

**Environmental Ethics and Responsibilities for Multinational  
Corporations - The Nigeria Niger Delta Case**

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**DEDICATION**

**In memory of my Dad and Sisters**

**Chief Sir Charles Iheanacho Kalu  
'SIR ACHO'**

**(Foremost Educationist)**

**&**

**Oriaku Orianu Iheanacho  
Kalu**

**&**

**Udochukwu Adanne  
Echezona**

**(Nee Iheanacho Kalu)**

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**LIST OF ACRONYMS**

<b>No</b>	<b>Acronym</b>	<b>Description</b>
1	<b>ANG</b>	Associated Natural Gas
2	<b>ATP</b>	Ability to Pay
3	<b>BCF</b>	Billion Cubic Feet
4	<b>BPP</b>	Beneficiary Pays Principle
5	<b>CBA</b>	Cost and Benefit Analysis
6	<b>CSR</b>	Corporate Social Responsibility
7	<b>DPR</b>	Department of Petroleum Resources
8	<b>EFCC</b>	Economic and Financial Crimes Commissions
9	<b>EGASPIN</b>	Environmental Guidelines and Standards for the Petroleum Industry in Nigeria
10	<b>EIA</b>	U.S. Energy Information Administration
11	<b>ERA</b>	Environmental Rights Action
12	<b>EPR</b>	Extended Polluter Responsibility
13	<b>ERPs</b>	Economic Recovery Programmes
14	<b>EEPNL</b>	Esso Exploration and Production Nigeria Limited
15	<b>EU</b>	European Union

16	<b>FDIs</b>	Foreign Direct Investments
17	<b>FEN</b>	Friends of the Earth Nigeria
18	<b>GDP</b>	Gross Domestic Product
19	<b>GHG</b>	Green House Gas emissions
20	<b>GMoU</b>	Global Memorandum of Understanding
21	<b>HRBA</b>	Human Rights Based Approach
22	<b>HYPREP</b>	Hydrocarbon Pollution Restoration Project
23	<b>IBM</b>	Intercontinental Ballistic Missiles
24	<b>ICESCR</b>	International Convention on Economic, Social and Cultural Rights
25	<b>IFOAM</b>	International Federation of Organic Agriculture Movements
26	<b>IMF</b>	International Monetary Fund
27	<b>INEC</b>	Independent National Electoral Commission
28	<b>IPCC</b>	Intergovernmental Panel on Climate Change
30	<b>JV</b>	Joint Ventures
31	<b>LGA</b>	Local Government Area
32	<b>LNG</b>	Liquified Natural Gas
33	<b>MEND</b>	Movement for the Emancipation of the Niger Delta

34	<b>MENI</b>	Mobil Exploration Nigeria Incorporated
35	<b>MNDA</b>	Ministry of the Niger Delta Affairs
36	<b>MNCs</b>	Multinational Corporations/Companies
37	<b>MNOCs</b>	Multinational Oil Corporations/Companies
38	<b>MON</b>	Mobil Oil Nigeria plc
39	<b>MOSOP</b>	Movement of the Survival of Ogoni People
40	<b>MPN</b>	Mobil Producing Nigeria Unlimited
41	<b>NESREA</b>	National Environmental Standards and Regulations Enforcement Agency
42	<b>NDBDA</b>	Niger Delta Basin Development Authority
43	<b>NDDC</b>	Niger Delta Development Commission
44	<b>NGOs</b>	Non-Governmental Organizations
45	<b>NLNG</b>	Nigerian Liquefied Natural Gas
46	<b>NNPC</b>	Nigerian National Petroleum Corporation
47	<b>NOSDRA</b>	National Oil Spill Detection and Response Agency
48	<b>NTNU</b>	Norwegian University of Science and Technology – Trondheim
49	<b>OECD</b>	Organization for Economic Co-operation and Development
50	<b>OMPADEC</b>	Oil Mineral Producing Areas Development Commission



51	<b>OPEC</b>	Organization of the Petroleum Exporting Countries
52	<b>OPL</b>	Oil Prospecting License
53	<b>PHH</b>	Pollution Haven Hypothesis
54	<b>PPP</b>	Polluter Pays Principle
55	<b>RDC</b>	Regional Development Communities
56	<b>RDS</b>	Royal Dutch Shell
57	<b>REER</b>	Real Effective Exchange Rate
58	<b>SAPs</b>	Structural Adjustment Programmes
60	<b>Shell BP</b>	Shell-British Petroleum
61	<b>SCiN</b>	Shell Companies in Nigeria
62	<b>SDN</b>	Stakeholder Democracy Network
63	<b>SNEPCo</b>	Shell Nigeria Exploration & Production Company
64	<b>SER</b>	Society for Ecological Restoration
65	<b>SNG</b>	Shell Nigerian Gas
66	<b>SPDC</b>	Shell Petroleum Development Company
67	<b>TNCs</b>	Transnational Corporations/Companies
68	<b>UDHR</b>	Universal Declaration of Human Rights

69	<b>UN</b>	United Nations
70	<b>UNEP</b>	United Nations Environmental Programme
71	<b>UNUDHR</b>	United Nations Universal Declaration of Human Rights
72	<b>WHO</b>	World Health Organizations
73	<b>WMD</b>	Weapons of Mass Destructions
74	<b>WTO</b>	World Trade Organizations
75	<b>WWF</b>	World Wide Fund for Nature

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## DIE ZUSAMMENFASSUNG

### Einleitung

Diese Forschungsarbeit ist ein Musterbeispiel für die Anwendung der Nachhaltigkeitswissenschaft im Niger-Delta Nigerias. Folglich ist diese Forschung ausgerichtet auf die ethischen Probleme hinsichtlich Umweltverschmutzung und multinationale Ölkonzerne (MNOCs), insbesondere die Öl- und Gas-Industrien in dieser rohstoffreichen Region des nigerianischen Niger-Deltas.

Seit der Entdeckung von Ölvorkommen und den darauffolgenden Erkundungsaktivitäten am 1. Juni 1956 ist das ölproduzierende Feuchtgebiet durch dreifache Hauptvariablen beeinträchtigt worden, d.h. **(a)** Fragen zur Zuständigkeit, **(b)** Probleme umwelttechnischer und sozialer Ungerechtigkeiten und **(c)** Fragen zur Nachhaltigkeit. All diese Themen bestehen aufgrund der mutmaßlichen unmoralischen Geschäftspraktiken multinationaler Ölfirmen und wie diese die Menschenrechte, die Lebensgrundlagen und den natürlichen Lebensraum beeinflussen. Die schädlichen Einflüsse aufgrund von Ölverschmutzungen haben außerordentliche Auswirkungen auf das Ökosystem, die traditionelle Wirtschaft (Landwirtschaft und Fischerei), die menschlichen fachlichen Fähigkeiten und die Fragen moralischer Ansprüche der ölreichen Regionen des Niger-Deltas gegenüber einer leistungsfähigen Arbeitsweise.

Folglich stellt diese Forschungsarbeit einige grundlegende moralische Fragen wie **(a)** Welche Arten von Verantwortlichkeit können den multinationalen Ölkonzernen (MNOCs) und der nigerianischen Regierung zugeschrieben werden und **(b)** Wer sollte verantwortlich gemacht werden für Entschädigungen, die Wiederherstellung und Wiedernutzbarmachung der erodierten Umwelt des ölproduzierenden Feuchtgebiets, in welchem Ölfirmen seit Jahrzehnten agiert haben?

Diese Arbeit setzt sich mit den Rechten der Bewohner des Niger-Delta auseinander hinsichtlich konkreter und angemessener Umwelt- und Gesundheitsbedingungen, die für das Leben notwendig sind. Auf der Basis empirischer Belege gesellschaftsbezogener Menschenrechtsverletzungen und mutmaßlicher unmoralischer Geschäftspraktiken in der ressourcenreichen Region durch die multinationalen Ölkonzerne (MNOCs) argumentiert diese Forschungsarbeit zu Gunsten einer bindenden und zwingend notwendigen Verpflichtung, die geschundene Umwelt des ölproduzierenden Feuchtgebiets und die Rechte der gastgebenden Gemeinden wieder herzustellen, Wiedergutmachung an die Opfer der gesundheitsschädlichen Auswirkungen zu leisten und Schadenbeseitigung durch die Verursacher und gleichermaßen Nutznießer des Kausalfaktors der Umwelteffekte aufgrund der Ölverschmutzungen im ölproduzierenden Niger-Delta zu veranlassen. Durch eine detaillierte Analyse der historischen, ökologischen, politischen und sozialen Situation des ressourcenreichen Niger-Delta stellt diese Forschungsarbeit überzeugende Argumente vor, anhand derer die multinationalen Ölkonzerne eine moralische Verpflichtung haben für die Wiederherstellung und Entschädigung im ölproduzierenden Niger-Delta.

Diese Forschungsarbeit ist normativ ethischer Natur. Demzufolge ist sie darauf ausgerichtet, die ölreichen Staaten des Niger-Delta bei ihrer Befreiung von der Armut zu unterstützen. Diese Arbeit wird die Region des Niger-Delta in die Lage versetzen, ihre menschlichen und praktischen Möglichkeiten sowie Themen moralischer Ansprüche zu erkennen wie sie von Martha Nussbaum spezifiziert worden sind. Gleichzeitig würde diese Arbeit dazu beitragen, ein überzeugendes Nachhaltigkeitskonzept und eine gleichberechtigte gemeinsame Verantwortung zu fördern vis-à-vis der inständigen Bitten an die internationalen Ölkonzerne (MNCOs) und die nigerianische Regierung, entscheidende Funktionen bei der Hilfe zur Selbsthilfe und Entwicklungsinitiativen mit dem Schwerpunkt auf

Nachhaltigkeit basierender Entscheidungen zu übernehmen, die für eine angemessene humane Lebensgrundlage in den nigerianischen Staaten des Niger-Delta absolut unerlässlich sind.

### **PROBLEMDARSTELLUNG**

Die multinationalen Ölkonzerne (MNCOs), die in der ölreichen Region des nigerianischen Niger-Delta agieren, sind berüchtigt dafür, an den Umweltverschmutzungen und umweltschädlichen Aktivitäten beteiligt zu sein. Die immer wieder auftretenden Episoden von Ölaustritten in Verbindung mit der Rohöl- und Erdgasgewinnung durch die internationalen Ölkonzerne in der ölreichen Region des nigerianischen Niger-Delta mit massiven Umweltverschmutzungen haben das derzeitige Verfahren des Umweltmanagements unhaltbar gemacht. Die Fähigkeit der multinationalen Ölkonzerne (MNCOs), ihren betrieblichen Einsatz der Rohölgewinnung durchzuführen, ohne Verantwortung für ihre unmoralischen Taten zu übernehmen, ist durch damit verbundene Umweltauswirkungen gekennzeichnet worden, die Umweltzerstörungen, schwerwiegende Verschmutzungen, Biotoxizität, ökologische Folgen, Verlust von Biodiversität, Auswirkungen auf die menschliche Gesundheit, Anstieg der Armutsquote und grobe Verletzung der Menschenrechte umfassen, jedoch nicht auf diese beschränkt sind.

Es hat permanente Kritik gegeben am Nichtvorhandensein der Einführung einer Umwelt-Nachhaltigkeitsmethode durch die multinationalen Ölkonzerne (MNCOs), wodurch die Probleme der schädlichen Einwirkungen durch Rohölverschmutzungen und Umweltzerstörungen sowie die Folgen für die menschliche Gesundheit verringert werden. Aufgrund dieser gemeinsamen Aktivitäten und der unmoralischen Geschäftspraktiken in Verbindung mit den multinationalen Ölkonzernen (MNCOs), haben gastgebende Gemeinden,

Menschenrechtsgruppen und Nicht-Regierungsorganisationen (NGOs) mit sozialen Bewegungen gegen diese Ölfirmen begonnen. Sie werben für das Erfordernis der multinationalen Ölkonzerne (MNOCs), eine angemessene Haltung gegenüber der Natur, der menschlichen Gesundheit und den Menschenrechten anzunehmen.

Mit Blick auf die multinationalen Ölkonzerne (MNOCs) und den Umweltschutz in der tropischen Region des ölproduzierenden Niger-Delta stellen sich einige ethische Fragen:

- a) Wie kann ein Gesetz gegen Verursacher innerhalb eines nachvollziehbaren Rechtssystems begründet werden, und welche moralischen Bestandteile hat ein solches Recht zur Folge?
- b) Tragen die multinationalen Ölkonzerne (MNOCs) die ‚moralische Verantwortung‘ dafür, die Umwelt mit ihrem Potenzial wachsender natürlicher Vielfalt heute und in Zukunft zu schützen?
- c) Haben die multinationalen Ölkonzerne (MNOCs) die moralische Verpflichtung dazu, Opfern von gesundheitsschädlichen Auswirkungen durch Ölverschmutzungen zu entschädigen und Schäden der Vergangenheit zu beseitigen?

Folglich zielt diese Forschungsarbeit auf die Entwicklung eines pragmatischen Rahmenkonzepts, um die Umweltprobleme und sozialen Missstände zu beurteilen, mit denen sich die ölproduzierenden nigerianischen Staaten des Niger-Delta konfrontiert sehen dort, wo eine jahrzehntelange Rohölförderung extreme Umweltbelastungen und andere gefährliche Auswirkungen durch Ölverschmutzungen erzeugt hat.

## FORSCHUNGSZIEL

Diese Forschungsarbeit möchte den Anspruch rechtfertigen, dass die multinationalen Ölkonzerne (MNOCs) und die nigerianische Regierung den gastgebenden Gemeinden und Einwohnern der ölreichen Staaten des Niger-Delta eine ‚würdige Lebensgrundlage schuldig sind‘. Außerdem will diese Arbeit den Anspruch durch ‚Kombination‘ der analytischen Philosophie der Menschenrechte, den Ansprüchen und dem Leistungsfähigkeitsansatz rechtfertigen, die ebenso entscheidend wie notwendig sind für die Leistungen der Bewohner und deren angemessene, gesunde und menschliche Lebensgrundlage. Zwar kann die analytisch-ethische Philosophie nicht den Menschen im ölreichen Niger-Delta direkt helfen, jedoch kann ein Argument dafür geliefert werden, was die multinationalen Ölkonzerne und die nigerianische Regierung den Menschen der ölproduzierenden Region des Niger-Delta ‚schulden‘. Die Morallehre kann beweisen, dass die multinationalen Ölkonzerne und die nigerianische Regierung verpflichtet und gleichermaßen Amtsträger sind. Woran viele Menschen intuitiv geglaubt haben, ist jetzt ein starkes logisches Grundprinzip (oder zumindest glauben wir es).

Es ist die Absicht dieser Arbeit, diese ‚Kombination‘ zu erreichen, und zwar gestützt auf:

- ❖ Die ethische Analyse der Rechte und Ansprüche der Bewohner des ölproduzierenden Niger-Delta gemäß des Leistungsfähigkeitsansatzes (wie von Amartya Sen und Marta Nussbaum entwickelt), der einen besonderen Schwerpunkt auf Wohlstand, Entwicklung und Gerechtigkeit der ressourcenreichen Region legt.
- ❖ Die dritte Generation der Menschenrechte, welche die Themen auf die Rechte hinsichtlich einer angemessenen Umwelt, Nahrung, Sicherheit,

sauberes Trinkwassers, urwüchsige Landschaft und die Rechte gegen die Verursacher lenkt.

Demgemäß untersucht diese Forschungsarbeit, welche Rechte (Freiheit – politisch und sozial) missachtet und welche Ansprüche verletzt und beeinträchtigt worden sind, um herauszufinden, welche menschlichen funktionalen Fähigkeiten (basierend auf der von Nussbaum spezifizierten Zehnerliste der Fähigkeiten) der Bewohner des ölproduzierenden Niger-Delta davon negativ beeinflusst sind.

### **FORSCHUNGSFRAGE**

Umweltunrecht und Verstöße gegen die Menschenrechte sind unklar ineinander verflochten. Umweltunrecht steht für eine übermäßige Zufügung umweltschädigender und anderer schädlicher Einflüsse auf unschuldige Unbeteiligte oder lokale Gemeinschaften, die nicht im Zusammenhang mit den Aktivitäten stehen, welche allerdings derartige Umweltgefahren hervorrufen. Die ökologische Wirtschaftslehre bezeichnet dies als externe Effekte. Deshalb stellt diese Arbeit konsequent die eine Frage, welche eine ethische Beurteilung bezeichnet: Wenn die multinationalen Ölkonzerne externe Auswirkungen auf die Umwelt, die menschliche Gesundheit und die Lebensgrundlagen in der Vergangenheit von gewaltigem Ausmaß verursacht haben, und wenn sie die Menschenrechte und Ansprüche verletzt haben und immer wieder verletzen und beeinträchtigen, haben sie dann nicht auch die moralische Pflicht und Verpflichtung, die Umwelt des ressourcenreichen Niger-Delta wieder herzustellen, zu sanieren und Schadenersatz zu leisten?

### **METHODIK**

Diese Forschungsarbeit behandelt die ethischen Fragen der fortwährenden ökologischen und sozialen Katastrophen, die eindeutig von Menschenhand

stammen. Diese Arbeit kombiniert verschiedene Methoden, wie sie für eine Fallstudie in praktischer Philosophie, in Umwelt-, Unternehmens- und Entwicklungsethik erforderlich sind, durch eine Analyse der Geschichte und einer Diagnose der momentanen Situation, einer Analyse der wesentlichen Konzepte und der Menschenrechtsdiskussion, durch Anwendung von Nussbaums Liste der Leistungsfähigkeit auf die aktuelle Situation, eine erweiterte Literaturrecherche, eine politische Analyse (Nigerias Ölpolitik) und politische Empfehlungen sowie die eher grundsätzlich ethische Frage zu stellen: *Gibt es eine moralische Verantwortlichkeit der multinationalen Ölkonzerne dafür, die im ressourcenreichen nigerianischen Niger-Delta verursachten Schäden zu beheben?* Diese Arbeit wendet allgemeine ethische Theorien an (sowie die Theorie der Gerechtigkeit, Ansatz zur Leistungsfähigkeit) hinsichtlich drängender und spezifischer Weltthemen. Als eine Ergänzung zu den verwendeten Sekundärquellen hat der Wissenschaftler eine Exkursion in das ölreiche Gebiet des Niger-Delta unternommen. Das Wesentliche der Exkursion dient analytischen und historischen Zwecken. Die Exkursion verschafft dem Wissenschaftler das Privileg, die neuesten Entwicklungen zu untersuchen durch ein tief gehendes Verständnis der aktuellen Verhältnisse und das Sammeln von Informationseinschätzungen aus erster Hand bezüglich der schädigenden Einflüsse durch Ölverunreinigungen, Ölleckagen, die Ernährungs- und Gesundheitssituation und örtlichen Strategien, die Lage zu bewältigen und sich daran anzupassen. Überdies ist der Wissenschaftler im ressourcenreichen Niger-Delta gereist um nachzusehen, ob irgendwelche Spuren ökologischer Sanierungen an den ölverseuchten Stellen existieren. Und wenn ja, welche Arten von Sanierungsprozessen – passive oder befürwortete Wiederherstellung?



## **STRUKTUR DER DISSERTATION**

*Kapitel 1* gibt Aufschluss mittels eines kurzen Exposés über das Areal der Fallstudie in der ölproduzierenden Region des nigerianischen Niger-Delta und seiner damit verbundenen ethischen Herausforderungen aufgrund der mutmaßlichen unmoralischen Geschäftspraktiken der multinationalen Ölkonzerne in den ölreichen Feuchtgebieten.

*Kapitel 2* bietet eine Übersicht über die Globalisierung und ihre Kompatibilität mit multinationalen Konzernen gegenüber ihren mächtigen ökonomischen Auswirkungen weltweit, mehr noch in den Entwicklungsländern und insbesondere im ressourcenreichen nigerianischen Niger-Delta.

*Kapitel 3* handelt vom „gewöhnlichen“ Diskurs über Menschenrechte. Deshalb ist das Kapitel eher erklärende Ethik und diskutiert Rechtsthemen, deren Einordnung und wie sie die Menschenrechtsverletzungen in der nigerianischen ölreichen Region des Niger-Delta betreffen.

*Kapitel 4* stellt das theoretische Rahmenkonzept der Analyse vor. Dieses Kapitel ist die reale normative und analytische Morallehre. Es bietet eine detaillierte Einsicht in den Leistungsfähigkeitsansatz, die menschlichen funktionalen Fähigkeiten, Themen zu Moralansprüchen und zu moralischen und gesetzlichen Rechten, die dritte Generation der Menschenrechte und die Rechte gegen Verursacher.

*Kapitel 5* richtet seine Fragen zur Verantwortlichkeit und den Einfluss der Energiewirtschaft (Öl und Gas) auf die Menschenrechte hinsichtlich Gesundheit, Lebensgrundlagen und bewohnbare Umwelt in der ölproduzierenden nigerianischen Region des Niger-Delta.

*Kapitel 6* erläutert die Aussichten der Wiederherstellungsagenda im ressourcenreichen nigerianischen Niger-Delta. Es problematisiert auch das

Firmenimage einiger der führenden Ölförderer, die im ressourcenreichen Feuchtgebiet agieren und die Antworten der gastgebenden Gemeinden auf den betriebswirtschaftlichen Einfluss der externen Effekte der Energiewirtschaft der Haupt-Ölförderer auf ihre Gesundheit, ihre Umwelt und traditionelle Wirtschaft (Quellen der Lebensgrundlage). Das Kapitel diskutiert gleichermaßen die Gründe für das Scheitern des nigerianischen Staates innerhalb der Grenzen des Ölsektors.

**Kapitel 7** behandelt einen Aktionsplan, der sachdienlich und unerlässlich zu sein scheint, um umwelttechnische und soziale Gerechtigkeit in der ölreichen Region des Niger-Delta voranzubringen. Im Kapitel wird eine politische Maßnahme für eine ausgedehnte Wiederherstellung der zerstörten Umwelt und eine effektive Entschädigung angeregt. Gleichermäßen befürwortet es eine Neubewertung einiger umstrittener Gesetze der nigerianischen Regierung zum Wohl und für die Nachhaltigkeit jetziger und zukünftiger Generationen der ölproduzierenden Region des Niger-Delta in Nigeria.

## **ERGEBNIS**

Diese Forschungsarbeit hat folgendes festgestellt:

- Es sind dort zahlreiche eindeutige empirische Beweise dafür vorhanden, dass die Aktivitäten zur Rohölförderung im ressourcenreichen Niger-Delta kolossale Auswirkungen auf die Region haben, und deren damit verbundene negative und zerstörerische Effekte durch Ölverschmutzungen im Hinblick auf Umweltschikanen, die menschliche Gesundheit und die Lebensgrundlage sowie Gewalt und sozio-ökonomische Belastungen in der ölreichen Region entsetzlich sind (*wie in den Kapiteln 1, 3 und 4 dargestellt*).

