸ the Dutch court – in front of which the case was brought by four Nigerian plaintiffs in a joint action with Friends of the Earth Netherlands – manifested doubts as whether, in the case the allegations against the parent company (Royal Dutch Shell) were dismissed, the claims against the Nigerian subsidiary (Shell Petroleum Development Company Nigeria – SPDC) were to be

²³ CAMA 2022, Part III, 5th Schedule

²⁴ O O Amao, 'Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals in Host States' [2008] (52)(1) *Journal of African Law*; 101

²⁵ *Akpan v Royal Dutch Shell Plc* [2013] No. 337050/HA ZA 09-1580 (District Court of The Hague).

²⁶ Sanctioned, amongst others, by the United Nations Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.

²⁷ L J McConnell, 'Establishing Liability for Multinational Oil Companies in Parent/Subsidiary Relationships' (2014) ELR 50, 51. Pertaining to this – and highlighting the peculiarly intricate situation in the management of the oil sector in Nigeria – Ploch stresses the point of the political complicity in the criminal activities related to oil: the deriving proceeds are used for the funding of electoral campaigns and other political activities. See: Ploch, 'Nigeria: Current Issues and U.S. Policy' (Federation of American Scientists 2012) <<http://fas.org/sgp/crs/row/RL33964.pdf>> accessed 26 January 2020.

²⁸ *Ibid*



dismissed, too, on the grounds of lack of jurisdiction. Even though the Dutch court decided that such dismissal was not appropriate, this cannot be regarded as a well-established juridical trend.

4.0 Nigerian Oil and Gas Industry Content Development Act, 2010

Previously, the Nigerian Content Division (NCD) was a part of NNPC established in 2006 to achieve the following goals (i) to achieve 45% local content in oil and gas spend by 2006; (ii) to achieve 70% local content value in the provision of materials, services and equipment to the local oil and gas industry by 2010; (iii) to create an economic engine for growth, driving employment, wealth creation and improved linkage between the Oil and Gas industry and other sectors of the Nigerian economy. The division is working to enable a transformed Oil and Gas industry with well-developed in-country capacity and local capabilities, a competitive supply and services sector and ultimately, the hub for energy service delivery in Africa.²⁹

But following the inability of the Nigerian Content Division of NNPC to ensure compliance or to implement and enforce Nigeria content policy in oil and gas industry, Nigerian Oil and Gas Industry Content Development (NOGICD) Bill was signed into law by President Goodluck Jonathan on April 22, 2010. The Nigerian Content (NC) Act 2010 (as is called in short) establishes the Nigerian Content Development and Monitoring Board (NCDMB). Thus, Balouga,³⁰ suggested that the Nigerian Content Consultative Forum (in charge of networking in the oil and gas industry), the Nigerian Content Division (an arm of NNPC) and the newly created Nigerian Content Development and Monitoring Board, NCDMB, (charged with the responsibility of strictly enforcing compliance) must work in tandem for the success of the local content policy.

However, the Nigeria Content Development and Monitoring Board (NCDMB) was established and vested with the responsibility to implement the provisions of the Act, make procedural guidelines and monitor compliance by operators within the oil industry. The Board is expected to perform the following functions, among others; (i) implement the Act's provisions and regulations made by the Minister; (ii) supervise, coordinate, administer, monitor and manage the development of Nigerian content; (iii) assist local contractors and Nigerian companies to develop their capabilities and capacities; (iv) make procedures to guide the implementation and ensure compliance with the provisions of the Act; and (v) monitor and coordinate Nigerian content performance of all operators in accordance with the provisions of the Act.³¹

The Act in addition establishes a Nigerian Content Development Fund managed by the Board and funded through a 1% deduction at source of every contract awarded to any operator, contract, subcontractor, alliance partner or any other entity in any project, operation, activity or transaction in the upstream sector on the industry. The Act also has a schedule detailing minimum levels of Nigerian

²⁹ D F Adebola and Others, 'Building Local Capability: A Case Study of Agbami Project' [2006] A Paper Presented at the 30th SPE Annual International Conference and Exhibition (NAICE 2006), Abuja, Nigeria July 31 – August 2

³⁰ J Balouga, 'Nigerian Local Content: Challenges and Prospects' *International Association for Energy Economics* [2012] Third Quarter.

³¹ D Okusami, 'An Overview of the Nigerian Local Content Act' [2010] A Paper Presented at the Africa Energy Week Conference in Cape Town, South Africa on September 29.



content in different areas of Oil & Gas operations. There are 17 categories which are further divided into 280 line items covering virtually all areas of operational activities. The main focus areas for implementation by NCDMB include; (i) training and employment of Nigerians; (ii) promoting indigenous ownership of marine vessels, offshore drilling rigs, etc; (iii) establishment of critical facilities such as pipe mills, dry docking and marine facilities, pipe coating facilities; (iv) integration of indigenes and businesses residing in oil producing areas into mainstream of industry economic activity; and (v) promoting services which support industry activities such as banking, insurance, legal, etc.³²

5.0 Environmental Impact Assessment Act, 2004

The Act,³³ also requires corporations to act responsibly by putting the environment into consideration before carrying out certain operations. The principal goal of this enactment can be seen its preamble which declares that it is an Act to set out the general principles, procedure and methods to enable the prior consideration of environmental impact assessment on certain public or private projects. The Act makes EIA mandatory for development projects likely to have adverse impacts on the environment prior to implementations.³⁴ Identifying the EIA process, the relevant significant environmental issues shall be identified and studied before commencing or embarking on any project or activity which is likely to have serious environmental impact on the Nigerians environment.³⁵ Furthermore, the Act prohibits the Federal, State, Local council or any of its agencies from issuing permits, licenses, grant approval or take any other action for the purpose of enabling a project to be carried out in whole or in part, prior to the environmental assessment of the project in accordance with the EIA Act.³⁶ It can be said that the Act is aimed at enhancing sustainable development in Nigeria.³⁷

6.0 Petroleum Industry Act (PIA), 2021

First proposed in 2007, and finally signed as an Act of the National Assembly in 2021, the PIA seeks to reform the structure and the functions of the Nigeria National Petroleum Corporation (NNPC). One of its main intended outcomes is to enhance the transparency and the accountability of the state-owned oil company, by devolving some of its functions to independent agencies, and, by doing so, to possibly improve the transparency of the whole petroleum sector in the country.

This would be a natural consequence of the Petroleum Industry Act (PIA), given the fact that the main avenue for the realisation of oil projects in Nigeria is the formation of joint-ventures between NNPC (i.e. the government)³⁸ and the foreign MNCs. Thus, reforming the structure and the responsibilities of NNPC would also push the government to assume its own responsibilities: so far, it has taken advantage of the uncertainty surrounding the oil industry in the country, to the detriment of local communities. However, as the Revenue Watch Institute has argued, there are various loopholes in the Petroleum Industry Act (PIA) provisions, firstly, the National Petroleum Assets Management Corporation

³² Okusami (n 40)

³³ Cap. E12 LFN 2004

³⁴ *Ibid* s 14 (1)(a) and (b)

³⁵ *Ibid* s 3

³⁶ *Ibid* s 14

³⁷ C C Nwufu, 'Legal Framework for the Regulation of Waste in Nigeria' [2010] (4)(2) *African Research Review*; 497

³⁸ E Oshionebo, 'Transnational Corporations, Civil Society Organizations and Social Accountability in Nigeria's Oil and Gas Industry' (2007) *AJICL*; 107.

(NPAMC) and the National Gas Company Plc. (NGC) “are not subject to the upstream contract-disclosure requirement, which means that joint ventures and gas contracts will *likely remain opaque*”,³⁹ secondly, “the downstream regulator is not required to publish information on downstream activities”;⁴⁰ thirdly, “there are no auditing requirements for NNPC and NGC, and NPAMC is required to publish only a summary of its audited accounts.”⁴¹ In conclusion, the Petroleum Industry Act (PIA) did not seem to bring the much needed comprehensive reconsideration of the current applicable disclosure requirements provisions into the Nigerian law.