- Außerdem scheint die nigerianische Regierung machtlos zu sein, die Agenda Artikel 3 des Rats für Menschenrechte in Kraft zu setzen, um zu erreichen, dass die multinationalen Ölkonzerne (MNOCs) in Übereinstimmung mit den Grundsätzen der sauberen Erdölförderung in der ölreichen Region des Niger-Delta handeln, so wie es in einigen ölfördernden Ländern wie Norwegen, den Vereinigten Staaten und Kanada praktiziert wird.
- Im Hinblick auf die gefährlichen Auswirkungen aufgrund von Ölverschmutzungen in der ressourcenreichen Region des Niger-Delta haben dazu einige verwandte Veröffentlichungen und empirisch-situative Fakten geheime Absprachen zwischen der nigerianischen Regierung und den multinationalen Ölkonzernen (MNOCs) bestätigt, dass ein eigennütziges Interesse daran besteht, den status quo der Umweltschäden zu erhalten. Tatsächlich sind zahlreiche Beweise dafür vorhanden, dass die multinationalen Ölkonzerne (MNOCs) politischen Druck ausüben und wirtschaftlichen Einfluss auf die nigerianische Regierung nehmen, die schließlich in der Vermutung gipfeln, dass der Reglementierte jetzt der Regulierer ist (**wie in den Kapiteln 5 und 6 dargestellt**).
- In dieser derzeitigen Situation lautet die Frage, die um Antwort ersucht: *Welche Handlungsstrategie sollte Anwendung finden, um die Umweltschäden und die Ungerechtigkeiten zu beheben, eine angemessene Entschädigung für die Umweltzerstörungen und die Menschenrechte zu berücksichtigen, die ökologische Nachhaltigkeit und Verringerung der Armut im ölproduzierenden Niger-Delta zu erreichen?* Die rationale Erklärung für diese Fragestellung lautet: Um Erfolge bei der ökologischen Wiederherstellung, der Nachhaltigkeit und dem Artikel 3 der Agenda des Rates für Menschenrechte in der ressourcenreichen Region des Niger-Delta zu erreichen gegenüber der Problembewältigung der Dreifach-Variablen, die

der Stein des Anstoßes gewesen sind, könnte die Einführung der von dieser Arbeit vorgeschlagenen Handlungsstrategie die allgemeine Situation verbessern und dabei den toten Punkt überwinden oder gar eine Situation des ‚sich Durchwurschteln‘.

- Die empfohlene **Handlungsstrategie** ist ein Aktionsplan infolge ethischer Forschung mit gleichzeitiger Analyse, der Rechtfertigung für einige wesentliche Forderungen und eine kritische Beurteilung der Gesamtsituation des ressourcenreichen Gebiets (**wie in Kapitel 4 verdeutlicht**). Der politische Prozess der vorgeschlagenen **Handlungsstrategie** sollte mit einer bedeutsamen versöhnenden Konferenz am runden Tisch beginnen, eventuell von der Weltbank organisiert, unter dem Titel ‚**Neuanfang: Eine Zukunft für das Niger-Delta**‘. Das Ergebnis der Versöhnungskonferenz sollte in einer Erklärung/Konvention verankert werden, welche das gemeinsame moralische Fundament definiert. Parallelen dazu sind versöhnliche Prozesse nach Regimewechseln und in Fällen von Massengewalt.

## **FAZIT**

Diese Forschung hat festgestellt, dass ganz offensichtlich die Joint-Venture-Unternehmenspartnerschaft zwischen der nigerianischen Regierung und den multinationalen Ölkonzernen im Verlauf der Ölförderung und Produktionsaktivitäten nicht zur Entwicklung der ölproduzierenden Region des Niger-Delta beigetragen hat. Stattdessen sind Ruinen, Unterentwicklung und Nichtnachhaltigkeit sowie ökologische und soziale Ungerechtigkeiten erzeugt worden. Allerdings, wie dem auch sei, die ‚zusammengesetzte‘ epistemisch-politische Gemeinschaft (**wie diese Arbeit in 7.2 vorgeschlagen und empfohlen hat**) sollte eine gemeinschaftliche Agenda definieren, die auf den aktuellen Problemen basiert (**wie in 7.3 und 7.3.1 dargestellt**) und dann dem zustimmen,

was als verbindlich und unverzichtbar gilt für das Vorankommen der Entwicklung. Zum Beispiel sollten die multinationalen Ölkonzerne (MNOCs) ihre Unternehmensleitlinien und die ethischen Komponenten ihrer Unternehmensberichte befolgen, die nigerianische Regierung als Amtsträger hingegen sollte das von ihr erwartete Erforderliche leisten durch Bereitstellung der notwendigen Infrastrukturen und Sicherheit mit der Gewährleistung, dass der Bericht der UNEP und die Empfehlungen des Afrikanischen Ausschusses für Menschen- und Völkerrecht im Ogoni-Land in jedem Winkel der ölproduzierenden Region des Niger-Delta umgesetzt werden. Die nigerianische Regierung sollte auch dafür sorgen, dass Opfer von Umweltschäden ordnungsgemäß entschädigt werden. Derweil sollten die gastgebenden Gemeinden des ölreichen Niger-Delta bestrebt sein, Frieden und menschliche Sicherheit in ihrem ressourcenreichen Gebiet zu fördern.

Die multinationalen Ölkonzerne (MNOCs) und die nigerianische Regierung sind dazu aufgerufen, eine aktive Rolle bei der Hilfe zur Selbsthilfe und den Entwicklungsaktivitäten zu übernehmen, die eher auf einen überzeugenden Entscheidungsfindungsprozess basierend auf Nachhaltigkeit ausgerichtet sind. Außerdem sollten Anstrengungen unternommen werden hin zu einer allgemeinen Vereinbarung über die Verpflichtung für eine erstrebenswertere, mehr zufriedenstellende und effektivere Staatsführung sowie die nachhaltige Nutzung der ölreichen Rohstoffquellen des Niger-Delta durch das Zusammenwirken der jeweiligen Möglichkeiten der multinationalen Ölkonzerne, der nigerianischen Regierung, der Nicht-Regierungsorganisationen (NGOs) und der ressourcenreichen gastgebenden Gemeinden. Das liegt daran, dass die ölreiche Region des Niger-Delta Rechte und Ansprüche gemäß des Ansatzes zum Leistungsvermögen und der dritten Generation der Menschenrechte besitzt. Von daher erfordert die Aussicht auf ökologische Wiederherstellung, Entschädigung, Wiedergutmachung und das

Prinzip des Schadenersatzes, welche gemeinsam für ein gutes Leben und Lebensgrundlagen für die ressourcenreiche Region sorgen könnten, eine umgehende Inkraftsetzung wie in *Abschnitt 7.3.1* dargestellt erfordert. Selbstverständlich sollte für die multinationalen Ölkonzerne und die nigerianische Regierung die Vermeidung von ökologischem Unrecht, Menschenrechtsverletzungen und die Inthronisation ökologischer und sozialer Gerechtigkeit im ölproduzierenden Gebiet des Niger-Delta an erster Stelle stehen.

Die ‚zusammengesetzte‘ epistemisch-politische Gemeinschaft sollte die multinationalen Ölkonzerne (MNOCs) und die nigerianischen Regierung darüber beraten, wie sie die Prinzipien von Verantwortlichkeit und Transparenz inklusiv einführen und dadurch ein System sich weitverbreitender nützlicher Informationen über die Bedürfnisse und Herausforderungen des ölreichen Gebiets haben sollten. Es ist ebenso ratsam, dass die lokalen Gemeinden des ölproduzierenden Niger-Delta aktiv an allen Entwicklungsinitiativen teilhaben. Dieser Scharfsinn würde eine partnerschaftliche Rahmenordnung, gegenseitiges Vertrauen und das Verständnis unter den Interessensvertretern verstärken. Darüber hinaus sollten die multinationalen Ölkonzerne (MNOCs), die nigerianische Regierung sowie die gastgebenden Gemeinden des ölreichen Niger-Delta der gemeinschaftlichen Bewahrung der Rechtsstaatlichkeit zustimmen. Diese genannten Sachverhalte würden den Frieden, die Nachhaltigkeit sowie ökologische und soziale Gerechtigkeit im ressourcenreichen Niger-Delta inthronisieren gegenüber der Einführung und der Verankerung der dreifachen Gewinnorientierung (3BL) in die Aktivitäten der multinationalen Ölkonzerne (MNOCs), wodurch diese zu verantwortungsbewussten gemeinsamen Bürgern gemacht werden.

**ABSTRACT**

This research is a paradigm case of sustainability science being applied to the oil-producing Nigeria Niger Delta. Thus, this research focuses on ethical issues in environmental pollution and multinational oil corporations (MNOCs) specifically, the oil and gas industries in the resource-rich region of the Nigerian Niger Delta. Since the discovery of oil deposits and its subsequent exploratory activities on June 01, 1956, the oil-producing wetland has been marred with tripartite major variables of **(a)** issues of responsibility **(b)** issues of environmental and social injustice **(c)** questions of sustainability. All these are due to the presumptive immoral business practices of the multinational oil companies and how these' impact on human rights, livelihood and the natural environment. The harmful effects due to oil pollutions have tremendously impacted the ecosystem, the traditional economy (farming and fishing), the human functional capabilities and issues of moral entitlements of the Niger Delta oil-rich regions from effective functioning. Thus, this research asks some fundamental ethical questions - such as **a)** *what types of responsibility can be ascribed to the MNOCs and the Nigerian government?* **b)** *who should be held responsible for the compensation, restoration, rehabilitation of the degraded environments of the oil-producing wetland where oil companies have operated for decades?*

This research discusses the Niger Delta inhabitants'- rights to specific and decent environmental and health conditions that are necessary for life. Based on the empirical evidences of 'corporate-related human rights harms, according to John Ruggie' and presumptive immoral business practices in the resource-rich region by the MNOCs, this research argues in favour of a binding and mandatory obligation to restore the degraded environments of the oil-producing wetland and rights of the host communities' - for compensation and correction of the environmental damages by the polluters and beneficiaries of the causal factor of the environmental effects

due to oil pollutions, to the victims of the harmful effects in the oil-producing Niger Delta. By a detailed analysis of historical, ecological, political and social situation of the resource-rich Niger Delta, this research presents convincing arguments that the MNOCs have a moral obligation to pay for restoration and compensation in the oil-producing Niger Delta.

This research is normative-ethical in nature. Hence, it aimed to assist in emancipating the Niger Delta oil-rich states out of poverty. This research will enable the Niger Delta region to know their human functional capabilities and issues of moral entitlements as enumerated by Martha Nussbaum. Simultaneously, this research would contribute in nurturing strong sustainability concept and equitable corporate responsibility vis-à-vis imploring the MNOCs and the Nigerian government to play important roles in capacity-building and developmental initiatives with emphasis on strong sustainability based decisions that are absolutely necessary for decent human livelihood in the oil-producing Nigerian Niger Delta states.



## GENERAL INTRODUCTION

### STATEMENT OF THE PROBLEM

The multinational oil corporations (MNOCs) operating in the Nigerian Niger Delta oil-rich region are notoriously known to engage in polluting and causing environmental harmful effects. The re-occurring episodes of oil spillages associated with crude oil and gas exploitation by the MNOCs in the Nigerian Niger Delta oil-rich region with severe pollutions have rendered the current practice of environmental management process unsustainable. The MNOCs' ability to carry out their operational act of crude oil exploratory activities without taking responsibility for their immoral actions have been characterized by associated environmental impacts that include, but not limited to - environmental degradations, severe pollutions, biota toxicity, ecological effects, loss of biodiversity and nature conservation, human health effects, increase in poverty rates and gross abuse of human rights.

There have been constant critics on the lack of MNOCs' adoption of an environmental sustainable approach that will reduce issues of harmful effects of crude oil pollutions, environmental degradations and human health consequences. Due to these corporate activities and immoral business practices associated with the MNOCs, host communities, human rights groups and non-governmental organisations (NGOs) usually commence civil rights, environmental and green movements against these oil companies. They agitate for the need of the MNOCs to adopt an appropriate attitude towards nature, human health and rights.

Regarding MNOCs and environmental protection in the tropical region of the oil-producing Niger Delta, some ethical questions are involved -

- a) *How can a right against polluters be substantiated within a comprehensive system of rights and what moral elements does such a right entail?*
- b) *Do the MNOCs have the ‘moral responsibility’ for protecting the environment with the potential of increasing natural diversity for the present and future generations?*
- c) *Do MNOCs have a moral obligation to compensate victims of harmful effects of oil pollutions and to restore damages from the past?*

Thus, this research aims to develop a pragmatic framework for evaluating the environmental and social injustices being faced by the oil-producing Niger Delta states of Nigeria, where decades of crude oil exploratory activities have produced extreme environmental and other harmful effects of oil pollutions.

### **RESEARCH OBJECTIVE**

This research wish to justify the claim that the MNOCs and the Nigerian government “owe” the host communities and inhabitants of the Niger Delta oil-rich states a “dignified livelihood”. This research wants to justify the claim through the ‘**combination**’ of the analytical philosophy of human rights - which are quite crucial and necessary for the oil-producing Niger Delta inhabitants’ performances and decent healthy human livelihood. Analytic ethical philosophy cannot help the Niger Delta oil-rich people directly but can provide an argument of what the MNOCs and Nigerian government “owe” the people of the oil-producing Niger Delta region. Ethics can show that the MNOCs and Nigerian government are committed and are duty bearers. What many people believed by intuition is now a robust rationale.

This research intends to achieve this ‘**combination**’ based on:

- ❖ The ethical analysis of rights and entitlements of the oil-producing Niger Delta inhabitants under the capability approach - (as developed by Amartya

Sen and Martha Nussbaum) - which has much emphasis on the well-being, development and justice of the resource-rich region.

- ❖ The third generation of human rights, which addresses the issues of rights to a decent environments, food, security, safe freshwater, unspoiled soils and **rights against polluters**.

Hence this research investigates which rights (liberty, political, social) that are infringed upon and which entitlements are violated and impaired, in order to know which human functional capabilities (based on the ten (10) list of capabilities as enumerated by Nussbaum) of the oil-producing Niger Delta inhabitants are negatively affected.

### **RESEARH QUESTION**

Environmental injustice and human rights abuses are indistinguishably intertwined. Environmental injustice signifies an excessive infliction of environmental and other harmful effects on innocent non-participants or local communities that are not associated with the activities generating such environmental hazards. Ecological economics calls it externalities. Thus, this research consequently poses this question - which signify an ethical judgement: *If the MNOCs have created huge external effects on the environments and on human health and livelihood in the past, and if they have violated and still violate and impair human rights and entitlements; do they have a moral duty and obligation to restore, rehabilitate and compensate the resource-rich Niger Delta environments?*

### **METHODOLOGY**

This research deals with ethical questions of the ongoing oil-producing Nigerian Niger Delta ecological and social disasters which are clearly man-made. This research combines different methods as necessary for a case study in practical philosophy, environmental, business and development ethics by an analysis of

history and diagnosis of current situation, analysis of crucial concepts, analysis of human rights discourse, application of Nussbaum's capability list to current situation, extensive literature research, policy analysis (Nigerian oil policies) and policy recommendations and asking this more fundamental ethical question - *Is there a moral responsibility of the multinational oil corporations to restore damages done in the resource-rich Nigerian Niger Delta?* This research applies general ethical theories (such as theories of justice, capability approach) to pressing and specific real-world issues. As an addendum to the secondary sources of information used, the researcher undertook a field trip to the Niger Delta oil-rich region. The essence of the field trip is for analytical and historical purposes. Because the field trip avails the researcher the privilege of studying recent developments, having an in-depth understanding of the current situation and collecting first-hand information appraisal about the harmful effects of oil pollutions, oil leakages, food and health situations, and local strategies to cope and adapt with the situation. Moreover, the researcher was at the resource-rich Niger Delta in order to see if there exist any acts of ecological restoration of the oil polluted sites. And if yes, *which kind of restoration process - passive or interventionist restorations?*

## **STRUCTURE OF THE DISSERTATION**

**Chapter 1** sheds light on brief exposé of the case study area of the oil-producing region of the Nigerian Niger Delta and its associated ethical challenges due to the presumptive immoral business practices of the multinational oil corporations in the oil-rich wetland region.

**Chapter 2** gives a synopsis of globalization and its compatibility with multinational corporations' vis-à-vis their powerful economic effects in the global world, more

especially in the developing countries and the resource-rich Nigerian Niger Delta in particular.

*Chapter 3* is about the "usual" human rights discourse. So, the chapter is more of descriptive ethics and it discusses the issues on rights, its classifications and as it concerns the human rights abuses in the Nigerian Niger Delta oil-rich region.

*Chapter 4* presents the research ethical framework of analysis. The chapter is real normative and analytical ethics. It gives a detailed insight into the capability approach, human functional capabilities, issues of moral entitlements, issues of moral and legal rights, the third generation of human rights and rights against polluters.

*Chapter 5* addresses the issues of responsibility and the impact of energy business - (oil and gas) - on human rights to health, livelihoods and habitable environment in the oil-producing Nigerian Niger Delta region.

*Chapter 6* outlines the prospects of restoration agenda in the resource-rich of the Nigerian Niger Delta. It also discusses the corporate identity of some oil majors operating in the resource-rich wetland and responses from the host communities on the business impact of the oil majors' energy business external effects on their health, environment and traditional economy (sources of livelihood). The chapter equally discusses the rationale for the Nigerian state failure.

*Chapter 7* handles some action plan and general conclusion that seems to be relevant and necessary in proffering environmental and social justices in the Niger Delta oil-rich region. The chapter proposes a policy action for extensive restoration of the degraded environments and effective reparation. It equally advocates the revaluation of some contentious laws by the Nigerian government for the welfare

and sustainability of the present and future generations of the oil-producing Niger Delta region of Nigeria.

# Chapter 1

## Case Study Area

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### 1.1 Nigeria in Brief

The State of Nigeria occurred in the year 1914 (*see figure 1*). Sir Fredrick Lord Lugard<sup>1</sup>, a British colonial master championed the cause of Nigeria coming into being. He amalgamated the Southern and Northern Protectorates. The rationale for this amalgamation has some economic and geo-strategic undertone<sup>2</sup> and moreover the colonial masters took into cognizance the rate of poverty in the Northern protectorate which necessitates them in using resource-proceeds from the Southern protectorate to be building the Northern part of Nigeria.<sup>3</sup> The Nigerian State has as its neighbours Niger Republic and Chad in the North, Cameroun in the East, the Atlantic Ocean in the South and Benin Republic in the West. The Nigerian State is thus geographically located in the west of the sub-Saharan African continent. Nigeria consist of thirty-six [36] States, with Abuja as the current capital whereas Lagos was the previous capital.

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<sup>1</sup> He was the then Governor-General.

<sup>2</sup> The southern protectorate is endowed with non-renewable resources of crude oil plus natural gas and natural capitals of forestry and fishing. The Northern protectorate has natural capitals such as farming and agricultural proceeds. Moreover, through the southern protectorate these resources would be exported to the developed countries through the Atlantic Ocean that bordered the Nigerian State in the southern protectorate.

<sup>3</sup> Oviasuyi, P.O. and Uwadiae, J. (2010), "The Dilemma of Niger-Delta Region as Oil Producing States of Nigeria", p119



**Figure 1: “Map of Nigeria showing the 36 States and Abuja the Capital, and the boundaries”<sup>4</sup>**

Nigeria is further subdivided into six [6] geo-political zones (*see figure 2*) namely: South-East, South-South, South-West, North-East, North-West and North-Central. The reason for the subdivision is for easy administrative and political purposes.

<sup>4</sup> Bomah Kelvin Brown (2014), “Digital Divide: Effects on Education Development in Africa.”, p10





Figure 2: showing the Six Geo-political Zones of the Nigerian State<sup>5</sup>

Nigeria is endowed with both renewable and non-renewable resources.<sup>6 7</sup> However, the Southern Protectorate is endowed with exhaustible (non-renewable) and

<sup>5</sup> Nigerian Masterweb Citizen News, 03.11.14

<sup>6</sup> Aluko, M.A.O. (2004), "Sustainability Development, Environmental Degradation and the Entrenchment of Poverty in the Niger Delta of Nigeria"

<sup>7</sup> The Wikipedia free encyclopaedia defines renewable resource as "a natural resource which will replenish to replace the portion depleted by usage and consumption, either through natural reproduction or other recurring processes in a finite amount of time in a human time scale. Renewable resources are a part of Earth's natural environment and the largest components of its ecosphere. A positive life cycle assessment is a key indicator of a resource's sustainability." While Business dictionary defines non-renewable resource as "a natural resource such as coal, gas, or oil that, once consumed, cannot be replaced. Most energy resources currently in use are non-renewable while the renewable ones (such as wind and solar power) are not well developed. Also called depletable resource."

renewable resources than the Northern Protectorate.<sup>8</sup> Furthermore, the Southern Protectorate's coastline is estimated at 853km in length and its land mass are approximately 28000sq/km and its outlet is into the Atlantic Ocean. Initially the Nigerian state depends on agricultural economy for its main source of foreign exchange earnings but with crude oil discovery which gives the Nigerian state almost 95% earning, agriculture was dumped.<sup>9</sup> Thus, during the massive crude oil production of the 1970s and 1980s many Nigerian citizens abandoned agriculture to seek employment in crude oil companies which is tagged "*Dutch Disease*."<sup>10 11</sup>

Currently, to think of agriculture practices today in some of the Niger Delta local communities is not possible because of incessant oil spills that are devastating the communities' farm lands. In fact from my observation based on the empirical facts I saw during my fieldwork research visits to some crude oil spill sites (*see figure 3*), there are no prospects of shifting back from crude oil to agriculture due to the fact that most of the farm lands are no longer fertile and not even to organic agriculture.<sup>12</sup>

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<sup>8</sup> EPU Research Papers, Issue 07/07

<sup>9</sup> Before the crude oil exploration and discovery, the Nigerian state has an enormous agricultural production sector of cocoa, oil palm, groundnut, cotton etc. These agricultural commodities were the bulk of Nigerian state foreign exchange earners and gross domestic revenue before the crude oil discovery in the 1950s.

<sup>10</sup> Cash Audrey C. (2012), "Corporate social responsibility and petroleum development in sub-Saharan Africa: The case of Chad" in Resources Policy.

<sup>11</sup> Cash Audrey C. (2012), states that the Dutch Disease syndrome "occurs when a resource sector, such as oil, experiences a boom, which can trigger an increase in spending, a rise in price of goods and services in the non-resource sector, and a shift of goods and services between the non-resource trade sector and non-tradable sector.", p145

<sup>12</sup> International Federation of Organic Agriculture Movements - IFOAM - defines organic agriculture as "a production system that sustains the health of soils, ecosystems and people. It relies on ecological process,



**Figure 3 - An agricultural farmland that has been destroyed by the impact of crude oil spillage in an Ogoni-land (Photo taken by the researcher)**

## 1.2 Niger Delta Area in Perspective

The Niger Delta region derives its name from the Niger River.<sup>13</sup> The point of convergence of the Niger River with all its tributaries and emptying into the Atlantic Ocean is in the Niger Delta region. The Niger Delta wetland is located along the coastlines of the Atlantic Ocean and occupies the largest extension of freshwater swamps within the Nigerian state. Niger Delta has five (5) ecological structures - coastal zone, freshwater swamps, lowland rain forests, mangrove

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biodiversity and cycles adapted to local conditions, rather than the use of inputs with adverse effects. Organic agriculture combines tradition, innovation and science to benefit the shared environment and promote fair relationships and a good quality for all involved.”