CSR initiatives have the capacity to make a significant contribution to meeting the needs of disadvantaged populations in developing nations, but it can also do harm politically, socially, and economically, whether by accident or intentionally (The PRC Criminal Law 1997).⁴² For one, what may be socially responsible to a corporation might not be socially responsible to individuals in the community. For example, there is a penalty for damages by way of sanctions on host communities under section 257(2) of the PIA (Armstrong and Green 2013). Will specific individuals who cause damage to be identified and punished, or is the host community now burdened with the social responsibility of ensuring that all individuals do not breach the PIA provisions? Is the local community to act as local police? How will the sanctions be managed so that communities are not deprived of government allocations as punishment?

The sanctions in section 238 of the PIA mandate corporations to comply or face the ultimate consequence of losing their license. While there are no case law or litigations yet on these provisions, we wonder as to the effectiveness of this provision – will it suffer the fate of enforceability as other similar provisions such as that for gas flaring? According to Azubuike and Others,⁴³ on the obligatory financial contributions for CSR, this may encourage the allocation of CSR resources to personal initiatives with little societal benefit.⁴⁴

It may also actually lead to less creativity on the part of oil and gas companies who may not subscribe to the idea of being told how to manage their internal affairs and will thus unilaterally force these companies to reduce their stakeholder engagement.⁴⁵ Host communities play an important role in the success of the operations in the petroleum industry in Nigeria. The relationship could make the difference in realizing profitable returns from the highly capital-intensive investments. Over the years however, the relationship between host communities and oil companies have not been cordial (to put it mildly). Distrust and restiveness have disrupted oil operations. The hostilities may also have contributed

³⁹ M H Sayne, ‘The Petroleum Industry Bill and the Future of NNPC’ <<https://www.revenuewatch.org/publications/petroleum-industry-bill-and-future-of-nnoc>> accessed 27 June 2020

⁴⁰ *Ibid*

⁴¹ *Ibid*

⁴² J A Debski, ‘Corporate Social Responsibility under the Petroleum Industry Act 2021: Achieving Environmental Sustainability through Multi-Stakeholder Partnership’ [2022] (3)(1) *African Journal of Engineering and Environment Research*; 3

⁴³ P I Azubuike and Others, ‘Corporate Social Responsibility in Nigeria’s Oil and Gas Industry: A Critical Analysis of Legal Obligations and Enforceability’ [2020] (3)(1) *Run Law Journal*; 139

⁴⁴ O J Olujobi, ‘Analysis of the Legal Framework Governing Gas Flaring in Nigeria’s Upstream Petroleum Sector and the Need for Overhauling’ [2020] 9 *Journal of Social Science*; 132.

⁴⁵ Azubuike and Others (n 65)

partly to the massive theft of crude oil, vandalization of pipelines and the incessant shutdown of major oil fields. The magnitude of the problem is evident in the inability of the government to meet its OPEC crude oil production quota of about 1.8 million barrels per day with production averaging 1.3 million to 1.4 million barrels per day in recent times.

In another attempt at addressing the frosty relationship between host communities and petroleum companies, the Petroleum Industry Act (PIA) introduced the requirement for specified petroleum industry operators to establish a Host Communities Development Trust (HCDDT).⁴⁶

7.0 Host Communities Development Trust (HCDDT)

The HCDDT is a fund to be set up for the benefit of communities that are situated in or appurtenant to the area of operation of petroleum companies or operators. The fund will cater to the infrastructural development and economic empowerment of host communities. In designating host communities, the PIA permits operators to exercise discretion to expand the coverage of the HCDDT to include other communities which may indirectly impact on its successful operation even if these other communities are not 'appurtenant' to the area of operation of the operator.⁴⁷

The concept of the HCDDT is not totally new to the Nigerian petroleum industry. There is an earlier iteration in the Global Memorandums of Understanding (GMOUs) used by some international oil companies (IOCs) to execute projects within host communities under their corporate social responsibility (CSR) initiative. What the PIA has done is to standardise the CSR initiative and make it mandatory. Thus, operators that operate the GMOU may find it easier to transition to the HCDDT by transferring the CSR initiative to the HCDDT. Contributions made by operators under the CSR initiatives within 12 months after the effective date of the PIA would be deemed as a contribution to the HCDDT.⁴⁸

The operators within scope of the HCDDT are those in the upstream sector and owners of designated facilities⁴⁹ in the midstream sector of the petroleum industry. The holders of Petroleum Prospecting License/Oil Prospecting License, Petroleum Mining Lease/ Oil Mining Lease, holders of license to operate petroleum crude oil and natural gas transportation pipelines, bulk storage tank farms, refineries and gas processing plants in the midstream petroleum operations and petrochemical plants, are currently obligated to incorporate the HCDDT. In the case of a collective of operators under a joint operating agreement with respect to upstream operations, the operators are to appoint an operator who would be responsible for complying with the requirement to incorporate the HCDDT. Failure to incorporate the HCDDT is grounds for the revocation of a licence.⁵⁰

The PIA generally requires operators with existing operations or facilities under construction to incorporate the HCDDT within 12 months of the effective date of the PIA. For other operators the HCDDT is to be incorporated prior to the application for field development plan for OPL/PPL and PML holders,

⁴⁶ PIA, 2021 s 235

⁴⁷ PIA, 2021 s 318 and 235(3)

⁴⁸ *Ibid* s 316(3)

⁴⁹ *Ibid* s 236

⁵⁰ *Ibid* s 238



and prior to commencement of commercial operations for licensees of designated facilities granted under the PIA.

In incorporating the HCDT, the operator is to consult with the host communities to appoint a board of trustees and apply to the Corporate Affairs Commission (CAC) for registration of the HCDT. The PIA does not specify the corporate vehicle to be adopted. However, the corporate structure of the HCDT in the PIA and its funding pattern suggests that the more suitable corporate vehicle for the HCDT is an incorporated trustee.

The management of the HCDT is the responsibility of the board of trustees, management committee, and the advisory committee. However, the operator is required to oversee the activities of the board of trustees and committees of the HCDT, the funds and expenditures of the HCDT.⁵¹ The operations of the HCDT are to be governed by the provisions of the PIA, the Companies and Allied Matters Act, Regulations issued by the regulators and the constitution of the HCDT.

8.0 Utilization of the Host Community Development Trust Funds

For upstream operations, the HCDT is to be funded with 3% of the operator's annual operating expenditure of the preceding year. The PIA is silent on the amount to be contributed by midstream operators to the HCDT. It is expected that the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority) will issue regulations to prescribe the amount to be contributed. Funds made available by operators to the HCDT are deductible in respect of hydrocarbon tax and companies income tax. Other sources of funds for the HCDT include donations, grants or honoraria, and any profit and interest accruing on reserve funds of the HCDT. Funds made available to the HCDT are to be used exclusively for the development of the host communities in accordance with the Host Community Development Plan (HCDP) prepared by the operator and approved by the Nigerian Upstream Petroleum Regulatory Commission (the Commission) or the Authority as the case may be. In preparing the HCDP, the operator is required to conduct needs assessments in the host communities and determine the effect of the petroleum operations, the strategy to be adopted and the projects to undertake to meet the communities' needs.

HCDT funds are to be utilised as follows:

- a. 75% to be allocated to execution of projects,
- b. 20% to be reserved for investment, and
- c. no more than 5% is to be allocated for the administrative cost of running the HCDT.

Funds spent on projects are to be accounted for by the operator and the board of trustees of the HCDT. The allocation ratios for the funds of the HCDT, should provide sustainability for the HCDT and prevent administrative costs from outpacing the intended objectives of the HCDT. Mid-year and annual reports and audited accounts are to be prepared for the HCDT; the annual report and audited accounts are to be submitted on or before the 31st May to the Commission or Authority as the case may be. The PIA further provides that where there is sabotage or vandalism to petroleum installations or designated

⁵¹ PIA, 2021 s 234(4)



facilities within a host community, that community shall forfeit, to the extent of the cost of the repairs, its entitlement under the HCDDT.⁵² It is expected that the above provision will create a sense of responsibility for the safety of petroleum installation and designated facilities within host communities. However, disputes could arise where there is no clear nexus or attribution for the damage.

The PIA initiative is commendable and should foster harmonious coexistence between host communities and operators in the petroleum sector of the Nigerian economy. How the HCDDT will fare in addressing host community restiveness will only be evident in the future. There may be indications in the fact that despite the use of GMDU by some IOCs, there are continuing disruptions to the operations of those IOCs. Accountability remains a common thread that runs through these initiatives. With the HCDDT, we hope that the funds will be better managed and utilised in host communities given that its administration will be by the operators.