<sup>13</sup> Niger River is the largest river with so many tributaries and estuaries in the Nigerian state that empty into the Atlantic Ocean.

swamps and Barrier Island forests (that have coastal area of the mangrove vegetation and tropical rainforest in the northern reaches of the delta) and all makes the region one of the significant, unique and famously known wetlands with marine ecosystems world over.<sup>14</sup> In the World Bank report of 1995 it noted that the Niger Delta is the world's second largest delta outside Mississippi. It is sub-Saharan Africa's known largest wetland estimating 20,000sq km and third largest wetland world-over with thick mangrove forests.<sup>15 16 17</sup>

The mangrove swamps are estimated at 1,900sq km making it the largest in Africa. The Niger Delta mangrove swamps happen to be among the most exploited in the world. Majority of the Nigerian mangrove swamps are located in the wetland. The coastal zones and mangrove swamps of the Niger Delta wetland are identified as the most important economically rich ecological zones amid the five main zones. They both lie at the centre of a sensitive and complex ecosystem, vital for local fishing industries and sources of employment and income for the rural dwellers. Some species of fish domicile in these ecological zones include indigenous strains of species such as tilapia, synodontis, guppies, tuna, sharks, sailfishes and saw fishes, croakers, catfish and shynose, shrimp (penaeids), small pelagic - sardinella spp. and ethmalosa spp.

Niger Delta region has coverage of 8,600sq km in its freshwater swamps. The freshwater swamps have lots of beautiful ecosystems services that provide foods -

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<sup>14</sup> Kadafa, Adati Ayuba (2012), "Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria"

<sup>15</sup> Odunkoya Adelaja Odutola (2006), "Oil and Sustainable Development in Nigeria: A Case of Study the Niger Delta"

<sup>16</sup> Boele et al. (2001), "Shell, Nigeria and the Ogoni. A Study in Unsustainable Development: 1. The Story of Shell, Nigeria and the Ogoni People - Environment, Economy, Relationships: Conflict and Prospects for Resolution"

<sup>17</sup> Tamuno and Edoumiekumo (2012), "Nigeria in the Niger Delta: An Allegory of the "Legs Tying the Hands"

fish and other aquatic foods such as crabs and other invertebrates. The freshwater swamps are vital for local fishing industries too. Other important ecosystems services being rendered by the Niger Delta is the extensive natural and plantation forests reserves. The natural forests harbour varieties of important indigenous-economic trees such as mahogany tree (*Swietenia macrophylla*), iroko tree (*Milicia excelsa*) and achi tree (*Brachystegia laurentii*). These indigenous-economic trees are used as timber products, saw logs, fuel wood and chewing stick. While the plantation forests are a consortium of planted commercial Teak trees (used for its valuable hardwood), rubber trees (for the production of gums, starch and rubbers for industries) and an indigenous-economic tree called Melina trees used to produce hardwoods, transmission poles and building poles. The Niger Delta is being considered to be one of the most sensitive environments and among the identified global biodiversity hotspots that is endowed with ecosystems of highly diversified species of flora and fauna that has to do with both aquatic and terrestrial species.<sup>18</sup>

Based on the wetland's extraordinary biodiversity, it has been proclaimed to be a pivotal zone for the conservation of the western coast of Africa and highly diverse ecosystems that support human life as well as various species of terrestrial and aquatic fauna and flora. Numerous plant species found within the wetland are used for medicine and sources of raw materials such as gums, starch, ink, wood and rubbers.

The ecosystem services obtainable in the Niger Delta are -

- **Provisioning** that deals with fish & other aquatic food such as barnacles, crabs and other invertebrates vis-à-vis agricultural and tree crops viz:

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<sup>18</sup> Kadafa, Adati Ayuba (2012), "Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria"

Manihot esculenta (cassava), Dioscorea (yam), Colocasia (cocoyam), Oryza sativa (rice), Zea mays (maize), Theobroma cacao (cocoa) and timber products like - saw logs, transmission poles, bamboo, fire woods etc.

- **Regulating** that provides structure for greenhouse gases of Carbon dioxide - CO<sub>2</sub> and Methane - CH<sub>4</sub>, mitigating the effects of natural disaster that includes coastal erosion and flood regulation, adjusting of water movement, quality and volume, natural environment for pollinators and monitoring the natural environmental broad of physical, chemical and biological activities without anthropocentric involvement so as to decrease toxicity and contaminants in the soil.
- **Cultural** that has to do with spirituality and sacred places, locations for fishing festivity and boundless biodiversity for tourism potentials.
- **Supporting** that involves the sustenance of the delta's biodiversity and moderation of the deltas soil nitrogen supply.

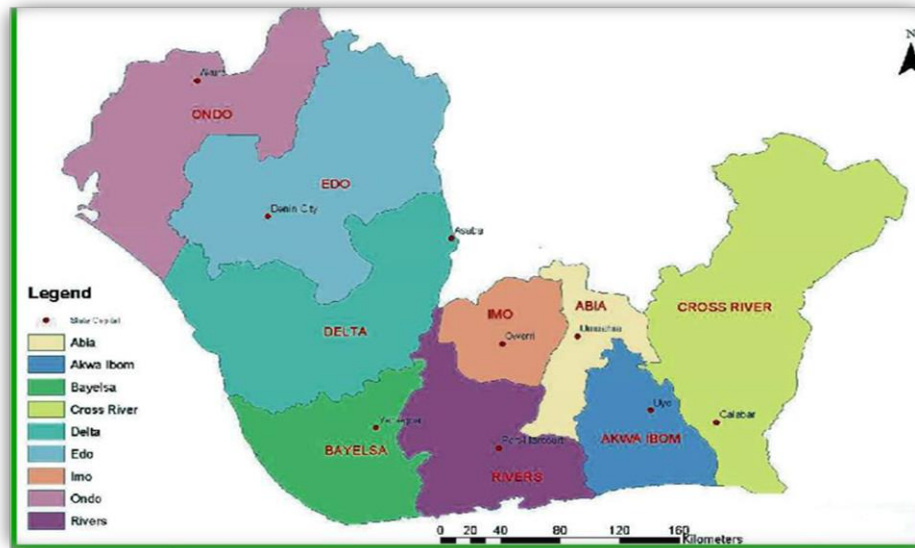
The Niger Delta region is a unique wetland region in all ramifications. But in spite of all these natural endowments of the Niger Delta wetland, suffice it to state that the wetland suffers from the 'focal perspective of sustainability' with regard to natural resources.

The Niger Delta region consists of people of various ethnic groups - Igbo, Ijaw, Itsekiri, Edo, Yoruba and Ibibio. These tribes are a consortium of nine (9) states (*see figure 4*): Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Rivers and Ondo; otherwise called "oil producing states".<sup>19</sup>

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<sup>19</sup> Odunkoya Adelaja Odutola (2006), "Oil and Sustainable Development in Nigeria: A Case of Study the Niger Delta", p249





*Figure 4: Showing the Nine Oil Producing States of the Niger Delta Region<sup>20</sup>*

Geographically these oil producing states are situated in the South-South and South-East geopolitical zone of the Nigerian state. They are geo-strategically located at the *Bight of Benin and Bonny* coastlines of the Atlantic Ocean. These oil producing states have common boundary with each other. Niger Delta region is home to over 15million people. The inhabitants are mostly local communities that depend solely on the natural environments for sustenance and livelihood. The source of livelihood of most inhabitants of the Niger Delta depends on the region's fragile ecosystem. They are into agricultural economy - fishing and farming; but unfortunately most of the oil exploration and exploitation constitutes adverse effects on the coastal ecosystems and biodiversity.<sup>21</sup> Most of the Niger Delta farmlands and aquatic ecosystem yearns for rehabilitation and prospects for organic agriculture. In fact, some organisms are needed to clean-up and restore the

<sup>20</sup> Niger Delta Regional Development Master Plan, p50

<sup>21</sup> Boele et al. (2001), "Shell, Nigeria and the Ogoni. A Study in Unsustainable Development ..."

damaged Niger Delta oil-rich environments and ecosystems. The photograph (*figure 5*) below is an example of how the farmlands look like.



**Figure 5 - A farmland in Ogoni-land that has been devastated by crude oil spills (photograph by the researcher)**

Although, there have been an environmental findings of the United Nations Environmental Programme (UNEP) report on acts of ecological restoration of some of the oil spill sites, but the prospects of rehabilitation of the damaged sites are not yet practicable due to this question - *who is morally responsible for the restoration of the damaged environments, the oil companies (polluters), the Nigerian government (beneficiaries) or both?*

Niger Delta region are the goose that does lay the golden eggs: “oil and gas” for the Nigerian state. The oil producing states contribute a lot of inputs to the economy of the Nigerian state, thus; it was reported that: “Niger Delta lie atop one of the biggest reserves of crude oil in the world currently estimated at 34 billion barrels



and constitutes the hub of oil and gas exploration in Nigeria. Exploration from the region has been a major source of revenue for the Nigerian government and put the state at a strategic position in the global calculations of industrial states and their multinational oil corporations.”<sup>22</sup> These states are naturally blessed with “exhaustible or non-renewable resources”<sup>23</sup> i.e. “oil and gas” and at the same time with renewable agricultural, forests and fishing resources, otherwise known as “natural capital.”<sup>24</sup> Of which before the discovery of oil deposit, Nigerian state’s bulk of economy was vested on agricultural resources. In a World Bank comment on the natural endowment of the Niger Delta region, it noted: “The Niger Delta has been blessed with an abundance of physical and human resources including the majority of Nigerian oil and gas deposits, good agricultural land, extensive forests, excellent fisheries as well as with well-developed industrial base, a strong-banking (potential system) a large labour force and an (potential) exuberant sector.”<sup>25</sup> Also Raji and Abejide argued that: “At the early stage of oil discovery, agricultural exports still continue to thrive in the international market until crude oil became an important foreign exchange earner for the government in the late 1960s.”<sup>26</sup>

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<sup>22</sup> Saliu et al. (2007), “Environmental Degradation, Rising Poverty and Conflict: Towards an Explanation of the Niger-Delta Crisis”, p277

<sup>23</sup> Kibert et al. (2012), Working Toward Sustainability, p132

<sup>24</sup> Ott et al. (2011), “Strong Sustainability as a Frame for Sustainability Communication”, p13

<sup>25</sup> Cited in Aluko, M.A.O. (2004), “Sustainability Development, Environmental Degradation and the Entrenchment of Poverty in the Niger Delta of Nigeria”, p64

<sup>26</sup> Raji and Abejide (2013), “Shell D’Arcy Exploration & the Discovery of Oil as Important Foreign Exchange Earnings in Ijawland of Niger Delta...” C.1940s-1970, p22

The oil deposits in the Niger Delta region are located both in *on-shore* and *off-shore* oil fields.<sup>27 28</sup> On the location of the crude oil deposits, it is reported that: “Of the 606 oil fields in the Niger Delta area, 355 are on-shore while the remaining 251 are offshore.”<sup>29</sup> Suffice it to postulate that the oil pollutants and contamination have impacted on the Niger Delta ecosystems degradation, biota toxicity, ecological effects, loss of biodiversity, and human rights to health, livelihood and good habitable environment.

### 1.3 Background of Oil Exploration

The discovery of crude oil in 1956 by the Shell-British Petroleum (then Shell D’Arcy) changed the economic landscape and status quo of the Nigerian state reliance on agricultural export commodities for its foreign exchange earnings.

A German company called Nigerian Bitumen Corporation was the first company that commenced the exploration of crude oil around the Nigerian state. Unfortunately, the First World War thwarted their oil exploration activities.<sup>30</sup> Some literatures stated that: “Petroleum exploration in Nigeria dates back to the first few

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<sup>27</sup> Saliu et al. (2007), “Environmental Degradation, Rising Poverty and Conflict: Towards an Explanation of the Niger-Delta Crisis”

<sup>28</sup> The on-shore and off-shore oil fields mean that the crude oil deposits are both on the land and in the sea. **Exploration Drilling Production Solutions** defines both as - On-shore “refers to the mainland. In exploration and production, “onshore” refers to the development of oil fields, gas deposits and geothermal energy on land.” While off-shore has to do with “originally meant islands in the open sea belonging to a country. The term “offshore” means “off the coast”. In oil and gas extraction, “offshore” refers to the development of oil fields and natural gas deposits under the ocean.”

<sup>29</sup> Nigerian National Petroleum Corporation News, March 13, 2014, p2

<sup>30</sup> Nigerian National Petroleum Corporation News, March 13, 2014; Raji and Abejide (2013), “Shell D’Arcy Exploration & the Discovery of Oil as Important Foreign Exchange Earnings in Ijawland of Niger Delta...”

years of this century. Organized marketing and distribution started around 1907 by a German Company, Nigerian Bitumen Corporation.”<sup>31</sup>

The coming on stage of an Anglo-Dutch firm called Shell D’ Arcy dates back to 1938 via a crude oil exploration license to explore crude oil all through the Nigerian state. This exploration right was extended to the corporation by the British colonial government in then Nigerian state.<sup>32</sup> This crude oil exploration license illustrates the monopoly of Britain and its imperial rights and hegemony over its colonies and on crude oil exploration in its colonies, as it was noted that: “the history of the oil industry is the history of imperialism.”<sup>33</sup>

Shell-BP was determined to explore crude oil in the Niger Delta region of the Nigerian state. Thus, right from 1956, Shell-BP invested an enormous sum in its exploration activities in the Niger Delta region and it was reported that: “Shell/D’Arcy has spent a total of 70,000 pounds on its geological survey and on the cost of drilling of oil wells in the Niger Delta area.”<sup>34</sup> Consequently, Shell-BP successfully struck the first oil deposit and subsequent drilling in 1956 around a community called Oloibiri in the present Bayelsa State.<sup>35 36 37</sup> It was in the same year of 1956 that Shell D’ Arcy was renamed Shell-British Petroleum (Shell-BP).

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<sup>31</sup> Okechukwu Ibeanu (2000), “Oiling the Friction: Environmental Conflict Management in the Niger Delta, Nigeria”, p21

<sup>32</sup> Nigerian National Petroleum Corporation News, March 13, 2014

<sup>33</sup> Cited in Odunkoya Adelaja Odutola (2006), “Oil and Sustainable Development in Nigeria: A Case of Study the Niger Delta”, p250

<sup>34</sup> Raji and Abejide (2013), “Shell D’Arcy Exploration & The Discovery of Oil as Important Foreign Exchange Earnings in Ijawland of Niger Delta, C.1940s-1970”, p23

<sup>35</sup> Kadafa, Adati Ayuba (2012), “Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria”

The Nigerian state's first export of crude oil was on 17 February 1958. Shell-BP was instrumental to this shipment through its massive production of 5100 barrels of oil per day. It was the genesis of '*petro-business*' in the Niger Delta region in particular and the Nigerian state in general.<sup>38 39 40</sup> Shell-BP maintained the sole 'concessionary right' of crude oil exploration until 1960, when Nigeria got her independence from Great Britain.

The Shell-BP monopoly of oil exploration was altered in the post-colonial-era with the 'concessionary right' of oil exploration being extended to other foreign oil firms - Mobil: 1960 -Texaco: 1961 - Chevron: 1961 - Agip: 1962. Currently the number of MNOCs drilling oil in the Niger Delta region is eleven (11) - Shell, Chevron, ExxonMobil, Total, Agip, Elf, Statoil, ConocoPhillips, Addax, Ashland and Texaco. There exist one hundred and fifty (150) crude oil exploration fields and one thousand four hundred and eighty one (1481) oil wells within the Niger Delta region from which these MNOCs are exploiting crude oil.<sup>41</sup> In the course of granting more crude oil licenses to other MNOCs, it was noted that: "...the granting of licenses to prospective oil companies by the Federal Government was to enhance smooth production of oil to generate revenue for the nation."<sup>42</sup> The

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<sup>36</sup> Odunkoya Adelaja Odutola (2006), "Oil and Sustainable Development in Nigeria: A Case of Study the Niger Delta"

<sup>37</sup> Okechukwu Ibeanu (2000), "Oiling the Friction: Environmental Conflict Management in the Niger Delta, Nigeria"

<sup>38</sup> Kadafa, Adati Ayuba (2012), "Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria"

<sup>39</sup> Okechukwu Ibeanu (2000), "Oiling the Friction: Environmental Conflict Management in the Niger Delta, Nigeria"

<sup>40</sup> Odeyemi and Ogunseitan (1985), "Petroleum Industry and its Pollution Potential in Nigeria"

<sup>41</sup> Kadafa, Adati Ayuba (2012), "Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria"

<sup>42</sup> Raji and Abejide (2013), "Shell D'Arcy Exploration & The Discovery of Oil as Important Foreign Exchange Earnings in Ijawland of Niger Delta, C.1940s-1970", p22

nation meant here is Nigeria. Significantly most of the named foreign oil companies and even those currently operating in the Nigerian state are either owned by Britain or United States of America. These indicate the correlation between oil, imperialism and hegemony. Thus, it was noted that: “The dominant position of Britain in the balance of power equation of the world in the early part of the last century assured her hegemonic position in the global oil network, and with the redrawing of the global configuration of power after the Second World War, a situation that threw up America as the new centre of imperialism, Britain was relegated next to the United States.”<sup>43</sup>

The Nigerian state witnessed the oil boom in the 1970s and its production level was estimated to be over 2 million barrels of crude oil per day. It became a member of Organization of Petroleum Exporting Countries (OPEC) in 1971.<sup>44</sup> With the Nigerian state relinquishing its dependency on agrarian commodities, it turned to crude oil earnings. It was reported that the Nigerian state earns 90% of foreign exchange and 70-85% of gross domestic revenue from crude oil.<sup>45 46 47</sup>

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<sup>43</sup> Odunkoya Adelaja Odutola (2006), “Oil and Sustainable Development in Nigeria: A Case of Study ...”, p250

<sup>44</sup> Onyemaechi Joseph Onwe (2012), “Economic Implications of Petroleum Policies in Nigeria: An Overview”

<sup>45</sup> Kadafa, Adati Ayuba (2012), “Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria”

<sup>46</sup> Odunkoya Adelaja Odutola (2006), “Oil and Sustainable Development in Nigeria: A Case of Study ...”

<sup>47</sup> Odeyemi and Ogunseitan (1985), “Petroleum Industry and its Pollution Potential in Nigeria”

**Table 1: Agricultural Commodity Export, Oil Export and Real Effective Exchange Rate (REER) in Nigeria: 1960-2011<sup>48</sup>**

YEAR	AGRICULTURAL PRODUCTION			OIL PRODUCTION			REAL EFFECTIVE EXCHANGE RATE
	% GDP	%TOTAL EXPORT	%TOTAL REVENUE	% GDP	%TOTAL EXPORT	%TOTAL REVENUE	(REER) *
1960	63.9	97.3	89.6	6.9	2.7	-	NA
1970	41.3	33.1	73.7	11.5	58.2	26.3	NA
1975	-	7.4	22.5	17.2	92.6	77.5	NA
1980	20.6	2.1	35.8	21.4	96.1	64.2	NA
1990	32.7	1.3	26.7	37.5	97.1	73.3	NA
1995	31.6	1.2	29.4	39.6	97.6	70.6	18.01
2000	33.8	1.3	16.5	47.7	98.7	83.5	58.25
2005	32.8	1.7	14.2	38.9	98.3	85.8	143.78
2010	35.2	3.6	26.1	33.4	96.4	73.9	92.38
2011	30.9	3.9	24.9	35.9	96.1	75.1	89.91

*\*Note: 1996-2007 base period is May 2003; 2008-2011 base period is November 2009; NA = Not Available. Source: CBN Statistical Bulletin, various years.*

The Nigerian National Petroleum Corporation (NNPC)<sup>49</sup> was established in 1977. The MNOCs are into exploration and production joint-venture of the crude oil with

<sup>48</sup> Cited in Ogbonna, Innocent Chukwuka et al. (2013), "Oil Exploitation and Agricultural Commodity Export in Nigeria: An Empirical Evaluation of the Extent and Impact of the Dutch Disease", p2

<sup>49</sup> NNPC belongs to the Nigerian government. It coordinates the public sector of the oil business while the multinational oil corporations (MNOCs) oversee the private sector. NNPC oversee the joint venture models between the Nigerian state and the MNOCs. As such, NNPC controls the upstream, midstream, downstream sectors and 14 subsidiaries of the Nigerian state oil business. In the NNPC website, the following FACTS were recorded that - "The Nigerian National Petroleum Corporation (NNPC) is the state oil corporation which was established on April 1, 1977. In addition to its exploration activities, the Corporation was given powers and operational interests in refining, petrochemicals and products transportation as well as marketing. In 1988, the NNPC was commercialised into 12 strategic business units, covering the entire spectrum of oil industry operations: exploration and production, gas development, refining, distribution, petrochemicals, engineering, and commercial investments."

NNPC, where they do pay royalties to the Nigerian state through the NNPC. Some literatures defined NNPC “as a corporate entity that represents the Nigerian government’s commercial interest in the oil and gas industry. It can be seen as a tool used by the government for the control of its oil and gas wealth.”<sup>50</sup>

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The mission statement of NNPC stated thus “NNPC is an integrated Oil and Gas Company, engaged in adding value to the nation’s hydrocarbon resources for the benefit of all Nigerians and other stakeholders.”

- Under the NNPC Business profile, it noted that the NNPC is involved in the following business operations - Upstream ventures which highlights the joint venture status between the NNPC and the oil majors “The Joint Operating Agreements (JOA) is the basic, standard agreement between the NNPC and the operators. The participation Agreement sets out the level of participation of each party in running the affairs of the company. The agreement determines the interests and obligations. The agreement ownership of production facilities, assets.”

- The following oil majors are involved in the JOA - **Shell Petroleum Development Company of Nigeria Limited (SPDC)** “The joint venture is composed of NNPC (55 percent), Shell (30 percent), Elf (10 percent) and Agip (5 percent) and operates largely onshore on dry land or in the mangrove swamp.” **Chevron Nigeria Limited (CNL)** “A joint venture between NNPC (60 percent) and Chevron (40 percent) has in the past been the second largest producer (approximately 400,000 bpd), with fields located in the Warri region west of the Niger River and offshore in shallow water.” **Mobil Producing Nigeria Unlimited (MPNU)** “A joint venture between NNPC (60 percent) and Mobil (40 percent) operates in shallow water off Akwa Ibom state in the south-eastern delta and averaged production of 632,000 bpd in 1997, making it the second largest producer, as against 543,000 bpd in 1996. Mobil also holds a 50 percent interest in a Production Sharing Contract for a deep water block further offshore, and is reported to plan to increase output to 900,000 bpd by 2000. Oil industry sources indicate that Mobil is likely to overtake Shell as the largest producer in Nigeria within the next five years, if current trends continue.” **Nigerian Agip Oil Company Limited** “A joint venture operated by Agip and owned by NNPC (60 percent), Agip (20 percent) and Phillips Petroleum (20 percent) produces 150,000 bpd mostly from small onshore fields.” **Elf Petroleum Nigeria Limited (EPNL)** “A joint venture between NNPC (60 percent) and Elf (40 percent) produced approximately 125,000 bpd during 1997, both on and offshore. Elf and Mobil are in dispute over operational control of an offshore field with a production capacity of 90,000 bpd.” **Texaco Overseas Petroleum Company of Nigeria Unlimited (TOPCON)** “A joint venture operated by Texaco and owned by NNPC (60 percent), Texaco (20 percent) and Chevron (20 percent) currently produces about 60,000 bpd from five offshore fields.”