9.0 Institutional Frameworks

The following institutional frameworks will be examined with a view to analyzing how it has impacted on corporate social responsibility;

9.1 Corporate Affairs Commission

The Corporate Affairs Commission was established by section 1 of the CAMA as a corporate body with perpetual succession and a common seal, capable of suing and be sued in its corporate name. The commission was created to administer the Act. The duties of the commission as set out in section 7 include to administer the Act, including the regulation and supervision of the formation, incorporation, management and winding up of companies; arrange and conduct investigations into the affairs of any company where the interests of the shareholders and the public so demand; and to undertake such others activities as are necessary or expedient for giving full effect to the provisions of the Act.

9.2 National Environmental Standards and Regulatory Enforcement Agency

The NESREA Act,⁵³ established the National Environmental Standards and Regulations Enforcement Agency. The Agency is saddled with the responsibility of protecting and developing the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.⁵⁴

The Petroleum industry is operated within the Nigeria environment hence affected by the frameworks of NESREA. Sections 2 and 35 of NESREA Act preserve the various guidelines and standards made by FEPA, which apply generally to all sectors including pollution from oil and gas. However, section 7(h), 8(k) and 29 of the NESREA Act effectively restrict the Agency from regulating the oil and gas

⁵² PIA, 2021, s 257(2)

⁵³ (n 24) s 1

⁵⁴ (N 24) s 2



sector. This was done by providing that the duty to conduct environmental audits and to establish data bank on regulatory and enforcement mechanisms, do not extend to the oil and gas sectors.⁵⁵

9.3 Nigerian Contents Development and Monitoring Board (NCDMB)

The core of the Nigerian content policy is to compel oil and gas multinationals to utilize the indigenous material and human resources with the aim of building local capacity, increasing local participation, dissuade capital flight, increase contribution of oil and gas to Gross Domestic Product (GDP) and facilitate backward and forward linkages. The Nigerian content policy was formally initiated in 2006 under Obasanjo's Administration, following the initial submission of a draft of National Content Development in 2003 by Nigerian National Petroleum Corporation (NNPC). The 23 content policy directives or domiciliation guidelines of Nigerian content policy were issued by Nigerian National Petroleum Corporation (NNPC) with stated projects of achieving 45% and 70% local content by 2006 and 2010, respectively.⁵⁶

The thrust of the Nigerian content policy, therefore, is to compel oil and gas multinationals to utilize the indigenous material and human resources with the aim of building local capacity, increasing local participation, dissuade capital flight, increase the contribution of oil and gas to Gross Domestic Product (GDP), and facilitate backward and forward linkages. In a nutshell, Nigerian content policy provides that contracts to be awarded by oil and gas multinationals operating in Nigerian to oil servicing firms must be executed in-country in a fabrication yard located in Nigeria by a Nigerian firm with high percentage of Nigerian workers or in joint venture partnership with a foreign firm; and procurement of materials and services needed to execute the contracts should as well be sourced from local manufacturers. In order to achieve these set out targets, the Nigeria National Petroleum Corporation (NNPC) was charged with the responsibility of ensuring compliance or ensuring that the oil and gas multinationals comply with the 23 local content directives or domiciliation guidelines.

The law establishing Nigeria National Petroleum Corporation (NNPC) empowers it to regulate business and productive activities in oil and gas sector. Thus, NNPC relies on the law establishing it to enforce Nigerian content policy while awaiting the passage of the Nigerian content bill into law. Consequently, NNPC has often blamed its inability to effectively enforce local content policy on the inadequacy of existing law. But our argument here is that the problem is more fundamental. The Nigerian National Petroleum Corporation, thus, set up the Nigerian Content Division (NCD) in March 2005 headed by a Group General Manager (GGM) as an organizational framework for effective implementation of the policy. So, while the Nigerian National Petroleum Corporation (NNPC) still reserves the right to enforce, the Nigerian Content Division (NCD) was charged with the responsibility of monitoring compliance, planning and building capacity. Thus, the Nigerian Content Division (NCD) comprises three departments, namely, (a) Capacity Building Department (b) Planning Department and (c) Monitoring Department.