<sup>50</sup> Hasasan and Kouhy (2013), “Gas flaring in Nigeria: Analysis of changes in its consequent carbon emission and reporting”, p128

#### 1.4 The Impact of Oil Exploration on the Niger Delta Oil-rich Environment

The Nigerian state has profited enormously from the crude oil exploration, discovery and subsequent production in the Niger Delta region. This profit is premised on foreign exchange earnings and gross domestic revenue gained from its massive crude oil production and exports. But these gains are not without its tremendous social and environmental impacts/degradation on the ecosystem, human rights to health and livelihood and biodiversity of the Niger Delta region which is the hub of oil exploitation itself and the multinational corporations operating in the Nigerian state. Some authors noted that: “Oil exploration by seismic companies involves surveying, clearing of seismic lines, and massive dynamiting for geological excavations. The explosion of dynamite in aquatic environments leads to narcotic effects and mortality of fish and other faunal organisms.”<sup>51</sup> Owing to the fact that the Niger Delta region is bestowed with a fragile ecosystem the technology being applied in the course of the crude oil extraction have impacted tremendously on the cultural structure of the inhabitants of the region, economically affecting their agrarian occupation of farming and fishing, the vegetation, the flora, fauna and the ambient oxygen of the ecosystem.

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<sup>51</sup> Collins N. C. Ugochukwu and Jürgen Ertel (2008), “Negative impacts of oil exploration on biodiversity management in the Niger Delta area of Nigeria”, p143





**Figure 6 - This is an oil spills site in Ogoni-land (Photo taken by the researcher)**

Oil exploration and production activities are causing changes to the physical and chemical properties of the Niger Delta region such as: changes in temperatures, turbidity, biological oxygen demand, heavy metals, salinity and ph. Oil spills and gas flaring are constituents of the greatest environmental risks and challenges in the wetland posing harmful effects on human health and aquatic organisms. The Niger Delta region suffers from incessant cases of oil spills. The existence of this massive and devastated crude oil spills is due to a lot of network of crude oil fields, underground crude oil pipelines, flow stations and loading bays that cut across numerous Niger Delta oil local communities and coastlines (*See figure 7 and 8*). The oil spills occur in variant forms - some are due to pipeline corrosion, leakages, and tank farms accidents; at the same time the oil companies do accuse the inhabitants of the region of vandalism and economic sabotage. Niger Delta regions has recorded the highest number of oil spills in the history of crude oil exploration

in the world, albeit most of these spills are considered ‘minor’ owing to the fact that they do occur in a developing country. The occurrence of these crude oil spillages are mostly in the mangrove swamp forest regions that are home stay of fauna and flora.



**Figure 7 - Nigerian National Petroleum Corporation (NNPC), oil and gas pipeline at Nsit-Ibom<sup>52</sup>**

According to a report “An estimated 1.5 million tons of oil has spilled in the Niger Delta ecosystem over the past 50 years. This amount is equivalent to about one “Exxon Valdez” spill in the Niger Delta each year. Many of the spills have taken place in sensitive habitats for birds, fish and other wildlife, leading to further loss of biodiversity and, in turn, further impoverishment of local communities. The spills pollute local water sources that people depend on for drinking, cooking, bathing, laundering and fishing. They also release dangerous fumes into the air, sometimes rendering villages uninhabitable and causing serious illness for those

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<sup>52</sup> <http://www.nigerdeltaavengers.org/> Sunday, July 24, 2016.

who are unable to relocate.”<sup>53</sup> Another literature noted: “Between 1976 and 1997, there were 5,334 reported cases of crude oil spillages, releasing around 2.8 million barrels of oil into the land, swamp, estuaries and coastal waters of Nigeria.”<sup>54</sup>

The devastation of the ecosystem and biodiversity of the Niger Delta region by oil spillage is a potential ethical challenge and environmental harmful act in the region. A study of the crude oil spill scenarios in the region indicates lack of adequate handling of these oil spills and is already catastrophic and hazardous to the region’s ecosystem. Survey study highlights that an estimation of “9 million- 13 million (1.5 million tons) of oil has been spilled in to the Niger Delta ecosystem over the past 50 years; 50 times the estimated volume spilled in Exxon Valdez oil spill in Alaska 1989.”<sup>55</sup> Pyagbara (2003) in his work postulates a coherent logical sequence of how oil spills affect the health of the inhabitants, their waters, agrarian and fishing occupations, the ecological zones and biodiversity of the region: “When oil operations discharge toxic effluents into rivers and onto farmlands, harmful elements such as mercury and chromium enter the food chain. The discharge of effluents also contaminates underground water and makes it unfit for human consumption; yet this remains the only source of water for local people.”<sup>56</sup> Hither to the MNOCs are being accused of fraudulent practices in the act of restoration

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<sup>53</sup> The Centre for Constitutional Rights and EarthRights International (2009), “Shell's Environmental Devastation in Nigeria”, p2

<sup>54</sup> Collins N. C. Ugochukwu and Jürgen Ertel (2008), “Negative impacts of oil exploration on biodiversity management in the Niger Delta area of Nigeria”, p144

<sup>55</sup> Kadafa, Adati Ayuba (2012), “Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria”, p21

<sup>56</sup> Pyagbara Legborsi Saro (2003), “The Ogoni of Nigeria: Oil and Exploitation” in Minority Rights Group International, p3

and remediating of the oil spillage sites. Some literatures made some observations on this ‘fraudulent remediation’ by commenting on the “...fraudulent clean-ups, the use of crude pits to bury oil waste, and ongoing damages”<sup>57</sup>, while another reports that: “...clean-up of oil spills is often very superficial, sometimes involving little more than turning the land so that the oil remains just beneath the surface of the soil.”<sup>58</sup>

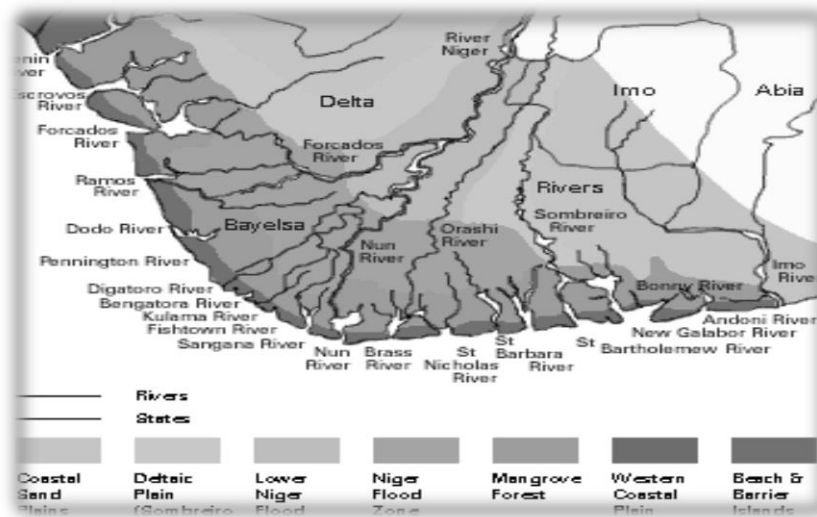


Figure 8 - Map of Niger Delta showing oil fields, pipelines, rivers, states and vegetation zones<sup>59</sup>

The issue of natural gas flaring is another ‘colossal damage’ to the ecosystem and ambient biodiversity of the Niger Delta region. Since the discovery of crude oil in the 1950s there have been enormous natural gas flares in the region (*see figures 9*

<sup>57</sup> Pyagbara Legborsi Saro (2003), “The Ogoni of Nigeria: Oil and Exploitation” in Minority Rights Group International, p2

<sup>58</sup> The Centre for Constitutional Rights and EarthRights International (2009), “Shell’s Environmental Devastation in Nigeria”, p2

<sup>59</sup> Collins N. C. Ugochukwu and Jürgen Ertel (2008), “Negative impacts of oil exploration on biodiversity management in the Niger Delta area of Nigeria”, p141

*and 10*). The Nigerian state natural gas is categorized into two types - “associated and non-associated natural gas.”<sup>60</sup> In the Nigerian state, it is recorded that 52% of its natural gas is ANG; the rest is classified as non-associated.<sup>61</sup> Initially outside Russia, the Nigerian state was the second crude oil producing nation that is notorious for flaring natural gas constituent of ANG in a high quantity (*see figure 11*), but there seems to be an improvement. This makes the Nigerian state natural gas flaring illegal due to the components that are being emitted from the ANG. It constitutes more of methane gas which degrades the environment vis-à-vis contributing to climate change and benzene which is known to cause illness like convulsion, chromosomal damage and birth defect.<sup>62</sup> It has been reported by scholars that natural gas flaring is catastrophic and environmentally harmful to plants and wild lives, moreover the flared natural gas emits a huge carbon dioxide which constitutes to global warming and subsequent harsh climatic weather making the Nigerian state natural gas flaring to be noted as the highest greenhouse gas emission in the African continent.<sup>63</sup> Ethically, this act of flaring gas is illegal.

In the years 1969 and 1984; the government of the Nigerian state has enacted bills to end gas flaring but all to no avail. For instance in 1969 the Nigerian state ordered

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<sup>60</sup> Associated Natural Gas (ANG) is crude oil laden, while Non-associated Natural Gas is a natural gas that is found alone without crude oil. It is known as associated if the natural gas is entrapped with the crude oil and if the natural gas is not crude oil laden it is called non-associated. However most of the natural gases found in the Niger Delta are crude oil laden i.e. “associated natural gas”. This makes gas flaring in the Niger Delta to be ethically challenging.

<sup>61</sup> Hasasan and Kouhy (2013), “Gas flaring in Nigeria: Analysis of changes in its consequent carbon emission and reporting”

<sup>62</sup> Hasasan and Kouhy (2013), “Gas flaring in Nigeria: Analysis of changes in its consequent carbon emission and reporting”

<sup>63</sup> Orubu et al. (2004), “The Nigerian Oil Industry: Environmental Diseconomies, Management Strategies and the Need for Community Involvement”.

the MNOCs to invent facilities that could be put into usage for the capture of the enormous production of the associated natural gas.<sup>64</sup> <sup>65</sup> There was also a bill enacted called *Associated Gas Reinjection Act of 1979*, that earmarked 1984 as deadline for MNOCs to put an end to associated natural gas flaring.<sup>66</sup> The MNOCs have been ignoring the orders given and do substitute in paying some fines instead.<sup>67</sup> Some scholars attribute to non-abiding by the orders given to lack of stringent legislative back up from the government of the Nigerian state.<sup>68</sup> Others report that: “This inaction, on the part of the government and the multinational oil companies can be traced to the fact that the Nigerian oil industry is steeped in corruption; which has been to the benefit of the ruling local elite.”<sup>69</sup> Unquestionably the government, the ruling elites and MNOCs are involved in the conspiracy theory of doing something immoral, illegal, or harmful in the crude oil exploration and these warrants the government of the Nigerian state not to be backing these orders or enacted bills with stringent legislations that should be binding. Suffice it to report that the Niger Delta region boast of over 100 flaring

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<sup>64</sup> Environmental Right Action (2008), “Fact sheet: Harmful gas flaring in Nigeria. Friends of the Earth”

<sup>65</sup> The Centre for Constitutional Rights and EarthRights International (2009), “Shell's Environmental Devastation in Nigeria”

<sup>66</sup> Dung et al. (2008), “The effects of gas flaring on crops in the Niger Delta, Nigeria”.

<sup>67</sup> The Centre for Constitutional Rights and EarthRights International (2009), “Shell's Environmental Devastation in Nigeria”

<sup>68</sup> Hassan and Kouhy (2013), “Gas Flaring in Nigeria: Analysis of Changes in its consequent carbon emission and reporting”.

<sup>69</sup> Oni and Oyewo (2011), “Gas Flaring, Transportation and Sustainable Energy Development in the Niger-Delta, Nigeria”



sites and of which some of these sites have been in existence since the discovery and subsequent drilling of crude oil in 1956.<sup>70</sup> But some sites have been curbed.



**Figure 9 - A Shell gas flare site at Rumuekpe in Rivers State. It is situated nearer to a big community within a neighbouring agrarian farmland.<sup>71</sup>**

The co-dependency that exists between the Nigerian state and the MNOCs is making it problematic for the Nigerian government to regulate the MNOCs operations. This is because the Nigerian state is benefiting from the oil explorations and productions activities of the MNOCs. The Nigerian state is making a huge oil windfall from the Niger Delta oil reserves. It was recorded that approximately 40% of the Gross Domestic Product (GDP), 95% of the nation's exports and 80% of the revenues for all the three tiers of government comes from the crude oil.<sup>72</sup> Because of these benefits on the side of the Nigerian state, they deploy measures in attacking and suppressing the peaceful movement of the Niger Deltas against the MNOCs and allowing the MNOCs' waste disposals of exploration, drilling and

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<sup>70</sup> Chinweze et al. (2012), "Oil and Gas Activities and the Nigerian Environment"

<sup>71</sup> Ezeamalu Ben (2014), "INVESTIGATION: How decades of gas flaring is harming Nigerians (Part 1)" in The Premium Times, Nigeria.

<sup>72</sup> Oluduro Olubayo (2012), "Oil exploitation and human rights violations in Nigeria's oil producing communities"

production into the Niger Delta Rivers and farmlands.<sup>73</sup> This constitutes to what is known as the phenomenon of the “Resource Curse.”<sup>74</sup> The explanation on resource curse in *footnote 74* is quite ad rem to the Niger Delta case scenario and to Nigeria as a country. In the words of an environmentalist activist - Emanuel Nnadozie - regarding “Oil and Socioeconomic Crisis in Nigeria”, he postulates that “Oil is a curse which means only poverty, hunger, disease and exploitation.”<sup>75</sup>

This attitude from the side of Nigerian government leads to poor environmental measures on the side of the MNOCs. Its resultant effect leads to environmental harmful effects of massive oil pollutions in the Niger Delta in form of - **Gas flaring**: the flaring of natural gases as by-products is hazardous, worst they are being flared off vertically and horizontally in the flaring stations mostly closer to villages and homes. Gas flaring emission constitutes carbon dioxide and oxides of nitrogen which do hang in the atmosphere when emitted. When it rains these gases dissolve in the rain water and fall to the ground as acidic rains which are very corrosive in nature with a catastrophic effect. - **Oil spills**: this affects the ecological systems, farmlands and biodiversity of the region. These environmental harmful effects, corporate politics and distributive effects of oil derivation formula - (which grew from 1.5% to 3% and presently pegged at 13% whereas when the Nigerian state was agrarian the derivation formula was 50% of a state’s income) - have turned and still turning the natural resources that ought to be a blessing to both the Niger Delta local communities and Nigeria holistically to a curse. But the question

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<sup>73</sup> “The Curse of Oil in Ogoniland”

<sup>74</sup> This is equally called the paradox of plenty. The term ‘resource curse’ was devised by a British economist called Richard M. Auty in 1993. It states that countries with plentifulness of natural materials or substances occurring in nature which can be exploited for economic gain - for instance non-renewable resources such as oil and gas, diamond - tend having slow growth rate, to be corrupt, to be prone to violent, to have more authoritarian or dictatorial government than countries that have few or no natural resources at all.

<sup>75</sup> “The Curse of Oil in Ogoniland”



remains - *why are countries like Norway, Canada and the USA not experiencing this curse of the resource rich syndrome based on some non-renewable resources of crude oil they are endowed with like Nigeria?*



Figure 10 - Ogoni-land showing gas flaring at one of the oil facilities<sup>76</sup>

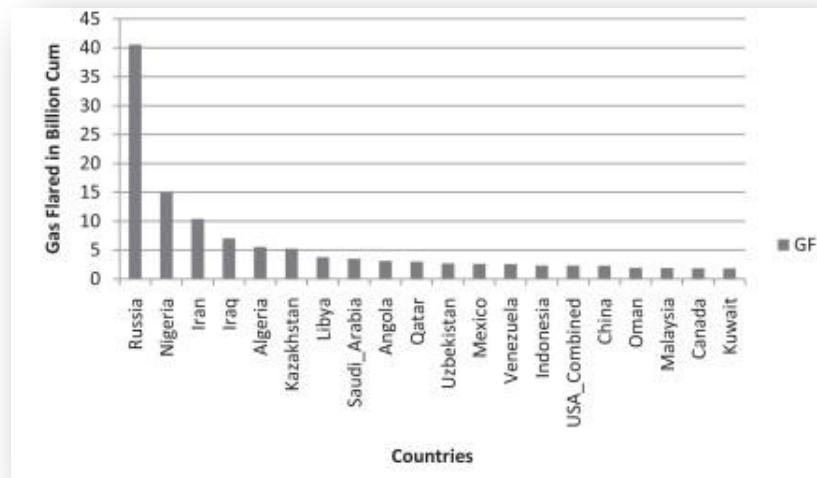


Figure 11- Oil producing countries' ranking in associated gas flaring<sup>77</sup> (Figure 11: 2<sup>nd</sup> ranking was in 2011. In 2014, Nigeria ranked 5<sup>th</sup> - see footnotes: 445 & 446. Good news in 2016, Nigeria ranked 7<sup>th</sup> - see footnotes: 716 & 717. This is a positive decrement in Nigerian associated gas flaring).

<sup>76</sup> Kadafa (2012), "Oil Exploration and Spillage in the Niger Delta of Nigeria", p44

<sup>77</sup> Hasasan and Kouhy (2013), "Gas flaring in Nigeria: Analysis of changes in its consequent carbon emission and reporting", p125

### 1.5 Pollution and Poverty Violating Human Rights

Predominantly the inhabitants of the local communities of the Niger Delta are farmers and fishermen. But due to the diverse forms of oil and gas generated environmental pollution evident in the Niger-Delta region, farming and fishing have become extremely difficult in some of the oil and gas affected areas, and even drinking water has become scarce. Malnourishment and diseases are very common. Mr. Mitee, former President of the Movement of the Survival of Ogoni People (MOSOP) said: “Lots of lands have been devastated by oil and drinking waters are left polluted. People inhale carbon dioxide and lots of lives have been lost due to pollution from spillages.”<sup>78</sup> In fact, most of the Niger Delta is now a “wasteland”<sup>79</sup>; the inhabitants’ health and livelihood are in danger and compromised due to the operations of the oil corporations. The environmental hazards exacerbated by the activities of the oil corporations in Niger Delta region present the most difficult enigma. Oil and gas exploration in the region has proved more catastrophic to the environment than any other part of the world, where oil and gas is explored. In one of the reports it noted: “The Niger-Delta has become an ecological wasteland. Several major rivers are heavily polluted; farmlands are under acid rain and oil spills, and carbon dioxide emissions in the area are among the highest in the world.

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<sup>78</sup> Cited in Eweje Gabriel (2006), “Environmental Costs and Responsibilities Resulting from Oil Exploration in Developing Countries: The Case of the Niger Delta of Nigeria”.

<sup>79</sup> Due to numerous cases of oil spillages, approximately 70% of the Niger Delta ecosystems does not contain or produce anything positive in terms of agricultural products. In fact most of the Niger Delta environments are ugly and often devastated or barely inhabitable place or area for they are completely without a particular quality or activity anymore.

It has been calculated that some 45.8 billion kilowatts of heat are discharged into the atmosphere of the region from flaring, 1.8 billion cubic feet of gas every day.”<sup>80</sup>

Since the discovery of crude oil in the Niger Delta region the oil corporations have been flaring gases, which affect the farmlands, polluting the air and the waterways. The high rate of pollution inherent in the Niger Delta region could be associated with enormous quantity of gas flaring which do occur on regular basis in the oil producing communities of the region. However, there are series of methods of handling associated natural gas, either through flaring, venting, reinjection or capturing, pressing and selling it.<sup>81</sup> But in the Niger Delta scenario, the associated natural gas are been flared on a regular basis, thereby emitting a greater quantity of carbon dioxide into the atmosphere. The emission in turn increases the temperature of the oil producing communities. This increase in temperature contributes to greenhouse emissions which invariably constitute climate change. In one of the reports Mr. Mitee states: “Apart from physical destruction to plants around the flaring areas, thick soot is deposited on building roofs of neighbouring villages. Whenever it rains, the soot is washed off and the black ink-like water running down the roofs is believed to contain chemicals which adversely affect the fertility of the soil.”<sup>82</sup>

For the Niger Delta local communities, the environmental, social and economic costs of the oil and gas explorations have been tremendous, rendering majority of

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<sup>80</sup> Oviasuyi, P.O. and Uwadiae, J. (2010), “The Dilemma of Niger-Delta Region as Oil Producing States of Nigeria”, p116

<sup>81</sup> Hassan and Kouhy (2013), “Gas Flaring in Nigeria: Analysis of Changes in its consequent carbon emission and reporting”

<sup>82</sup> Eweje Gabriel (2006), “Environmental Costs and Responsibilities Resulting from Oil Exploration in Developing Countries: The Case of the Niger Delta of Nigeria”.

the local communities to perpetual penury and misery due to the very fact that their traditional economy (source of livelihoods) of farming and fishing have been hampered upon by the crude oil exploratory activities. Resultantly, some of the host communities are challenging the performances of the oil corporations and that of the Nigerian government; posing questions like: - *Could this oil income lead to sustainability for the local communities and the entire Niger Delta environment?*

Since the execution of an environmental activists and author - Ken Saro Wiwa - (who organized a nonviolent opposition on the environmental injustice and human rights abuse in the region) - by the then Nigerian Head of State - Sani Abacha in 1995, several environmental activist groups have emerged on the scene to fight against pollution and poverty violating human rights happening in the resource-rich region cum Niger Delta impoverishment situation upon having had some decades of crude oil extraction. In fact, aftermath of his death saw the emergence of a fearless and violent agitating group under the umbrella of - Movement for the Emancipation of the Niger Delta (MEND)<sup>83</sup> that was created in the late 2005 and

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<sup>83</sup> MEND happened to be a consortium of militants that were used by some Niger Delta politicians during their act of politicking with the return of Nigerian democracy in 1999. MEND formally accused the Nigerian state and the MNOCs of actively encouraging extensive economic disparities, corruption and environmental degradation. They vowed to unmask the 'exploitation and oppression of the Niger Deltas' and great destruction of the region's natural ecosystems by the joint venture cooperation between the Nigerian state and the MNOCs involved in the crude oil extractions in the Niger Delta. Thus, MEND initially commenced the agitation for fairer distributive formula of the oil dividends, advocating for resource control of the oil extractions from the region, seeking compensations from the Nigerian state for environmental harmful effects due to oil pollutions being caused by the MNOCs, struggling for environmental justice, human rights abuse and to institute "contestatory deliberation and normative change across multiple levels of governance, below and above the level of the nation state." (Allen Michael (2011), Movement for the Emancipation of the Niger Delta (MEND), Encyclopedia of Global Justice, p727, Springer Science+Business Media B.V.) However, later on they began some nefarious activities such as - economic sabotage, illegal bunkering of crude oil, kidnaping of both expatriate oil workers and civilians for ransom, attacking oil installations and facilities of the MNOCs, involving in guerrilla warfare etc. Some of their known leaders include - "Henry Okah, Dokubo-Asari, Ebikabowei Victor-Ben† (Killed in action), John Togo, Godswill Tamuno, Ateke Tom,

early 2006. Thus, some of the groups fighting against the MNOCs and the Nigerian government unethical behaviours in the resource-rich Niger Delta have become so determined and irrepressible that they cannot be ignored. Moreover, with the collaboration of some international groups - (such as Amnesty International, Human Rights Watch, Friends of the Earth) - the activities of some of the oil corporations have received much publicity worldwide and mostly criticized is the symbiotic relationship that exist between the Nigerian government and the MNOCs.