⁵⁵ S C Dike, *Energy Security: The Case of Nigeria and Lessons from Brazil, Norway and the UK* (Port Harcourt: Pearl Publishers 2015) 55

⁵⁶ F Balogun, 'Losing the Local Content Race' [2008] <<https://thenewsng.com/business>> accessed 17 March 2022



The above departments are collectively charged with the following responsibilities; (i) study best practices and advise NNPC management on Nigerian content (ii) obtain applicable data from industry and plan for new opportunities (iii) develop strategies for capacity building, skill competency and supplier enhancement (iv) drive Nigerian content implementation and monitor compliance; and (v) coordinate sectoral working committees. In order to complement the work of Nigerian Content Division (NCD), the Nigerian National Petroleum Corporation (NNPC) in alliance with key industry stakeholders (i.e. oil and gas multinationals) and other operators set up the Nigerian Content Consultative Forum (NCCF). The Nigerian Content Consultative Forum (NCCF) has eight sectoral working committees covering the fabrication, engineering, manufacturing, petroleum engineering and subsurface, banking and insurance, and shipping and logistics, and other subsector committees.

The oil and gas multinationals that make up the Nigerian Content Consultative Forum (NCCF) are to actively participate in monthly meetings of the committees to discuss issues of compliance, default or violations and review capacity building programmes. In accordance with the industry coordination procedures, Nigerian content offices have been set up in all operator companies and managers appointed to coordinate company local content activities. The Nigerian Content Division (NCD) in collaboration with Nigerian Content Consultative Forum (NCCF) has developed the Joint Qualification System (JQS) to facilitate the Exploration and Production (E&P) contracting process in oil and gas industry. Joint Qualification System (JQS) will provide a databank of available goods and services suppliers to the Nigerian petroleum industry and streamline the pre-qualification process in order to open up available opportunities for qualified local contractors to participate in the oil and gas sector.

Despite the establishment of these institutions or institutional frameworks available data demonstrate that Nigerian National Petroleum Corporation (NNPC) has not been able to attain its stated targets of achieving 45% of local content in 2006 and from all indications will not be able to achieve 70% of local content by 2010.⁵⁷ For example, even Nigerian Content Division (NCD) data show that after two years of actively pursuing Nigerian content policy objectives, Nigerian content has grown from just below 10% to over 35% based on scientific metrics used for measurement as at 2008. This is still below 45% set target for 2006, that is, two years earlier. In addition, Mbamalu,⁵⁸ observes that the current available data show that Nigerian National Petroleum Corporation (NNPC) has only been able to attain local content value of between 30% and 35% in 2009.

Therefore, when compared with other oil producing countries, Nigeria has an extremely low level of local content in its petroleum industry. For example, facts from NNPC show that while some countries had domesticated its oil industry to a large extent, Nigeria can only boast of a mere five percent local content level by 2007. Comparative figure, for some other oil producing countries like Brazil, Malaysia, Norway and Indonesia are 70%, 70%, 50% and 25%, respectively. Although, there are conflicting data on the level of local content achieved in Nigerian oil and gas industry, but none of data suggests that

⁵⁷ H O Ajumogobia, Keynote Address at a Workshop Organized by Nigerian Content Consultative Forum (NCCF) on Developing Strategies for Domiciling, Training and Creating Sustainable Partnerships for Human Capital Development. (2009)

⁵⁸ M Mbamalu, 'Oil and Gas: Engineering Firms Want More Compliance with Nigerian Content' [2009] <<http://nrguardiannews.com/business/article>> accessed 26 April 2022.

the local content targets are being attained. Moreso, other indices like Gross Domestic Product (GDP) show that the local content target is yet to be attained. Even the Nigerian Content Division (NCD) recognizes this shortcoming when it states that despite huge investments made by the Federal Government of Nigeria (FGN) in oil and gas sector of the economy, an average of US\$ 10 billion per annum, its contribution to GDP growth has been minimal. For example, available data indicate that the contribution of oil and gas sector to the country's Gross Domestic Product (GDP) decline in the local content regime from 24.26% in 2005 to 17.54% in 2008.