### 1.6 Ethical Challenges

In an ethical context, the empirical evidences of the environmental harm in the local communities of the Niger Delta resulting from oil pollution “manifests one of the clearest examples of the inhumanity of man to man.”<sup>84</sup> The weighty nature of the environmental injustice and human rights abuse imminent in the local communities of the Niger Delta is best enunciated in a Latin proverb - ‘*Homo homini lupus est*’ meaning ‘*Man is a wolf to another man*’, which is in consonance with the Hobbesian description of the state of nature. The ethical challenges of crude oil exploration and exploitation inherent in the local communities of the Niger Delta are predicated on the issue of environmental restoration and rehabilitation of its degraded ecosystems and environment at the aftermath of crude oil exploratory activities vis-à-vis the act of compensation for the victims of the harmful effects due to oil pollutions. *What ought to be done in the event of environmental degradation? Will the issue of compensation be the best alternate approach that will balance the hazardous effect of crude oil exploration and*

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Government Ekpemupolo, Soboma George† (Killed in action), Brutus Ebipadei, Solomon Ndigbara, Tubotamuno Angolia† (Killed in action)” and as of 2009 their foot-soldiers were approximately 15,000 - 25,000 members.

<sup>84</sup> Esikot I. F. and Akpan M (2013), “The Niger Delta Crisis in Nigeria: Some Moral Lessons”, p11

*nature? What techniques of operation could be applied that will be sequential to ethical environmental care?*

The rationale for these questions are because of the fact that the local communities of the Niger Delta ought to be having high rate of life expectancy and quality health due to the region's natural endowments of non-renewable resources, natural capitals and good biodiversity. But unfortunately, empirical evidences postulate the opposite. The crude oil and gas extraction activities are tremendously exposing the local communities to toxicities from the soil, water and air which have affected and still affecting the local communities' human rights to health, livelihoods and the rights to habitable and healthy environment.

Due to the harmful effects of oil pollution, the immune systems of the inhabitants of the Niger Delta are being weakened for drinking toxic water and breathing poisonous chemicals. Of course most of the people are suffering from respiratory diseases, leukaemia, strokes, reproductive defects, skin problems, cancer, cholera and deformities in children are imminent.<sup>85</sup> Explicitly stated, the local communities of the Niger Delta are suffering from the concept of externality<sup>86 87</sup> The local communities of the Niger Delta issue of externality happens to be within the framework of negative externality due to fact that they are bearing the cost of the MNOCs business joint ventures with the Nigerian government and this kind of externality (environmental injustice and human rights abuse) being meted out to the local communities of the Niger Delta by the MNOCs demand concepts of restoration, rehabilitation and subsequently compensation where the need arises.

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<sup>85</sup> Anslem O. Ajugwo (2013), "Negative Effects of Gas Flaring: The Nigerian Experience", p7

<sup>86</sup> Kibert et al. (2012), Working Towards Sustainability, p130

<sup>87</sup> Kibert et al. (2012) postulates that an externality arises when an "economic transactions can affect people not directly involved with the transaction itself." Ibid.

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## Chapter 2

# Globalization and Multinational Corporation

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### 2.1 Introduction

The phenomenon of globalization and multinational corporations (MNCs) or transnational corporations (TNCs) as some scholars referred it seem to be indistinguishably intertwined. The fusion of both does bring out their connectivity in an integrated global market economy in terms of foreign direct investments (FDIs), for one prefigures the other. Whenever these two themes are mentioned, the following “multilateral institutions”<sup>88</sup> namely - the World Bank - formed in July 1944, the International Monetary Fund (IMF) - founded in December 1945 and the World Trade Organization (WTO) - created in January 1995; come to mind. This assumption is predicated on that fact that these tripartite ‘powerful’ multilateral institutions above-mentioned are holistically involved in “global business” or “global market integration.”<sup>89</sup> <sup>90</sup> While the MNCs are the acclaimed drivers of globalization<sup>91</sup> <sup>92</sup> the World Bank, IMF and WTO are known to be the instrument ‘conduit pipe’ by which the MNCs execute their international strategic economic policies. These ‘multilateral institutions’ are called the promoters of globalization.<sup>93</sup>

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<sup>88</sup> Preeti Sampat (2003), Economic Globalization Today “Resource Book”, p3

<sup>89</sup> Lodge & Wilson (2006), A Corporate Solution to Global Poverty: How Multinational Can Help The Poor and Invigorate Their Own Legitimacy, p9

<sup>90</sup> Preeti Sampat (2003), Economic Globalization Today “Resource Book”, p99

<sup>91</sup> Wacker K. M (2013), Empirical Aspects of Foreign Direct Investment and Economic Development, p15

<sup>92</sup> Preeti Sampat (2003), Economic Globalization Today “Resource Book”, p3

<sup>93</sup> Preeti Sampat (2003), Economic Globalization Today “Resource Book”, Ibid.

Depending on the perspective the term globalization is being seen, we have to realize that globalization is multifaceted. Ordinarily, the concept properly dwells within the ambient of the economics school of thought. Thus, the economics sees globalization as “geographically large-scale economic interaction. Such interaction involves... the free and uninhibited flow of capital and other important factors of production.”<sup>94</sup> Globalization has to do with cross border frontiers liberalization of trade policies and mostly being facilitated by MNCs. Globalization was at a time being referred to as “Washington Consensus”<sup>95</sup> <sup>96</sup> by some scholars; owing to the fact that the United States is the major hegemonic and imperial power. This concept “Washington Consensus” signifies “the ideology of free and efficient markets regardless of national boundaries”<sup>97</sup>; which has envelope the global economic system since the dawn of the last decades (millennium). An economist John Williamson was the protagonist of the “Washington Consensus” in the year 1989. He referred the terminology “to summarize commonly shared themes among policy advice by Washington-based institutions at the time, such as the International Monetary Fund, World Bank, and U.S. Treasury Department, which were believed to be necessary for the recovery of countries in Latin America from the economic and financial crises of the 1980s.”<sup>98</sup> Of course, some of these IMF and World Bank economic policies or conditionality was equally presented to some

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<sup>94</sup> Ambe J. Njoh (2005). African cities and regional trade in historical perspective: Implications for contemporary globalization trends, p19

<sup>95</sup> Peter Dicken (2011), GLOBAL SHIFT Mapping The Changing Contours of the World Economy, p1

<sup>96</sup> Rao, B.B., Vadlamannati, K.C. (2010), “Globalization and growth in the low income African countries with the extreme bounds analysis”, p795

<sup>97</sup> Peter Dicken (2011), GLOBAL SHIFT Mapping The Changing Contours of the World Economy, p5

<sup>98</sup> [https://en.wikipedia.org/wiki/Washington\\_Consensus](https://en.wikipedia.org/wiki/Washington_Consensus)

sub-Saharan countries in the form of Economic Recovery Programmes (ERPs) and Structural Adjustment Programmes (SAPs).

The eruption of the concept of globalization and MNCs do herald in retrospect the over bearing economic influence of “economically advanced countries”<sup>99</sup> that are been exacerbated on the emerging and developing economies of the world. As such in discoursing globalization, the MNCs are been spotted in all spheres, frontiers and horizons of FDI namely -agricultural sector, health, water, tourism, extraction of logs/timbers, fisheries, goods manufacturing, power and energy, mining, and crude oil extraction. Globalization is been seen as “...powerful northern economic interests in the form of Transnational Corporations (TNCs) and the global financial community have emerged as the biggest beneficiaries, advocates and lobbyists of global market integration. They are aided by a host of instruments (including governments) acting in their interests, with poor people all over the world often at the other extreme of the spectrum.”<sup>100</sup>

Suffice it to enunciate that in the course of the research the terms ‘globalization and economic globalization’ will be intermingling in the elucidation of issues.

## 2.2 Explication of Terms (Concepts)

### 2.2.1 Globalization

The concept of globalization could be define as “the gradual integration of economies and societies driven by new technologies, new economic relationships, and the national and international policies of a wide range of actors, including governments, international organizations, business, labour and civil society

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<sup>99</sup> Preeti Sampat (2003), Economic Globalization Today “Resource Book”, p5

<sup>100</sup> Preeti Sampat (2003), Economic Globalization Today “Resource Book”, p3

(NGOs)<sup>101</sup> being actors and involving in the act of integrated global market economy. Another scholarly definition of globalization stated that, it is “the world as a single market, without barriers, as opposed to a world divided up into separate markets.”<sup>102</sup> In the words of Johnson and Turner (2004), globalization is “the growing interdependence of countries worldwide through the increasing volume and variety of cross-border transactions in goods and services; and of international capital flows, and also through the more rapid and widespread diffusion of technology.”<sup>103</sup> In the work of Holm and Sorensen (1995), they defined globalization as “a quantitative shift toward a global economic system that is based on a consolidated global marketplace for production and consumption.”<sup>104</sup> Another scholar remarked that, “globalization is a ... supercomplex series of multicentric, multiscalar, multi-temporal, multiform and multicausal processes.”<sup>105</sup>

### 2.2.2 Multinational Corporations (MNCs)

The ‘Omni’ MNCs or TNCs does envisage diverse definitions from numerous scholars. They are “company or corporation that operates internationally, usually with subsidiaries, offices or production facilities in more than one country.”<sup>106</sup> In the words of Dicken (2011) “A transnational corporation is a firm that has the

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<sup>101</sup> Lodge and Wilson (2006), A Corporate Solution to Global Poverty: How Multinational Can Help The Poor and Invigorate Their Own Legitimacy, p12

<sup>102</sup> John Madeley (2008), Big Business, Poor Peoples: How Transnational Corporations ..., p19

<sup>103</sup> Cited in Nicolaidis. A and CM Van der Bank (2013), GLOBALISATION, NEPAD, FUNDAMENTAL HUMAN...,p54

<sup>104</sup> Cited in Nicolaidis. A and CM Van der Bank (2013), GLOBALISATION, NEPAD, FUNDAMENTAL HUMAN...,p54

<sup>105</sup> Peter Dicken (2011), GLOBAL SHIFT Mapping The Changing Contours of the World Economy, p7

<sup>106</sup> Preeti Sampat (2003), Economic Globalization Today “Resource Book”, p25

power to coordinate and control operation in more than one country, even if it does not own them.”<sup>107</sup> He stated that MNCs are ‘capitalist enterprise’ which are been govern by the basic rules or principles of capitalism; which has to do with ‘profit maximization’, ‘drive for profit’ or ‘pursuit of profit’. Analytically, the pursuit of profit by the MNCs seems to be “the key barometer to its business ‘health.’”<sup>108</sup> The United Nations define MNCs as “[enterprise] with activities in two or more countries with an ability to influence others.”<sup>109</sup> To highlight more on the MNCs mode of operation, Madeley (2008) quoted John H. Dunning’s words that MNCs “directly control the deployment of resources in two or more countries, and the distribution of the resulting output.”<sup>110</sup>

### 2.2.3 Foreign Direct Investments (FDIs)

Balance of Payments Manual - sixth edition (BPM6) defines FDI as a “category of cross-border investment with a resident in one economy having control or a significant degree of influence on the management of an enterprise that is resident in another economy.”<sup>111</sup> Another definition of FDI earmarked it as a “direct investment across national boundaries to buy a controlling investment in a domestic firm or to set up an affiliate.”<sup>112</sup> Legendijk and Hendrikx, 2009 define FDI as “... a cross-border corporate governance mechanism through which a company obtains

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<sup>107</sup> Peter Dicken (2011), GLOBAL SHIFT Mapping The Changing Contours of the World Economy, p110

<sup>108</sup> Peter Dicken (2011), GLOBAL SHIFT Mapping The Changing Contours of the World Economy, Ibid.

<sup>109</sup> Cited in John Madeley (2008), Big Business, Poor Peoples: How Transnational Corporations Damage the World’s Poor, p1

<sup>110</sup> John Madeley (2008), Big Business, Poor Peoples: How Transnational Corporations Damage the World’s Poor, p4

<sup>111</sup> Wacker K. M (2013), Empirical Aspects of Foreign Direct Investment and Economic Development, p29

<sup>112</sup> Peter Dicken (2011), GLOBAL SHIFT Mapping The Changing Contours of the World Economy, p20



productive assets in another country. Such a link can involve the acquisition of (or merger with) already existing production facilities by getting hold of a majority share, or the establishment of a new facility. The first case is often abbreviated as an ‘M&A’ investment; the latter case is commonly described as a ‘greenfield’ investment.”<sup>113</sup> MNCs are the major architect of FDI. In MNCs ‘drive for profit’, the MNCs do shift their economic bearing to the developing countries of the world where multiplicity of economic advantages abound for the MNCs. The rationale for this shift in economic bearing has to do with “Wages and operating costs are usually much lower than in developing countries, organized labour unions may not exist, environmental controls are often lax, there is scope for transfer pricing and governments may offer a ‘tax-free holiday.’”<sup>114</sup>

### 2.3 Genesis of Globalization

The process of globalization is not a new phenomenon; rather it dates back to some centuries ago and very synonymous with the advent of European colonialism. Albeit, varied dates of its actual commencement abound, suffice it to note that the slave trade era of the 16th to 19th centuries seems to be the genesis of the globalization process.

The slave trade age of 1500 - 1900 across the Atlantic Ocean witness the globalization process in sub-Saharan Africa with the huge export of slaves from sub-Saharan Africa to new found lands or ‘New World’ as some scholars refer it. This ‘New World’ consists of the present United States and her nearby islands of Caribbean and Bermuda; in fact ordinarily known as - North America. The people

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<sup>113</sup> Legendijk and Hendrikx (2009), Foreign Direct Investment, in International Encyclopaedia of Human Geography, p243

<sup>114</sup> John Madeley (2008), Big Business, Poor Peoples: How Transnational Corporations Damage the World’s Poor, p2

of the Western European nations were the first to engage in the slave trade globalization process. In fact, history has it that the Portuguese were the first West European slave merchants; followed simultaneously by the British, French, Spanish and Dutch Empire. It is on record that during the slave trade globalization era, more slaves were sent to the Southern America than to the Northern America. The slaves are been taken to the Southern America so as to enable them work in the coffee, tobacco, cocoa, sugar and cotton plantations. They are also engaged in gold and silver mining, working in the rice fields, involved in lumbering of timbers, working in the construction industries, doing skill labours and domestic works for their slave masters. The rationale for high concentration of slaves in the Southern America is predicated on the fact that “South Atlantic economic system centred on producing commodity crops, and making goods and clothing to sell in Europe ... This was crucial to those Western European countries which, in the late 17th and 18th centuries, were vying with each other to create overseas empires.”<sup>115</sup>

However, talking of globalization in terms of global market integration or global market economy falls within two phases or ‘waves’ of the globalization process as some scholars call it.

The first phase still subsists within the colonial era of 18th and 19th centuries. Most Western European nations and America are homogenously agricultural based. However, this first phase of globalization in review heralded the birth of industrial revolution, innovation, quality of life and industrialization, transportation, communication and banking moves beyond Britain. In fact, the first wave of globalization marked a significant shift to technological inventions and innovations in the industrial, banking and transport sectors. The years 1760 - 1850 marked the Industrial Revolution era of globalization in Britain. The rationale for the British

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<sup>115</sup> <https://www.americanhistoryusa.com/topic/atlantic-slave-trade/> “Atlantic slave trade”, p1

shift to industrial revolution is premised on the fact that; as of then Britain was endowed with some economical advantageous variables like enormous coal and iron ore deposits, she happens to be a political stable nation and controls massive colonies that were endowed with the necessary raw materials needed for the production of goods and simultaneously having booming markets for the goods produced. With the take-off of industrial revolution in Britain, other Western European and America followed suit in the following sequence viz. - France:1830-1860; Belgium:1833-1860; United States:1843-1860; Germany:1850-1873; Sweden:1868-1890; Japan:1878-1900; Russia:1890-1914 and Canada:1896-1914. This first wave of globalization is characterized with heavy, 'spreading and deepening' industrialization of the Western European and America and the reduction of industrial activity or capacity in the emerging and developing economies which were the colonies of the industrialized Western European nations and America. It was an era of extractive trading economy, where primary products were been exported. During the period in review though the emerging and developing economies experienced global integration but they were subjected to exploitative tendency by the Western European and Northern America and had little or no contact with the global systems.

The second phase of globalization is enmeshed in profound controversy in both its characteristics and effect. The late 19th and 20th centuries were most prominent in this era. The years 1881 - 1914 was the era of hostilities, scramble and partition of the African continent by the Western European nations, with Britain as the principal. In fact, only two African States of Ethiopia and Liberia escaped this neo-colonization. The Western European nation's activities were termed 'New Imperialism' and of which their hegemonic tendency over the African continent were profoundly pronounced. The Free Encyclopaedia stated that "The Scramble for Africa" is the popular name for the invasion, occupation, colonization and

annexation of African territory by European powers during the period of New Imperialism, between 1881 and 1914. It is also called the Partition of Africa and the Conquest of Africa. In 1870, only 10 percent of Africa was under European control; but by 1914 it was 90 percent of the continent, with only Abyssinia (Ethiopia) and Liberia still being independent. The Berlin Conference of 1884, which regulated European colonization and trade in Africa, usually is the starting point of the Conquest of Africa. Consequent to the political and economic rivalries among the European empires in the last quarter of the 19th century, the partitioning of Africa was how the Europeans avoided warring amongst themselves over Africa, thus “later years of the 19th century saw the transition from "informal imperialism" (hegemony), by military influence and economic dominance, to direct rule, bringing about colonial imperialism.”<sup>116</sup> This era of new imperialism was too forceful that by the year 1914 there is no part of the global world “...whose prices were not influenced by distant foreign markets, whose infrastructure was not financed by foreign capital, whose engineering, manufacturing, and even business skills were not imported from abroad, or whose labour markets were not influenced by the absence of those who had emigrated or by the presence of strangers who had migrated. The economic connections were intimate.”<sup>117</sup> Suffice it to remark that the amalgamation of the Southern and Northern Protectorates of what is called Nigeria today by the British Governor General named Lord Frederick Lugard happened within this 1914.

This second wave of globalization witnessed an alteration of the status quo of the highly technological and industrialized Western European economies due to the outbreak of the First World War of 1914 - 1918 and subsequent Second World War

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<sup>116</sup> [http://en.wikipedia.org/wiki/Scramble\\_for\\_Africa](http://en.wikipedia.org/wiki/Scramble_for_Africa) , p1

<sup>117</sup> Peter Dicken (2011), GLOBAL SHIFT Mapping The Changing Contours of the World Economy, p14

of 1939 - 1945. The post war period saw the decline of some Western European economies and the emergence of 'unrivalled dominance of the United States'. With the emergence of the dominant economy of the United States, these multilateral institutions of World Bank and IMF were created within this second wave of globalization respectively. This era gave rise to trans - nationalization of United States' corporations to Europe and into emerging and developing economies of the world as against the previous 'modus operandi' when all the productions were done in the United States and been exported either to Europe or to emerging and developing economies. *Why the imminent change of operational standard by the United States' companies, some people may ask?* The rationale for this change of operational standard is "either because they saw an opportunity to reduce production and distribution costs or because of a threat to their market position. Such a threat might come from local competitors or from government attempts to reduce imports through tariff and other trade barriers."<sup>118</sup> The hegemonic tendencies of the United States galvanize the rapid geometrical progression of globalization. This idea of the United States' companies to move beyond their border frontiers gave birth to the emergence of MNCs and heralded the '*Pollution Haven Hypothesis (PHH)*' which states that multinational enterprises move their dirty operations to countries with weak environmental regulations and poor social standards.<sup>119</sup> In fact, the concept of PHH tried to reduce industrial activities in the Western European and the United States vis-à-vis trying to industrialize their colonies or the emerging and developing economies of the global world.

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<sup>118</sup> Peter Dicken (2011), GLOBAL SHIFT Mapping The Changing Contours of the World Economy, p117

<sup>119</sup> Dam and Scholtens (2012), The curse of the haven: The impact of multinational enterprise on environmental regulation, Journal of Ecological Economics, p148

The second wave of globalization got a boost at the aftermath of the Second World War (1939-1945) and early 1960s. There was an infusion of prominence of the globalization process into the international business as “world leaders strove to break down trade barriers between various nations. The period of de-colonization from roughly 1966, led to nations seeking their own economic systems as they formed trade relations with the rest of the world.”<sup>120</sup> Within the period in review, the dominant role and dictatorial footprint of the nation states were prominent in the integrated global market economy. Simultaneously, with the Bretton Woods institutions’ strategic economic impact and infusion into the global business of the nation states and emerging economies; there was an alteration in the status quo of integrated global market economic system leading to the nation states’ loss of control of the global business as MNCs get upper hand and absolute dominance of the international business. The MNCs dominant role of international business gave rise to different degrees of “integration” into the world global economy between the dominant industrialized Western European/ American nations; sub-Saharan Africa and other emerging economies of the world like Asia. While the Asian countries economies connected firmly to global flows in terms of mercantile trade liberalization and foreign direct investments (FDIs), the sub-Saharan African economies eulogized from the enormous capital inflows attached to the natural resource boom.<sup>121</sup> A classic example is Nigeria with her enormously endowed “exhaustible or non-renewable resources” in the Niger Delta region.

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<sup>120</sup> Nicolaides and Van der Bank (2013), GLOBALIZATION, NEPAD, FUNDAMENTAL HUMAN RIGHTS, SOUTH AFRICAN AND CONTINENTAL DEVELOPMENT, p55

<sup>121</sup> Bezemer and Jong-A-Pin (2012), Democracy, globalization and ethnic violence, *Journal of Comparative Economics* 41 (2013) 108-125

Within the period 1960 - 1975, the independence-laden of some sub-Saharan African emerging economies received enormous economic leverage and initiated many developmental and economic goals. At the same time the colonial masters utilize the colonial state structures to enrich themselves. The currency values of the emerging sub-Saharan economies were overvalued and the agrarian sector was exploited. There was “Protectionism of developed countries limited African exports. Africa’s international debts grew as exports revenues fell. Rising interest rates in 70’s and 80’s raised debt service payments to unsustainable levels. FDI followed colonial patterns. Contradictory nature of globalization became apparent and Greater diplomatic contacts.”<sup>122</sup> These globalization features facilitates cross border frontiers liberalization of trade policies and more global integration of the emerging economies of the sub-Saharan Africa into the international business. The MNCs’ trajectories into the emerging economies of the sub-Saharan Africa broaden the avenues for market liberalism. The Bretton Woods Institutions were able to introduce their economic strategies in terms of Structural Adjustment Programmes (SAP) of the 1980s and 1990s, which featured so many economic implications for the emerging economies of sub-Saharan Africa. It makes the economy to become accessible whereas the export and import were not affected including the FDI.<sup>123</sup>

## 2.4 Aspects of Globalization

The phenomenon of globalization is a constituent of various types which are much intertwined in nature and seems difficult to separate. Some forms of globalization are - economic, political, cultural, ecological, social, military, medicine, migration

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<sup>122</sup> Schneider Geoffrey E. and Cortés Yazmín, Globalization and the Poorest of the Poor: Global Integration and the Development Process in Sub-Sahara Africa, pp9-10

<sup>123</sup> Schneider Geoffrey E. and Cortés Yazmín, Globalization and the Poorest of the Poor: Global Integration and the Development Process in Sub-Sahara Africa

and religion globalizations. However, in the course of the research in review, some will be given a synopsis preview.

**2.4.1 Economic Globalization:** This form of globalization is the point of convergence or the melting point of the integrated global economic system. It is the pivot that coordinates other forms of globalization. In fact, economic globalization is being found in all other forms of globalization. MNCs “are popularly considered the engine drivers of economic globalization today.”<sup>124</sup>

**2.4.2 Political Globalization:** It has come to be well-known facts that due to the phenomenon of the globalization process; any form of political instability in one part of the global world does affect others as well. The global world seems to be under one umbrella and simultaneously pursuing common goals. Of which in the course of pursuing a common goal, there bound to be conflict of interest which will undermine some emerging and developing economies and which will necessitate global cooperation for absolute solution.

**2.4.3 Cultural Globalization:** This form has to do with the transfer of culture from a particular part of the globe to the other. Take for instance, the idea of Chinese restaurant that left the shores of China and berthed in Europe.

**2.4.4 Ecological Globalization:** It is the idea of countries synergizing in order to find sustainable solutions to global environmental issues. The issues of climate change and global warming are instances.

**2.4.5 Social Globalization:** This aspect of globalization connotes technology and communication as well. Social globalization has increased the rate of social and digital networking, with its embodiment of unintended consequences. For some scholars a variable force known as ‘network’ has ignited via the globalization phenomenon that incorporates “free flow of information, improved global

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<sup>124</sup> Preeti Sampat (2003), Economic Globalization Today “Resource Book”, p25



communication and faster and lower cost transportation.”<sup>125</sup> An example has to do with - a digital television network stationed in the Western European, North America or China and it is been viewing globally in other parts of the planet earth. The sophisticated innovation and invention of World Wide Web, internet and smartphones vis-à-vis its laden or embedded appliances are aspect of the social globalization concept. These innovations have geometrically improved the rate of global interconnectivity that a time affects positively and negatively other aspects of the globalization phenomenon. Social globalization is technological determinism driven.

**2.4.6 Military Globalization:** The formation of the intergovernmental organization known as the United Nations in the month of October 24th 1945 shaped this aspect of the globalization phenomenon. This has to do with an institution of military forces and networking whose common goal is to checkmate violence, hostility and conflict prone regions of the global world vis-à-vis application of the use of force if necessary to individuals’ or nation-states’ ‘threats to use violence’; in order to maintain peace and accord in the world. This process of globalization monitors the abusive use of sophisticated military warfare like the weapons of mass destruction (WMD), intercontinental ballistic missiles (IBM) in this nuclear age.

**2.4.7 Medicine Globalization:** The medical health is affected by the globalization phenomenon. Medically, there is an increase where developed economies of Western European and North America are synergizing with emerging and developing economies in trying to develop a global high quality health care and medical education. This involves some pharmaceutical MNCs collaborating with medical research and higher institutions in the production of tropical medicines from herbs that will be beneficial to humanity and at the same time reducing the

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<sup>125</sup> The Levin Institute (2016), Migration and Globalization, p2

cost of such medicines so that it could be easily accessible and affordable to the people no matter the social status of the individual; as some Chinese pharmaceutical are doing in HIV drugs and others tagged food supplements.

**2.4.8 Migration Globalization:** This trans-border international liberalization is globally restricted to trades, investments and movement of capitals and prohibits international movement of people. The nation-states opposition to free movement of people is predicated on some economic, cultural/social and security rationale. In the light of this, the World Bank stated that “while countries have sought to promote integrated markets through liberalization of trade and investments, they have largely opposed liberalizing migration policies. Many countries maintain extensive legal barriers to prevent foreigners seeking work or residency from entering their national borders. In fact, immigration policies across the world are becoming stricter as governments attempt to minimize the economic, cultural, and security impacts of large movements of people between nations. Despite the reluctance of governments to liberalize immigration policy, however, the number of people living outside their countries of origin has risen from 120 million in 1990 to an estimated 215 million in 2012.”<sup>126</sup>

**2.4.9 Religious Globalization:** Religious norms and cultural values have their own share of the globalization process. This assumption is premised on the fact that globalization seems to have altered the societal religious norms and cultural values (cultural rights and freedoms). In pursuance of economic profit and advantages, globalization has forced various societies with different religious and cultural values backgrounds into an entity; thereby threatening and polarizing institutional traditions. In globalization’s drive for profit, it has come into conflict and alteration of religious customs and traditional belief in some emerging and developing economies. However, globalization had some positive imprint on religious

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<sup>126</sup> Cited in The Levin Institute (2016), Migration and Globalization, p2

teachings in the form of culture of pluralism culminating in having multiculturalism (an aspect of migration globalization) vis-à-vis the establishment of some form of global organizations such as: non-governmental organizations (NGOs); human rights activists groups and environmental organizations, that defend the welfare and interests of victims of the globalization phenomenon.

## **2.5 Problems Associated with Globalization and Multinational Corporations**

The phenomenon of globalization gave precedence to the emanation of modern day MNCs' act of transnational which commenced around the late 20th century. History has it that 1970s witnessed a global geometrical increase of MNCs with enormous profit earnings and absolute control of the global market economy. The MNCs are exerting hegemonic economic influence, dominance of international trade, involved in influencing both national bilateral policies of numerous countries where they operate and international policies with the assistance of multilateral institutions of World Bank, IMF and WTO. In fact, the MNCs "...emerged as the dominant stakeholders in the global economy, constantly consolidating their power and wealth through an ingenious mix of strategies and policies, often successfully lobbying governments and international institutions for greater access to resources and markets and freedom from regulation."<sup>127</sup> The Friedman's doctrine of maximization of profit for the stockholders is ad rem to MNCs business strategies in the sense that they dominate and influence the global market economy, but indulged in low level of employment ratio that is not commensurate with their enormous GDP.

The issue of MNCs free movement of their production operations to any geographical location of their choice is a problem. The problem is anchored on the

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<sup>127</sup> Preeti Sampat (2003), Economic Globalization Today "Resource Book", pp25-26

fact that such movements are fundamentally rooted in enhancing their global economic growth based on where they have cheap labour, huge economic and profit making advantages. MNCs are into numerous networking strategies and increase of foreign direct investment targeting both the developed and developing countries; as such “Globalization has facilitated a vast shift in economic activity among various regions and countries. Production and consumption activities have become highly dispersed around the world.”<sup>128</sup> This issue of mobility marks a clear cut difference between modern MNCs and the previous once.

In as much as globalization is being blamed for litany of woes in the developing countries, most of the developing countries are not making some frantic effort to march with the trend of the integrated globalized economy of the world system.

## **2.6 Argument for & Argument against Globalization**

In terms of FDI, globalization has been profitable to emerging economies and developing countries of the world. Globalization is the architect of the holistic global economic structure being experience now on the planet earth. There abound imprints and trade-marks of positive effects of globalization that are being seen and felt in various endeavours of humanity. Globalization has made a tremendous advancement in the material, technological, medical, communicational, academically, economical, and cultural well-being of humanity.

However, the processes of globalization are MNCs’ driven. MNCs adhere to the basic tenets of classical capitalism, which is maximization of profit for its stockholders. MNCs as corporate entities, apply series of economic strategies within their hegemonic power to circumvent the emerging and developing

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<sup>128</sup> Sethi S. Prakash (2012), Globalization and Multinational Corporations: Creating Social Accountability through Voluntary Codes of Conduct, p4.

economies laws to suite their purpose and objectives, for easy achievable of their economic bottom-line; which is “the drive for profit or pursuit of profit.”<sup>129</sup> The achievement of this economic bottom-line is premised on the reality that, “in many (if not all) emerging markets, it is simply impossible to make significant money without overt violation of normal Western ethical principles.”<sup>130</sup> The act of circumventing the laws and ordinances is an impingement on “equitable, sustainable and democratic global economic growth.”<sup>131</sup>

MNCs as corporate entities with global capital, out-weigh enormous economic prowess and imperial tendencies on the emerging and developing economies. Of course, the emerging and developing economies are craving for FDI and industrial development but ironically this search for FDI has given leverage and platform for some MNCs to conspire with some corrupt elites in power who are equally craving for wealth in the said economies to rip-off their country. An example is the potential act of most multinational oil corporations operating in the wetland region of the Niger Delta conniving with Nigerian political elites to cause collateral economic damage to the economy of the country.

The global economic liberalization and market integration created enabling business environment for MNCs’ geographical dispersal of global network production of goods. Of course, this market integration culminates in making the MNCs to operate where they have economic advantage and to re-locate when economic tide is against their economic profit and it proofs that MNCs “...tend to be less interested in long-term sustainable operations in any one country. They are

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<sup>129</sup> Peter Dicken (2011), GLOBAL SHIFT Mapping The Changing Contours of the World Economy, p110

<sup>130</sup> John Madeley (2008), Big Business, Poor Peoples: How Transnational Corporations Damage the World’s Poor, p8

<sup>131</sup> Preeti Sampat (2003), Economic Globalization Today “Resource Book”, p17

more concerned about their own profits than the welfare of a host country.”<sup>132</sup> As such, this liberalization and globalization “... has led to cost-efficiency as they take advantage of the cheapest labour, resources and services around the world as well as economic environments that offer maximum tax and tariff rebates and freedom from regulation.”<sup>133</sup>

Globalization has altered the ‘ethical equity and social concern’ of the emerging and developing economies and vested more powers and influence on the MNCs; thereby neutralizing the autonomy of the emerging and developing economies. Critics of globalization enunciate that it “...promotes a decrease in national control as MNCs and TNCs assume greater control and power by virtue of their immense wealth.”<sup>134</sup> Of course, the MNCs are the real beneficiary of the globalization process, for they have hegemonic and monopolistic domination approach on their operational standards all over the developed, emerging and developing economies. The globalization process instituted the doctrine of corporate rights’ superiority over human rights in the world economic system. In fact globalization “is essentially more about mercantilism and horizontal global systems.”<sup>135</sup>

Globalization is seen as a new version of neo-colonialism. This is due to the fact that emerging and developing economies are the sufferers; they are at the receiving end, they are mostly been marginalized and exploited in the global market integration. The developed economies of the Western Europe and United States

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<sup>132</sup> John Madeley (2008), *Big Business, Poor Peoples: How Transnational Corporations Damage the World’s Poor*, p9

<sup>133</sup> Preeti Sampat (2003), *Economic Globalization Today “Resource Book”*, p41

<sup>134</sup> Nicolaides and Van der Bank (2013), *GLOBALIZATION, NEPAD, FUNDAMENTAL HUMAN RIGHTS, SOUTH AFRICAN AND CONTINENTAL DEVELOPMENT*, p57

<sup>135</sup> Nicolaides and Van der Bank (2013), *GLOBALIZATION, NEPAD, FUNDAMENTAL HUMAN RIGHTS, SOUTH AFRICAN AND CONTINENTAL DEVELOPMENT*, p58

where most of these MNCs originate from are the absolute beneficiaries. Most of the MNCs are headquartered in their developed economies of their origin, while they are into exploitation and ripping-off the emerging and developing economies vis-à-vis transferring all the exploited wealth to the home economies. Worst still, these MNCs lack the will for the sustainable development of the emerging and developing economies, rather they are into controlling and influencing government decisions to their profit driven advantages. Most of the operational bases of the MNCs in the emerging and developing economies have been volatile and vulnerable predicated on their potential immoral business practices.

### **2.7 Globalization and Multinational Corporations in the Niger Delta**

Globalization has been playing a pivotal role in the economic development and growth of the Nigerian economy through the expansionist movement of the multinational oil corporations (MNOCs) 'globalization of international businesses' or FDI in the resource-rich region of the Niger Delta. High strategy and sustainable rate of economic growth is of immense important in the Niger Delta region; thus, through the globalization process the MNOCs are creating economic growth and provision of trade investment opportunities for employment generation resulting to decrease in income inequality and poverty reduction<sup>136</sup> in the Niger Delta region and Nigerian state in general. Varied forms of ideas, poverty reduction strategy, degrees and habits of reasoning which have impacted positively on the economic growth resulting to hybrid methods of production and improvements that have been attributed to the issues of globalization.

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<sup>136</sup> Rao, B.B., Vadlamannati, K.C. (2010), "Globalization and growth in the low income African countries with the extreme bounds analysis, Econ. Model"

However, there abound some negative conceptions of globalization in Nigeria via the corporate activities and presumptive immoral practices of its driver - (the MNOCs) - of having a 'complex system of oppression' and 'systemic targeting' of the wetland region of the Niger Delta. The 'correlation coefficient' measuring of globalization process in the Niger Delta extrapolate that 'growth effects' of globalization lack 'broad impact of outward-oriented policies' that should consist not only the economic growth but 'variable interests' like the environmental and socio-welfare simultaneously. Various 'empirical indicators' as it concerns globalization and reality of trade liberalization policies regarding 'growth effects of globalization' on the environment and social welfare of the region is enmeshed in 'rhetoric versus reality' paradigm. There exists lack of 'sustainable business practice' on the side of the MNOCs which is being expected or required of them.

Globalization and MNOCs are potential threats to the 'personal (civil) rights and freedom' of the Niger Delta inhabitants. Of course, worst still the Nigerian state that ought and has the statutory obligation to fight against violations of personal rights and freedoms of the Niger Delta citizens do connive with the MNOCs in circumventing the personal rights and entitlements of the inhabitants of the region. Even the 'social and economic rights and freedoms' of the Niger Delta inhabitants are been transmogrified by globalization and the MNOCs. In fact, the core quartet - right to peace, right to development, right to proper environment and right to the common heritage of mankind as contained in the "third generation of human rights" which are very crucial for capability performance have all been trampled upon via the instrumentality of the globalization phenomenon and corporate acts of the MNOCs.

The MNOCs are using the globalization process in stifling the economic and industrialization of Nigeria and most of the countries in the sub-Saharan Africa.



The MNOCs strive in impoverishing, environmental degrading and exploitation of “exhaustible or non-renewable resources” i.e. “oil and gas natural reserves” from the Niger Delta as against encouraging or facilitating the region’s industrial base needed for the exportation of finished or semi-finished products, so as to enable Nigeria to be participant in the global economy. For instance, the Niger Delta oil-rich hub of the MNOCs business operations is having only three obsolete refineries. Each of the refineries is more than 30 years of age and there is a great and incessant sabotage against the optimal functioning capacity of the respective oil refineries. At times none of them is performing at all. Whenever such economic situation occurs, the crude oil from the oil-rich producing Niger Delta are being exported and refined in some MNOCs’ refineries scattered in the developed countries and in-turn imported back as refined petroleum products. In fact, the MNOCs are expected to establish some state of the art refineries within the oil-rich region of its upstream business operations. These very corporate acts of the MNOCs are making the Niger Delta citizens in particular and Nigerians in general to be having a resentment opinions and ideas on globalization vis-à-vis MNOCs.

Globalization should be equated with prosperity, development and industrialization of the Niger Delta region’s endowed natural reserves; rather than the globalization process in the region being synonymous with economic exploitation or “issues of exploitative relationship”, environmental degradation, impoverishment, impeding the economic growth of the industrialization sector and reinforcing violence, insecurity and political instability in the region. The issue of “sustainable business practice” cannot be equated with the reality in the region’s environment. MNOCs through the globalization concept have weakened the region’s global socio-economic participation.

## 2.8 Conclusion

Globalization has really liberalized and opened up the emerging and developing economies border frontiers for many MNCs, based on integrated global market economic system. Though there have been numerous economic advantages emanating from global market economy but at the same time; liberalization of global business have altered the economic, ecological, cultural and social norms and values of many emerging and developing economies. Due to huge capitals within the MNCs reach, they do weigh enormous power and influence within the governments of the emerging and developing economies. Some scholars and public spheres such as Non-governmental Organizations see them as threats to the emerging and developing economic system. Of course, no wonder John Ruggie in one of his works noted that, the main “cause of business and human rights predicaments today lies in the governance gaps created by globalization - between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation.”<sup>137</sup>

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<sup>137</sup> Ruggie J. (2008), Protect Respect and Remedy, A Framework for Business and Human Rights, p1

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## Chapter 3

### Rights

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#### 3.1 Introduction

The issue of the business responsibility and human rights discourse today is predicated "...in the governance gaps created by globalization - between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation."<sup>138</sup> The phraseology 'governance gaps' needs further elucidation so as to imbibe its in-depth comprehension. In that regard John Ruggie noted that the issue of governance gaps emanate due to the fundamental factor that "Over the past decades, the influence and reach of multinational companies have dramatically increased. At the same time, the capacities of some states to properly regulate and prevent possible adverse consequences that business activity may bring has not kept up at equal pace. This means that in many societies individuals do not enjoy adequate protection if corporate activity leads to negative impacts, because the law and/or its enforcement are not adequate."<sup>139</sup> Thus, "governance gaps" mean "under-regulation" of MNC. This under-regulation is by no means a predicament, but can be seen as a result of coalitions between ruling elites and MNCs. Governance gaps/under-regulation implies that some acts are legally permitted which are repugnant or wrongful from the moral point of view. Thus,

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<sup>138</sup> Ruggie, J. (2008), Protect Respect and Remedy, A Framework for Business and Human Rights, A publication of the United Nations, p1

<sup>139</sup> Business & Human Rights Initiative (2010), "How to Do Business with Respect for Human Rights: A Guidance Tool for Companies," p24

governance gaps indicate a strong tension between law and ethics. This is termed “legal evil”.

The wrongful acts are more significant in the developing world where there are lacks of stringent rules for either enforcing the national laws on human rights or making the international laws on human rights to be binding in all international business. It is also prominent in warring developing worlds that are hampered with weak governance necessitating government unwillingness to performance adequately her human rights duties including business regulations. John Ruggie correctly postulated that - “...some developing countries may lack the institutional capacity to enforce national laws and regulations against transnational firms doing business in their territory even when the will is there, or they may feel constrained from doing so by having to compete internationally for investment.”<sup>140</sup> He went further to illustrating where the act of business and human rights predicament occurrences are most prominently done with impunity: “They occurred, predictably, where governance challenges were greatest: disproportionately in low income countries; in countries that often had just emerged from or still were in conflict; and in countries where the rule of law was weak and levels of corruption high. A significant fraction of the allegations involved companies being complicity in the acts of government or armed factions.”<sup>141</sup> In Ochoa (2008) analysis of the work of John Ruggie, she noted that the ““governance gaps” create an environment in which business-related human rights abuses can occur with relative impunity.”<sup>142</sup>

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<sup>140</sup> Ruggie, J. (2008), *Protect Respect and Remedy, A Framework for Business and Human Rights*, p192

<sup>141</sup> Ruggie, J. (2008), *Protect Respect and Remedy, A Framework for Business and Human Rights*, *ibid.*

<sup>142</sup> Ochoa Christiana (2008), *The 2008 Ruggie Report: A Framework for Business and Human Rights*, p2

The high rate of curiosity on business and human rights predicament in the developing world today hinges on “...increasing power of corporations to impact both positively and negatively on human rights, combined with the increasing instances of corporate complicity in human rights violations.”<sup>143</sup> Actually, there abound the importance of business in the economic development of any nation be it developing world or developed world, for it “...is the major source of investment and job creation, and markets can be highly efficient means for allocating scarce resources. They constitute powerful forces capable of generating economic growth, reducing poverty, and increasing demand for the rule of law, thereby contributing to the realization of a broad spectrum of human rights.”<sup>144</sup> As such these ought to be some positive values required of business by the society owing to the fact that “...markets work optimally only if they are embedded within rules, customs, and institutions. Markets themselves require these to survive and thrive, while society needs them to manage the adverse effects of market dynamics and produce the public goods that markets undersupply.”<sup>145</sup>

But unfortunately, numerous business, their subsidiaries or managers in the developing world act contrary to the aforementioned required of business vis-à-vis markets, necessitating an increased accusation of presumptive immoral behaviours impacts on human rights and the natural environment. In the global world of today and more especially in the developing world, the concern of the society anchored on “how business activities have impacts on human rights”<sup>146</sup> owing to the fact that

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<sup>143</sup> Editorial (2011), Accounting for Human rights: An overview and introduction, p734

<sup>144</sup> Ruggie, J. (2008), Protect Respect and Remedy, A Framework for Business and Human Rights, p189

<sup>145</sup> Ruggie, J. (2008), Protect Respect and Remedy, A Framework for Business and Human Rights, Ibid.

<sup>146</sup> Business & Human Rights Initiative (2010), “How to Do Business with Respect for Human Rights: A Guidance Tool for Companies,” p3



“...markets pose the greatest risks - to society and business itself - when their scope and power far exceed the reach of the institutional underpinnings that allow them to function smoothly and ensure their political sustainability.”<sup>147</sup> Instances of these human rights predicaments in the developing world where business abuses and impacts on human rights and the natural environments are - the case of Oil companies’ human rights problem in the wetland region of the Nigerian Niger Delta, the case of NIKE subcontractors and usage of sweatshops in Vietnam and the case of Unocal in Myanmar<sup>148</sup>.

Another important factor is the very strong position of MNC as being investors. In any country, in which for whatever reasons tax systems are underdeveloped, saving rates are low and profits are transferred to foreign countries but not invested domestically, foreign direct investment (FDI) is urgently needed. Since MNC are investors operating globally, states have to compete for investments. Therefore, the attraction of foreign direct investment often creates huge externalities on local environments and often comes at the expense of decent labour conditions, workers’ health, and states’ sovereignty. In the case of large scale land acquisition, FDI can result in eviction and displacement of peasant farmers.

### **3.2 System of Moral Rights**

System of moral rights falls into the domain of ethics and political philosophy. Moral is the system of belief that concerns actions that are right and wrong as it is enunciated in the bible. Moral beliefs connote emotional dimensions such as - equality, fairness, guilt, shame, generosity, mercy, integrity, compassion and

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<sup>147</sup> Ruggie, J. (2008), Protect Respect and Remedy, A Framework for Business and Human Rights, p189

<sup>148</sup> Ethics in International Business, McGraw Hill Higher Education

altruism. Moral belief systems could be pluralism or relativism. Moral beliefs could be gleaned from cultural circumstances.