The above includes both the upstream and downstream subsectors, that is, contribution of the crude oil & natural gas and refined oil & liquefied gas. The year set out for achieving 45% local content value, was -4.51% even as the contribution of oil sector to government revenue rose from 80.5% in 2003 to 84.7% in 2006.⁵⁹ The inference is that while the contribution of oil sector to public revenue is increasing, its contribution to GDP is decreasing, meaning that the objective of Nigerian content policy of increasing the contribution of oil and gas sector to GDP is not being realized. Also, the contribution of crude petroleum and natural gas declined from 37.22% in 2004 to 36.47% in 2007. Even between 2005 in which the local content policy was formally initiated and 2006 in which the first local content target was set, the contribution of crude petroleum and natural gas declined from 38.87% to 37.61% representing a percentage decrease of 1.26%. From these data above, it is clear that the first local content target has not been met; yet all the oil and gas multinational corporations operating in Nigeria claim to be complying with Nigerian content policy. Aside from assisting in capacity building, it seems that the so-called compliance of the oil and gas multinationals stops at the level of contract bidding and submission of tenders by oil servicing companies.

Most of these oil and gas multinationals like Shell, Agip, Chevron, Texaco, Total, Exxonmobil, etc, are contented to limit their compliance of the Nigerian content policy at the level of invitation for pre-qualification tender or bidding. As such, they are not bordered by what happens at the level of execution of the contract provided the contract is satisfactorily carried out or standards are maintained. This is exactly what Omoh & Hector in Nana⁶⁰ were referring to when they state: Oil gas multinationals are only prepared to comply with the directives at the contracting stage, but not at the implementation stage. In order to qualify, most of the oil majors go into joint ventures with Nigerian companies at the contracting, but only to default at the implementation stage by given or subcontracting it to foreign firms.

Similarly, Azudialu,⁶¹ seems to corroborate the above assertion when he states that there are some cases of collusion between some of the oil multinationals and certain "briefcase" contractors in Nigeria to paint foreign oil service companies indigenous all in bid to satisfy the local content policy. The "briefcase" contractors are those indigenous firms that act as fronts for foreign oil servicing firms. Thus, many scholars attributed the inability of the Nigerian Content Division of NNPC to ensure compliance or to implement and enforce Nigeria content policy in oil and gas industry to weakness of the regulatory

⁵⁹ Central Bank of Nigeria (CBN) Statistical Bulletin and Annual Reports, 2008.

⁶⁰ O J Nana, 'Indigenous Entrepreneurship and Financing in the Nigerian Oil and Gas Industry' [2003] A Paper Presented at the National Conference on *Promoting Local Content in the Nigerian Oil and Technology Development* at Petroleum Training Institute (PTI), Efurun, Delta State, Nigeria.

⁶¹ E Azudialu, 'Obstacles to Local Content Policy' [2009] *The Newswatch* <<http://www.newswatchngr.com/index>> accessed 17 June 2022



agency and absence of enabling law. The Nigerian Oil and Gas Industry Content Development Bill was subsequently enacted into law in 2010 establishing Nigerian Content Development and Monitoring Board (NCDMB) as the regulatory agency replacing NNPC-NCD.

10.0 Conclusion

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

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

The absence of an enabling environment in Nigeria (to sufficiently mandate, facilitate, partner with, and endorse CSR) stem from the country's culture of underprivileged political governance, lack of transparency and accountability of government agencies, weak institutions, and the attendant government malinger. Making resources and opportunities available to local communities is not enough to procure social license for the corporation. Inequalities and imbalances still ignite frustrations and farm insecurity and hostilities in the Niger Delta, thereby impeding sustainable development. Oil and gas multinationals have to adopt and promote an approach that targets the reduction of the inequalities through strategic community-state corporation partnerships that involve the community in project selection, initiation, design, execution and monitoring and address community's negative perception of the corporation and CSR projects. Communities must not only have a proprietorial sense of CSR projects but they must also actually take ownership of them. In effect, there is a need for sustainable community development that centres on developing and strengthening institutional capacities of communities, sound governance, and emphasis on the statutory role of government in furthering common good. This is likely to reduce one source of failure of CSR projects in the Niger



Delta: the fact that the corporation and the communities had hitherto perceived CSR projects from different perspectives. Strategic initiatives that eliminate sources of intra- and inter-community conflicts associated with developmental projects are also likely to improve the success rate of CSR in the region.

11.0 Recommendations

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

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

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

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

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

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