Ethics is a philosophical reflection upon moral beliefs. Ethics concerns itself with a coherent system of moral principles that ought to be for the rights and duties of individuals and for the goodness and the promotion of society. Ethics is a branch of philosophy called moral philosophy. If someone is doing ethics, such person is not moralising. Instead ethics happens to be a higher order of activity that transcends morals. Ethical theories are systematised. In fact, ethics is “a systematic approach to understanding, analysing, and distinguishing matters of right and wrong, good and bad, and admirable and deplorable as they relate to the well-being of and the relationships among sentient beings.”<sup>149</sup> Ethics is quite useful to individuals and society. Hence “Immanuel Kant, an 18th-century philosopher and ethicist, believed that ideal behaviour was acting in accordance with one’s duty... having the freedom to exercise autonomy (self-determination), not being used as a means to an end, being treated with dignity, and having the capability to think rationally.”<sup>150</sup>

The issues of self-interest and self-desire are not the concern of ethics, rather ethics deals more with what concern the society or other people and ideal goods that have the interest of God. Ethics reflects moral intuitions, emotions and convictions. Ethics also tries to justify and substantiate principles and rules. Given these tasks, ethics is a critical philosophical discipline of study.

Ethics these days consist of three ethical layers namely - metaethics, normative ethics and applied ethics. Metaethics analyses moral concepts as “obligation”, “value”, “objective”, “ideal”, “principle”, “virtue”, “right”, “evil” and the like.

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<sup>149</sup> Rich Karen L. (2013), Introduction to ethics, p4

<sup>150</sup> Rich Karen L. (2013), Introduction to ethics, Ibid.

There is no normative ethics as such, but there are competing general ethical theories, as Kantianism, utilitarianism, contract theory, virtue ethics, discourse ethics and the like. Applied ethics contains fields as bioethics, business ethics, and environmental ethics (example - this present doctoral thesis) and so on.

However, the research periscope is more of normative ethical theory as it is concerned with systems that establish the principles of what is morally right and wrong. Normative ethics is part of moral philosophy that helps in determining what we ought to do and helps justifying the actions that results from it. Normative ethics is an aspect of ethical inquiry and analysis with respect to “questions like what is good or bad, what we must or ought to do.”<sup>151</sup> Normative ethics core question involves how to determine and justify fundamental moral criteria. Responses to the question of these fundamental moral criteria are classified into two groups - deontological and teleological.

The issues of business and human rights are normative-ethical and has its guiding principles enshrined in either “Classical ethical theories” of Kant, deontology, utilitarianism, contractualism and virtue ethics or “New ethical approaches” of discourse ethics by Habermas and ***capability approach*** by Sen and Nussbaum - which is *the anchorage of the research project theoretical framework*. Thus, any business acts which are wrong or repugnant from all the aforementioned ethical theories mean that they are wrong or repugnant beyond reasonable doubt. In moral philosophy, this is called argument from convergence. Arguments from convergence are strong rationales within the field of applied ethics. If competing ethical theories E-1, E-2....E-n converge to the moral judgment j that an action is

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<sup>151</sup> Schroeder Mark (2017), “Normative Ethics and Metaethics”, p674

morally wrong (forbidden), this judgment *j* is robust. To argue against this judgment implies a huge burden of proof because one has to oppose all or almost all ethical theories.

### 3.3 Human Rights Discourse

Human rights issue is one of the most common ethical issues in international business more especially in the developing world. Human rights problems accrued due to the following rationales "...geographical distances of foreign subsidiary from the home office, a failure to incorporate ethical issues into strategic and operational decision making, a dysfunctional culture, and failure of leaders to act in an ethical manner."<sup>152</sup> These aforementioned rationales necessitate most of the managers of the multinational corporations in the developing world to adopting the - 'Straw men' approaches raised by some business ethics scholars:- 'cultural relativism' and 'naïve immoralist' - in their course of doing business, without weighing if the adopted approaches are ethically acceptable in the developed world where the home office is situated. Thus, cultural relativism "...is the belief that ethics are nothing more than the reflection of a culture - all ethics are culturally determined - and that accordingly, a firm should adopt the ethics of the culture in which it is operating."<sup>153</sup> While, naive immoralist "asserts that if a manager of a multinational sees that firms from other nations are not following ethical norms in a host nation, that manager should not either."<sup>154</sup> The last sentence does clearly not follow. The likeliness that another person may perform a forbidden act does not make it permissible.

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<sup>152</sup> Charles W. L. Hill & Gareth R. Jones (2012), *Strategic Management: An Integrated Approach*, p407

<sup>153</sup> *Ethics in International Business*, op.cit.p139

<sup>154</sup> *Ethics in International Business*, op.cit.p140

However in the human rights discourse, the classical views of ‘Kantian ethics’ and that of the ‘Rights theories’ approaches to international business sound more plausible and ad rem if they ought to be adopted by managers of the multinational corporations doing business in the developing world. Kantian ethics state that “people should be treated as ends and never purely as means to the ends of others. People are not instruments, like a machine. People have dignity and need to be respected as such.”<sup>155</sup> Of which managers of the multinational corporations should be taking cognizance of the human rights affected by their business more especially in the developing world. That the multinational corporations have the right of property on the basis that they are doing international business or having subsidiaries in the developing world is not a condition whereby they would be infringing on the important human rights of the people hosting their business. This is because the right to property does not authorize either the multinational corporations or their managers to treat others, in this case the host developing world as a means to an ends; as Freeman and Evans in Chryssides and Kaler postulated: “Property rights are not a license to ignore Kant’s principle of respect for persons. Any theory of the modern corporation that is consistent with our considered moral judgments must recognize that property rights are not absolute.”<sup>156</sup> Rather, they argued that: “...corporation is accountable for the consequences of its actions. Persons are responsible for the consequences of their actions through the corporation; even if those actions are mediated.”<sup>157</sup> As such, Kantian tenet of respect for persons needs to be upheld by the multinational corporations and their managers, for: “The corporate responsibility to respect

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<sup>155</sup> Ethics in International Business, op.cit.p142

<sup>156</sup> Chryssides, George D and Kaler, John H. (1993), An Introduction to Business Ethics, p259

<sup>157</sup> Chryssides, George D and Kaler, John H. (1993), An Introduction to Business Ethics, ibid

human rights means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur.”<sup>158</sup> This human rights due diligence is the “appropriate corporate response to manage human rights risks”<sup>159</sup> and as a “...good risk management: it helps protect business value by maintaining reputation, avoiding strikes, boycotts and protest, and prevents disputes from becoming costly law suits or damaging public campaigns.”<sup>160</sup>

According to the rights theories, “...human beings have fundamental rights and privileges that transcend national boundaries and cultures. These rights establish a minimum level of morally acceptable behaviour.”<sup>161</sup> They are of the opinion that “...fundamental human rights form the basis for the moral compass that managers should navigate by when making decisions that have an ethical component. More precisely, they should not pursue actions that violate these rights.”<sup>162</sup> Their line of argumentation and that of Kantian approach gave credence to the enthronement of basic tenet of human rights necessity in the United Nations Universal Declaration of Human Rights, which are been adopted across border frontiers worldwide either in developed or developing world<sup>163</sup> and “...it provides a useful map to help identify where and how business affects human rights.”<sup>164</sup>

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<sup>158</sup> Sinha, Manoj Kumar (2013), Business and human rights, p172

<sup>159</sup> Ruggie (2008), quoted in Business & Human Rights Initiatives (2010), op.cit.p4

<sup>160</sup> Business & Human Rights Initiatives (2010), op.cit.p6

<sup>161</sup> Ethics in International Business, op.cit.p149

<sup>162</sup> Ethics in International Business, op.cit.p142

<sup>163</sup> Ethics in International Business, ibid

<sup>164</sup> Ochoa Christiana (2008), The 2008 Ruggie Report: A Framework for Business and Human Rights, p2

In furtherance to, John Ruggie in his report on the corporate responsibility to respect human rights by business and corporations, he asserts that business and corporations “are expected to obey the law, even if it is not enforced, and to respect the principles of relevant international instruments where national law is absent.”<sup>165</sup> According to his report, there are some societal expectations from business and corporations based on the fact that “...the responsibility to respect is the baseline expectation for all companies in all situations”<sup>166</sup> and moreover, the society required the act of due diligence from business, which he enunciate as “a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view of avoiding it.”<sup>167</sup>

### 3.4 Human Rights Definitions and Classifications

Prior to justifying the issue of human rights classification, it would be a sine qua non to have some brief definition of what the term human rights signify. Some authors comprehend the term to mean “those rights which are inherent in the mere fact of being human. The concept of human rights is based on the belief that every human being is entitled to enjoy her/his rights without discrimination.”<sup>168</sup> In the words of the United Nations Commissioner for Human Rights, he postulates that “Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national, or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without

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<sup>165</sup> Ruggie, J. (2008), *Protect Respect and Remedy, A Framework for Business and Human Rights*, op.cit. p194

<sup>166</sup> Ruggie, J. (2008), *Protect Respect and Remedy, A Framework for Business and Human Rights*, ibid.

<sup>167</sup> Ruggie, J. (2008), *Protect Respect and Remedy, A Framework for Business and Human Rights*, ibid.

<sup>168</sup> Sepuldeva et al. (2004), *Human Rights Reference Handbook*, p6

discrimination.”<sup>169</sup> For the Business and Human Rights Initiatives, human rights are the “basic standards aimed at securing dignity and equality for all. They are universal, indivisible and inalienable.”<sup>170</sup> In furtherance to, they explicitly noted that human rights are part and parcel of international agreements; by citing the page 16 of Universal Declaration of Human Rights (UDHR) which is the custodian of an in-depth UDHR 30 articles on human rights. However they noted that inasmuch as the international human rights agreement does not concern business practices but UDHR asserts that “every individual and every organ of society shall strive by teaching and education to promote respect for these rights and freedoms.”<sup>171</sup> However on this aspect of business practices, Ruggie in his report on business versus human rights discourse asserts that human rights are meant “to provide more effective protection to individuals and communities against corporate-related human rights harm.”<sup>172</sup>

At this juncture, it would be ad rem to explicitly enunciate the interconnectivity or how human rights and business intertwined. It is encapsulated that “Human rights have entered the business agenda mainly through concepts and frameworks such as Sustainability, Corporate Social Responsibility (CRS) and Triple P (People, Planet, Profit).”<sup>173</sup> Thus, for corporations engaging in trans-border operations and more especially into the territorial borders of the developing world the “Society is increasingly concerned about how business activities have impacts on human

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<sup>169</sup> OHCHR (1996-2017), “What are human rights?”, p1

<sup>170</sup> Business & Human Rights Initiatives (2010), p6

<sup>171</sup> Business & Human Rights Initiatives (2010), Ibid.

<sup>172</sup> Ruggie, J. (2008), Protect Respect and Remedy, A Framework for Business and Human Rights, op.cit. p20

<sup>173</sup> Business & Human Rights Initiatives, op.cit.p20



rights.”<sup>174</sup> In today’s business practices - (‘human resources, health and safety, suppliers and contractors, product safety, employment benefits’) - it has been affirmed and recognized that “human rights is increasingly a standard that companies are also expected to explicitly address, and against which they are measured in various investors indices and civil society reports. Human rights are increasingly used by companies and their stakeholders as the normative framework for social aspects of sustainability.”<sup>175</sup> It can be argued that any entrepreneurship and any company rests on the right to private property and the liberty right to free mobility, contracting and to trade. Since companies are consuming some rights, and since such rights are only elements within a more comprehensive system of human rights, it would be self-defeating for companies to consume some right and violate, impair and compromise others. This supposes that a system of rights is in some sense indivisible.

There exist so many categorization and overlapping classification of human rights. Some literatures structural categorized human rights in consonance with the realm of life activity of a person and society.<sup>176</sup> This classification constitutes of - personal (civil) rights and freedom, political rights and freedoms, social and economic rights and freedoms and cultural rights and freedoms. Another structural categorizations are according to “the politico-legal status of a person (presence of the citizenship of the state) ... the fixation of rights and freedoms in regulatory legal acts. According to this basis, the rights and freedoms can be divided into basic (constitutional) and derived (specific) ones.”<sup>177</sup> The third structural categorization

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<sup>174</sup> Business & Human Rights Initiatives (2010), op.cit.p3

<sup>175</sup> Business & Human Rights Initiatives (2010), op.cit.p20

<sup>176</sup> National Centre on Human Rights Information and Documentation

<sup>177</sup> National Centre on Human Rights Information and Documentation, op.cit.p4

is “according to the time of appearance”<sup>178</sup> or “... classification of rights into generations.”<sup>179</sup> This period of appearance is grouped into first generation of human rights, second generation of human rights and third generation of human rights.

In 1979 Karel Vasak advocated the systematic human rights ideological categorization into three generations.<sup>180</sup> His idea is sequel to and implicitly embedded in the French revolutionary slogan of “Liberty, Equality and Fraternity”. He argued that the following human rights to development, human rights to a healthy environment, human rights to peace and human rights to intergenerational equity are in the process of kinesis in the international law and he tagged this human rights categorization as ‘solidarity rights’. However in his synoptic human rights classification into three generations, the third generation of his human rights categorization becomes the most prominent and recognized. The is predicated on the rationale that it is quite consonant with the ‘rights of solidarity’ that embraces - the right to development, the right to peace, the right to a healthy environment and the right to intergenerational equity - which are known to be the ‘collective rights of society and peoples’. Vasak’s idea is a proposal premised on European law.

Other ethicists give strong priority to “classical” liberty rights (John Rawls), while discourse theory emphasizes the importance of political rights to take the full-fledged role of a political citizen. The Marxist tradition gives special importance to material rights, as labour, food, access to health services, and the like. Thus, the different systems of rights are, at least partly, determined by the overall ethical framework one holds. Nevertheless, most ethicist would adopt the “generation of

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<sup>178</sup> National Centre on Human Rights Information and Documentation, op.cit.p2

<sup>179</sup> Icelandic Human Rights Centre, section 4. OTHER CLASSIFICATIONS

<sup>180</sup> Macklem, Patrick (2014), Human Rights in International Law: Three Generations or One?, p1

rights”- scheme, but would group rights differently. While the “classical” scheme distinguishes **a)** liberty rights (1 generation), **b)** political rights (2. generation), **c)** social material rights (3. generations), new schemes group liberty and political rights together, define social rights as second generation and added the long lists of solidarity rights *which have a robust basis in Capability Approach* - as third generation. This grouping looks as follows:

**3.4.1 The First Generation of Human Rights** is enshrined in liberty with much emphasis on basic civil and political rights of individuals and citizens. “They are fundamentally civil and political in nature and serve to protect the individual from excesses of the states. First-generation rights include, among other things, freedom of speech, the right to a fair trial, freedom of religion and voting rights. They were first enshrined at the global level by the 1948 Universal Declaration of Human Rights.”<sup>181</sup> The aforementioned privileges under the first generation of human rights “... belong to a person from the moment of birth, are inalienable and not subjected to any limitation by any part of the State.”<sup>182</sup>

**3.4.2 The Second Generation of Human Rights** has to do with equality of citizenry, which embraces economic, social and cultural rights of an individual. It ensures “different members of the citizenry equal conditions and treatment. Secondary rights would include a right to be employed in just and favourable condition, rights to food, housing and health care, as well as social security and unemployment benefits.”<sup>183</sup> The genesis of this second generation of human rights was the aftermath of the world economic

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<sup>181</sup> [http://en.wikipedia.org/w/index.php?title=Three\\_generations\\_of\\_human\\_rights&oldid=840957811](http://en.wikipedia.org/w/index.php?title=Three_generations_of_human_rights&oldid=840957811)

<sup>182</sup> National Centre on Human Rights Information and Documentation, op.cit.p3

<sup>183</sup> [http://en.wikipedia.org/w/index.php?title=Three\\_generations\\_of\\_human\\_rights&oldid=840957811](http://en.wikipedia.org/w/index.php?title=Three_generations_of_human_rights&oldid=840957811), ibid

demonstration/agitation of the 19th and commencement of the 20th centuries. “They reflected the ideas of the assignment of socio-economic and cultural conditions of living of a person in the sphere of labour, employment, welfare and social security.”<sup>184</sup>

3.4.3 **The Third Generation of Human Rights** is fundamentally grounded in entitlements to live a dignified life. It has more to do with the common good of society and issue of collectiveness. This third generation of human rights addresses some rights that are crucial for a dignified life and for capabilities performance. Some of the rights are - right to development, right to peace, right to self-determination, right to decent environmental conditions, right to natural resources, right to food security, right to safe fresh water, right to unspoiled soils, *right against polluters* and right to intergenerational equity and sustainability. This long list of rights has a robust basis in *Capability Approach*. The Nussbaum list of human functional capabilities (*as stated in chapter 4.2.1*) elucidates how the third generation approach should be operationalized. Moreover, the third generation of human rights are “rights that go beyond mere civil and social, as expressed in many progressive documents of international law, including the 1972 Stockholm Declaration of the United Nations Conference on Human Environment, the 1992 Rio Declaration on Environment and Development,... Because of the present-day tilting toward national sovereignty and the preponderance of would-be offender nations, these rights have been hard to enact in legally binding documents.”<sup>185</sup> The middle of the 20th century saw the evolution of the third generation of the human rights. It was the aftermath of many nations of the

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<sup>184</sup> National Centre on Human Rights Information and Documentation, *ibid*

<sup>185</sup> [http://en.wikipedia.org/w/index.php?title=Three\\_generations\\_of\\_human\\_rights&oldid=840957811](http://en.wikipedia.org/w/index.php?title=Three_generations_of_human_rights&oldid=840957811), op.cit.p2

world seeking for independence and national sovereignty. This coming into existence of the third generation approach made the societal world to realize the need for affiliation and to act collectively.<sup>186</sup>

Amid the aforementioned list of rights, this research focuses only on - *rights against polluters or a right not to be victimized by environmental pollution*. This is predicated on the empirical evidences that the entitlements to live a dignified life and to boast of a decent habitable environment by the oil-producing Niger Delta local communities have been impaired, violated or compromised due to the harmful effects of oil pollutions. This right presupposes an entitlement that one's natural environment should not be polluted by the external effects of others' activities. This supposes some material assumptions about pollutants, thresholds of permissible pollution, state's legislation. It would suffice to see the right against polluters as a right that is grounded in an entitlement to stay in good health without infringement by others.

### 3.5 Niger Delta Wetland Region Human Rights Imbroglia

The issues of environmental injustice and human rights abuses<sup>187</sup> precipitated in the wetland region by the multinational oil companies (MNOCs) have been re-occurring episodes. There abound lacks of integrating the act of human rights in the business activities by the MNOCs. As such, they have been increasingly accused of engaging in polluting and causing environmental harmful effects. The ethical dimensions of crude oil and gas exploratory and production issues in the wetland's environment, ecosystem, biodiversity and natural habitat have been environmental unsustainable. It is on record "that the pollution levels of aquatic ecosystems

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<sup>186</sup> National Centre on Human Rights Information and Documentation, *ibid*

<sup>187</sup> Adeola Francis O. (2001), *Environmental Injustice and Human Rights Abuse: The States, MNCs, and Repression of Minority Groups in the World System*

observed in the region are as a result of unregulated effluent discharges and unsustainable methods of petroleum extraction.”<sup>188</sup> Literatures abound that the issues of nature conservation and biodiversity lost in the Niger Delta is interconnected with crude oil exploratory activities.<sup>189</sup> These environmental unsustainable and oil extraction practices exhibit that the wetland region is being “besieged by situations of grave and overwhelming environmental annihilation brought by continuous and intensive exploitation of natural resources without regard for environmental protection and sustainable development.”<sup>190</sup>

The issues of human rights and environmental pollution in the Niger Delta “provides a stark case study of the lack of accountability of a government to its people, and of multinational companies’ almost total lack of accountability when it comes to the impact of their operations on human rights.”<sup>191</sup> The John Ruggie’s framework assertion that it is “The state duty to protect against human rights abuses, including those by business; The corporate responsibility to respect human rights; and The need for better access to remedy when corporate-related abuses have occurred”<sup>192</sup> are all been annihilated in the wetland by the respective actors concerned. It is still an enigma for the MNOCs to embed human rights act into their daily business operations in the region. Most MNOCs’ business operations impede corporate ethics and governance that boosts human rights, safeguards corporate responsibility and environmental sustainability. As such these obstructs make

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<sup>188</sup> Emoyan et al. (2008), *The Oil and Gas Industry and the Niger Delta: Implications for the Environment*, p31

<sup>189</sup> Cited in Emoyan et al. (2008), *The Oil and Gas Industry and the Niger Delta: Implications for the Environment*

<sup>190</sup> Utuama (2001), *International Issues relating to Environmental Justice and Community Development*, p1

<sup>191</sup> Xcroc (2009), *Nigeria: Petroleum, Pollution and Poverty Violating Human Rights In the Niger Delta*, p2

<sup>192</sup> Ruggie (2008), quoted in *Business & Human Rights Initiatives* (2010), op.cit.p3

“business and human rights agenda remains hampered, because, it has not yet been framed in a way that fully reflects the complexities and dynamics of globalization and provides governments and other social actors with effective guidance”<sup>193</sup> in the region. The United Nations Human Development situational report on the resource-rich Niger Delta environment noted that: “there is strong feeling in the region that the degree and rate of degradation are pushing the delta towards ecological disaster.”<sup>194</sup>

Environmental injustice signifies “any undue imposition of environmental burden on innocent bystanders or communities that are not parties to the activities generating such burdens.”<sup>195</sup> This is what ecological economics called ‘externalities’ - which signify that “economic transactions can affect people not directly involved with the transaction itself”<sup>196</sup> as enunciated by Pigou A.C in his doctrine of “costs and benefits that lie outside of the market.”<sup>197</sup> In the words of Utuama on the issue of human rights violation, he asserts that the wetland “has been subjected to despicable criminal neglect resulting in massive environmental degradation, impoverishment of the people and the environment culminating in the collapse of their traditional economy.”<sup>198</sup> The ‘traditional economy’ being compromise because of the exhaustible or non-renewable resources in the wetland

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<sup>193</sup> Ruggie, J. (2008), *Protect Respect and Remedy, A Framework for Business and Human Rights*, op.cit. p191

<sup>194</sup> Cited in Emoyan et al. (2008), *The Oil and Gas Industry and the Niger Delta: Implications for the Environment*, p31

<sup>195</sup> Adeola (2000), *Cross-National Environmental Injustice and Human Rights Issues: A Review of Evidence in the Developing World*, p688

<sup>196</sup> Kibert et al. (2012), *Working Towards Sustainability, Ethical Decision Making in a Technology World*, p130

<sup>197</sup> Kibert et al. (2012), *Working Towards Sustainability, Ethical Decision Making in a Technology World*, ibid

<sup>198</sup> Utuama (2001), *International Issues relating to Environmental Justice and Community Development*, p3

region is the endowed natural capital which “consists of all components of animate and non-animate nature, especially living and non-living funds, that can benefit human beings and other highly developed animals in the exercise of their capabilities or that can constitute indirect functional or structural conditions for such beneficence in the broader sense”<sup>199</sup> or “refers to any stock of natural resources or environmental assets such as oceans, forests or agricultural lands.”<sup>200</sup> This issue of impact and impairment on human rights and natural capitals - agriculture, forest and fishing is corroborating the words of Chief Inyang Ekong, Secretary, Akwa Ibom State Chapter of the Artisan Fishermen Association of Nigeria who stated that - “The spill seriously contaminated the waters, causing fish drought and distorting the marine food chain because of the toxic chemicals the oil company uses to disperse the oil. Whenever a spill occurs, fishermen are thrown out of business because when the waters become toxic, fishes migrate from the reach of fishermen and for you to have any catch you have to go beyond Nigeria’s territorial waters at the mercy of the Cameroon gendarmes.”<sup>201</sup> Invariably, the ‘natural capitals’ are being destroyed for the utilization of non-renewable resources, which is the curse of the resource rich syndrome in the economy of most of the developing world. Furthermore, a community leader - Chief John Etim - postulated on the impact of oil spills on the traditional economy of Ibeno oil community area that is hosting ExxonMobil by stating thus “the frequent spills were depriving the

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<sup>199</sup> Ott et al. (2011), Strong Sustainability as a Frame for Sustainability Communication, In Jasmin Godemann, Gerd Michelsen (eds.): Sustainability Communication, p21

<sup>200</sup> Kibert et al. (2012), Working Towards Sustainability, Ethical Decision Making in a Technology World, op.cit.p.135

<sup>201</sup> Vanguard Newspapers (2012), Fishermen decry frequent spills at Qua Iboe Oil Fields.



communities their economic rights. He said that the frequent spills had impoverished the fishing communities along the coastline.”<sup>202</sup>

With regard to MNOCs vis-à-vis human rights violation and environmental protection in the wetland region of the Niger Delta, three ethical questions are involved:

- ❖ How can a right against polluters be substantiated within a comprehensive system of rights and what moral elements does such a right entail?
- ❖ Do the MNOCs have the ‘moral responsibility’ for protecting the environment with the potential of increasing natural diversity for the present and future generations?
- ❖ DO MNOC’s have a moral obligation to compensate victims of pollutions and to restore damages from the past?

In providing answers to the ethical questions posited, so many ethical schools of thought could emanate. However concerning business vis-à-vis human rights violation and natural environment in the wetland region, business should recognize that “human rights is closer to home than many companies think”<sup>203</sup> and as such business needs to be aware of this utilitarian concept that - an action is right if it tends to promote happiness and wrong if it tends to produce the reverse of happiness - not just the happiness of the performer of the action but also that of everyone affected by it.<sup>204</sup> Ethical theory of this nature opposes the theory of egoism, which is of the opinion that “a person should pursue his own self-interest, even at the expense of others, and to any ethical theory that regards some acts or

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<sup>202</sup> Vanguard Newspapers (2012), “Fishermen decry frequent spills at Qua Iboe Oil Fields”, *ibid.*

<sup>203</sup> Business & Human Rights Initiatives (2010), *op.cit.*p.4

<sup>204</sup> West, H.R (2006), Utilitarianism, *Encyclopaedia Britannica*

types of acts as right or wrong independently of their consequences.”<sup>205</sup> As such the bottom-line still remains that for environmental sustainability and human rights to reign supreme in the wetland region of the Niger Delta, the environmental imperatives of justice that has to do with the principles of common heritage and interest of mankind as well as intergenerational equity must be taking into consideration.

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<sup>205</sup> West, H.R (2006), Utilitarianism, Encyclopaedia Britannica, ibid

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## Chapter 4

# Research Ethical Framework

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### 4.1 Introduction

Approaches for sustainable environmental, human management and well-being derive a significant amount of benefits from natural ecosystems and their associated biodiversity. As a result, ecosystems variables that control environmental and human well-being include both direct benefits such as food from agriculture or fishing, inspiration and improved bodily/mental health. However, on a natural note the direct dependence of Niger Delta local communities on ecosystems variables is a challenging problem, because oil pollution and ongoing climate change are affecting environmental and human health, biodiversity and human well-being, thereby impairing or violating the capabilities of the local communities for or from effective functioning and the use of natural resources that normally should be at their disposal. This direct dependency on their surrounding ecosystems makes people in the Niger Delta region, severely vulnerable to pollution pressure and accelerated ecological change due to global climate change.

These challenging problems of the Niger Delta region make the thesis to asking the more fundamental questions of responsibility viz. - *is there a moral responsibility of the MNOCs to restore damages that occurred in the past, are there rights of oil producing communities against polluters, how can ongoing pollution be stopped and how can stocks of pollutants degraded over time?* Consequently, these posited questions summed up pose this research question: ***If the MNOCs have created huge external effects on the environment and on human health in the past, and if they have violated and still violate and impair on human rights and entitlements; do they have a moral duty and obligation to restore and rehabilitate the Niger Delta environment?***

In order to examine the research question, the research intends applying the - ‘combination’ of analytical philosophy of human rights, entitlements and capabilities concept that are crucial for the Niger Delta local communities and inhabitant’s performance and necessary for a decent and healthy human life. The research intends to achieve this ‘combination’ based on the ethical analysis of rights and entitlements of the Niger Delta inhabitants under the capabilities concept (*Moral Rights*), with much emphasis on the well-being, development and justice of the region, as developed by Amartya Kumar Sen and Martha Nussbaum , and third generation of human rights (*Legal Rights*), which addresses the issue of rights to a decent environment, food, security, safe freshwater, unspoiled soils and *rights against polluters* - which happens to be the theoretical framework of analysis.

A recap of the research intent of contributing to the enthronement of *Strong Sustainability, Environmental and Social Justices* in the Niger Delta region - the research intend investigating which entitlements are impaired or violated, in order to know which human capabilities (*based on the 10 list of capabilities as enumerated by M. Nussbaum*) of the Niger Delta inhabitants are negatively affected and which rights (liberty, political, social) that are infringed upon. These findings are an absolute necessity in providing answers to the research question because according to the international human rights discourse, the Nigerian government from the legal point of view has it as her duty to protect the Niger Delta local communities and environment against human rights abuse from the MNOCs - ‘third parties’<sup>206</sup> while from the moral point of view the MNOCs owe the Niger Delta oil producing communities and inhabitants a dignified livelihood and not victimization for the fact that the MNOCs’ *social license to operate* depends on the

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<sup>206</sup> Ruggie, J. G. (2013), Just Business: Multinational Corporations and Human Rights, p83

oil producing communities and as such the MNOCs have a moral obligation to pay for restoration and compensation in the Niger Delta.

#### **4.2 Capability Approach (Concept)**

The transformative impact<sup>207</sup> of oil exploration in the Niger Delta region demands theory of justice that would help address and correct anomalies of social justice, an ethics of care<sup>208</sup> and strong sustainability<sup>209</sup> of the region. In philosophy there abound some theories of justice viz.: Libertarianism, Utilitarianism, John Rawls' Liberalism, Communitarianism, Feminist Approaches and Capabilities Approaches. However, due to the social and environmental impacts of oil exploitation in the Niger Delta, the theory of justice that is more relevant to the region seems to be capabilities approach. This is because capability approach is widely recognized in the United Nations declarations. It is universal and anthropologically based. It recognizes the interconnectedness of capabilities. Based on the environmental pollution and local resistance many capabilities of the Niger Deltas are impaired or violated. Capabilities approach is a theory of justice that is not restricted to philosophical foundations rather it is being considered when enacting social and economic policies. Going by the impacts of oil extraction and production in the Niger Delta, capabilities approach seems to be an alternate concept to economic-

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<sup>207</sup> The ECCR (2010), Shell in the Niger Delta: A Framework for Change, p5

<sup>208</sup> Kibert et al. (2012), Working Towards Sustainability, p72

<sup>209</sup> Ott et al. (2011), "Strong Sustainability as a Frame for Sustainability Communication", p13



utilitarian approach<sup>210</sup> in order words resource or income-based approaches to human welfare<sup>211</sup> of the local communities of the region.

Philosophers like Aristotle, Karl Marx and the economist Adam Smith were known to have conceived some ideas of capabilities approach, before its modern concept and theory were pioneered in the 1980s by Amartya Sen<sup>212</sup> and developed further by Martha Nussbaum.<sup>213</sup> Sen's idea of capabilities approach focus on 'positive freedom' which he explains thus "... that our evaluations and policies should focus on what people are able to do and be, on the quality of their life, and on removing obstacles in their lives so that they have more freedom to live the kind of life that, upon reflection, they have reason to value."<sup>214</sup> Sen's concept of capabilities approach is quite relevant or applicable in the Niger Delta environment, for the inhabitants are required to have the freedom to be and to leave the quality of life they want to live for them to exercise what Sen called their "functionings."<sup>215</sup> In his idea of 'functionings', he did mentioned the issue of 'ends' which has an 'intrinsic' value and that of 'means' which has an 'instrumental' value and gives an example that "the capability of being in good health is an end in itself, but also a means to

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<sup>210</sup> Ravit Hananel and Joseph Berechman (2016), Justice and transportation decision-making: The capabilities approach, p79

<sup>211</sup> Kim Hopper (2007), "Rethinking Social Recovery in Schizophrenia: What A Capabilities Approach Might Offer"

<sup>212</sup> Ravit Hananel and Joseph Berechman (2016), Justice and transportation decision-making: The capabilities approach, p79

<sup>213</sup> Ingrid R. (2005), "The Capability Approach: a theoretical survey", p93

<sup>214</sup> Ingrid R. (2005), "The Capability Approach: a theoretical survey", p94

<sup>215</sup> Ingrid R. (2005), "The Capability Approach: a theoretical survey", p95

the capability to work.”<sup>216</sup> This Sen’s concept of capabilities approach is quite different from Rawlsian theory of justice which sees “...primary goods as ends in themselves rather than the means for achieving capacities.”<sup>217</sup> A derivative of Sen’s ideas illustrate that the ends of well-being, justice and development of the Niger Delta region would enhance the local communities and inhabitants’ capabilities to function. The constituent of Sen’s capabilities approach as it concerns the Niger Delta inhabitants is that if the inhabitants have the freedom to live the kind of lives they want and have reasons to value, be the person they want to be and do what they want to do, then there would be enough substantive opportunities at their disposal that would empower them to work, live the type of life they intend, that would make their livelihood to be dignified. This Sen’s concept signifies moral emphasis.

The idea of ‘dignified livelihood’ is the basic thought behind Martha Nussbaum capabilities approach. This is because Nussbaum conceived “... human beings as essentially rational agents”<sup>218</sup> thus stating “that all, just by being human, are of equal dignity and worth, no matter where they are situated in society, and that the primary source of this worth is a power of moral choice within them, a power that consist in the ability to plan a life in accordance with one’s own evaluation of ends.”<sup>219</sup> But in the case of the Niger Delta region the question is - *if this ‘power of moral choice’ of the local communities has been impaired or violated, what would be the fate of such group of human beings?* She cited an example that seems

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<sup>216</sup> Ingrid R. (2005), The Capability Approach: a theoretical survey, Journal of Human Development, p95

<sup>217</sup> Ravit Hananel and Joseph Berechman (2016), Justice and transportation decision-making: The capabilities approach, p79

<sup>218</sup> Garret J. (2008), Martha Nussbaum on Capabilities and Human Rights, p2

<sup>219</sup> Garret J. (2008), Martha Nussbaum on Capabilities and Human Rights, p2

peculiar to the Niger Delta situation where the ‘power of moral choice’ have been distorted by saying that: “A slave or an abused woman may eventually become convinced that a moderately comfortable enslavement or oppression is the best she can do and not “prefer” greater freedom.”<sup>220</sup>

Of course, most of the Niger Delta local communities have found and still finding themselves in this type of precarious situation and as such they are having no ‘power of moral choice’. The MNOCs and the Nigerian government owe the inhabitants of the Niger Delta a dignified livelihood that would enable them have the ‘power of moral choice’, and not imposing nor victimization of the local communities. Nussbaum argue that the idea of capabilities is not only concern with distribution of the natural capitals as endowed in the Niger Delta region “alone, because resources have no value in themselves disconnected from their promotion of human functioning, i.e., what humans actually do and are.”<sup>221</sup> Hitherto Sen and Nussbaum noted that the distribution of resources ‘primary goods’ to the Niger Delta local communities is not the primary factor, “instead, what can one do with these resources to improve the welfare of individuals, especially the disadvantaged.”<sup>222</sup>

This research project would concerns itself more with capability approach as developed further by Nussbaum for her ethics of capabilities are more peculiar to the Niger Delta region, local communities, inhabitants and environment.

#### **4.2.1 Nussbaum Human Functional Capabilities**

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<sup>220</sup> Garret J. (2008), Martha Nussbaum on Capabilities and Human Rights, p3

<sup>221</sup> Garret J. (2008), Martha Nussbaum on Capabilities and Human Rights, p3

<sup>222</sup> Ravit Hananel and Joseph Berechman (2016), Justice and transportation decision-making: The capabilities approach, p79

In the work of Martha Nussbaum (1999) “Sex and Social Justice”, she enumerated some list of capabilities, which she calls ‘threshold approach’ for a decent quality of Livelihood, although Sen is not in conformity with such ‘threshold approach’. However, Nussbaum justified her ‘threshold approach’ by saying “...that every person must be guaranteed realization of a minimum, basic level of each of these capabilities...this is a threshold approach, one that defines the minimum required in various fields in order for a person to live a full and free life in modern society.”<sup>223</sup>

In fact, the present situation of the Niger Delta region calls for Nussbaum application of these ‘threshold approach’ in order to enhance their performance for sustainable environmental management and societal development. In her work *Sex and Social Justice*, Nussbaum listed the following capabilities she considers relevant to enhance performance and functions:

“1. Life - Being able to live to the end of a human life of normal length . . . ; not dying prematurely . . .

2. Bodily Health - Being able to have good health, including reproductive health; being adequately nourished . . . ; being able to have adequate shelter . . .

3. Bodily Integrity - Being able to move freely from place to place; being able to be secure against violent assault, including sexual assault . . . ; having opportunities for sexual satisfaction and for choice in matters of reproduction

4. Senses, Imagination, and Thought - Being able to use the senses; being able to imagine, to think, and to reason--and to do these things in . . . a way informed and cultivated by an adequate education . . . ; being able to use imagination and thought in connection with experiencing, and producing expressive works and events of

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<sup>223</sup> Ravit Hananel and Joseph Berechman (2016), Justice and transportation decision-making: The capabilities approach, p80

one's own choice . . . ; being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech and freedom of religious exercise; being able to have pleasurable experiences and to avoid non-beneficial pain.

5. Emotions - Being able to have attachments to things and persons outside ourselves; being able to love those who love and care for us; being able to grieve at their absence, to experience longing, gratitude, and justified anger; not having one's emotional developing blighted by fear or anxiety. . . .

6. Practical Reason - Being able to form a conception of the good and to engage in critical reflection about the planning of one's own life. (This entails protection for liberty of conscience.)

7. Affiliation - Being able to live for and in relation to others, to recognize and show concern for other human beings, to engage in various forms of social interaction; being able to imagine the situation of another and to have compassion for that situation; having the capability for both justice and friendship; - Being able to be treated as a dignified being whose worth is equal to that of others.

8. Other Species - Being able to live with concern for and in relation to animals, plants, and the world of nature.

9. Play - Being able to laugh, to play, to enjoy recreational activities.

10. Control over one's environment. (A) Political: being able to participate effectively in political choices that govern one's life; having the rights of political participation, free speech and freedom of association . . . (B) Material: being able to

hold property (both land and movable goods); having the right to seek employment on an equal basis with others . . . .<sup>224</sup>

#### 4.2.2 Issue of Moral Entitlements

Nussbaum's list of ten capabilities is quite peculiar to the Niger Delta environment, where poverty and environmental degradation due to pollution from oil exploration and extraction have reduces the capabilities of the local communities and inhabitants from effective functioning and the use of natural resources that normally should be at their disposal. As such, the Niger Delta situations require the MNOCs and the Nigerian government to “produce a credible work plan to address the many complex and holistic issues”<sup>225</sup> of pollution, poverty and environmental degradation that would help checkmate either the impaired or violated list of capabilities.

In the course of this research, the capabilities would be categorize under the capabilities that are being impaired and the ones that are being violated before full explanation of the two categorizations.

Impaired Capabilities	Violated Capabilities
❖ Life – 1	❖ Bodily Integrity – 3
❖ Bodily Health – 2	❖ Practical Reason – 6
❖ Senses, Imagination, Thought – 4	❖ Other Species – 8
❖ Emotions – 5	❖ Control over One's Environment – 10
❖ Affiliation – 7	
❖ Play – 9	

**Table 2: Nussbaum List of Capabilities**

##### 4.2.2.1 Impaired Moral Entitlements

<sup>224</sup> Nussbaum M.C., *Sex and Social Justice*, pp. 41-42, 1999

<sup>225</sup> Newsom Chris (2011), *Conflict in the Niger Delta More Than a Local Affair*, Special Report 271 in United States Institute of Peace, June 2011, p2

*Life* is the first Nussbaum ‘threshold approach’ under the impaired capabilities. The local communities of the Niger Delta region ought to have high rate of life expectancy because of the natural endowments of the region, their good biodiversity with an ecosystems consisting of highly diversified species of flora and fauna and wonderful ecological structure. But the empirical situation in the region is a reverse opposite. For instance an oil rich local community of Akalu-Olu in the Niger Delta has been experiencing an incessant gas flaring, thus; The Economist magazine of 2008 reports a gas flaring impairment on the community’s life stating that: “Life expectancy, once just below 70 years in the Niger Delta, is now around 45. The oldest man in Akalu-Olu is not yet 60.”<sup>226</sup> A situational analysis reports that due to heavy exposition of the local communities of the Niger Delta region to toxicity from the soil, water and air as a result of oil spills and natural gas flares though not a direct causality that life expectancy of an average Niger Delta is 49 years,<sup>227</sup> as compare to 51 years for an average Nigerian and 70 years worldwide.<sup>228</sup> Amnesty International reports that incessant oil spills and gas flaring is reducing the life expectancy of the local communities of the Niger Delta to 40 years.<sup>229</sup>

The business-related human rights abuse<sup>230</sup> in the Niger Delta region has dangerously impaired on the moral entitlements of life of the local communities and inhabitants’ of the region. The local communities and inhabitants are entrapped in pollution which is having severe health, environmental and economic

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<sup>226</sup> The Economist, (2008), “Nigeria: Another deadline goes up in flames”

<sup>227</sup> Effiong Sunday A. and Etowa Ubi E., (2012), “Oil spillage cost, gas flaring cost and life expectancy rate of the Niger Delta people of Nigeria”

<sup>228</sup> Andrew Cherry and Mary Dillon (ed), (2014), “Overview of Adolescent Pregnancy in Nigeria”, p494

<sup>229</sup> Maxime Serignac, (2010), “Nigerians dying at 40 in Niger Delta?” in afrik-news.com

<sup>230</sup> Ruggie, J. G., (2013), Just Business: Multinational Corporations and Human Rights, p84

implications on them. A situational report states: “The region has been faced with the problems of oil spillages and gas flaring, which have caused serious atmospheric pollution, ground water and soil contamination, constant heat around the flare pits and abnormal salinity of the pool water, resulting in serious health hazards for the inhabitants, and of course grave disturbance to the life cycles of plants and animals in the region.”<sup>231</sup> Crude oil exploitation in the Niger Delta has negatively impacted on the lives of the local communities and inhabitants, on the environment’s ecosystem and fuelling of conflict in the region. The incessant oil spills and gas flaring are clear illustration for the local communities and inhabitants that the MNOCs are conniving with the Nigerian government and not working with the Niger Deltas.

The exploration of non-renewable resources in the Niger Delta region is having negative and hazardous impacts on the local communities of the region and thereby subjecting them to existential and environmental challenges. These challenges are being noticeable on the bodily health of the local communities, which invariably have a significant effect on their life expectancy.

***Bodily Health*** is the second Nussbaum ‘threshold approach’ under the impaired capabilities. Local communities in the Niger Delta region are supposed to be enjoying quality health due to the region’s endowments with natural capitals - agriculture, forest and fishing; instead of suffering from increase in poor health. The images below (***Figure 12***) on oil spills and (***Figure 13***) on gas flaring depict the actual situation in the local communities of the Niger Delta region. In the local communities of the Niger Delta, there exist a correlation between bodily health and life expectancy due to oil pollution in the region. The Voice of America (VOA)

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<sup>231</sup> Oviasuyi, P.O. and Uwadiae, J. (2010), “The Dilemma of Niger-Delta Region as Oil Producing States of Nigeria”, p113



situational report on health issues concerning children mortality by families in the Niger Delta region states: “... their children’s immune systems are weakened from drinking toxic water, and that children frequently die from diseases like cholera and malaria.”<sup>232</sup> A member of the parliament in the Niger Delta region corroborates thus “...adults in his region are also weakened by the pollution. The life expectancy of our people has dramatically dropped...You can imagine at 45, 40, people are beginning to have strokes.”<sup>233</sup>



**Figure 12: Oil spills sites in Ogoni-land of the Niger Delta, 22.01.2016 (Photo taken by the researcher)**



<sup>232</sup> Heather Murdock, (2012), “Poverty, Pollution Lower Life Expectancy in Nigeria”, in Voice of America

<sup>233</sup> Heather Murdock, (2012), “Poverty, Pollution Lower Life Expectancy in Nigeria”, in Voice of America, ibid

Figure 13: Processing of cassava flakes near gas flaring sites in the Niger Delta<sup>234</sup> and<sup>235</sup>

Within the local communities of the Niger Delta, oil spillage is a reoccurring episode. In between 1976-2001, statistics show that MNOCs report 6,817 cases of oil spills indicating an approximation of one oil spill per day for the 25 years.<sup>236</sup> Recent report on oil spillage earmarked that in between 2007 - 2014 an estimated 1,693 spills have occurred as the table below shows.<sup>237</sup>

Top Spill Incidents in Nigeria (1976-2001)			
Year	Operator	Location	Amount (barrels)
1978	Shell Petroleum Development Corp. (SPDC)	Rivers/Forcados Terminal	580,000
1980	Texaco	Rivers/Funiwa - 5	400,000
1978	Gulf Oil Company of Nigeria (GOCON)	Delta/Escravos	300,000
1998	Mobil	Akwa Ibom/Idoho Field	40,000
2001	Shell Petroleum Development Corp. (SPDC)	Rivers/Ogbodo	26,000
<p><b>Sources:</b> Nwilo, Peter C. and Badejo, Olusegun T. for The Association for Environmental Health and Sciences. (2006). <i>Impacts of Oil spills along the Nigerian coast</i>. Retrieved Aug. 5, 2011, from <a href="http://www.fig.net/pub/accra/papers/ts16/ts16_06_egberongbe_etal.pdf">http://www.fig.net/pub/accra/papers/ts16/ts16_06_egberongbe_etal.pdf</a>;</p> <p>Environmental Rights Action and Friends of the Earth. (2005). <i>The Shell Report, Continuing abuses in Nigeria – 10 years after Ken Saro Wiwa</i>. Retrieved on July 8, 2011, from <a href="http://www.liberationafrique.org/IMG/pdf/shellreport.pdf">http://www.liberationafrique.org/IMG/pdf/shellreport.pdf</a>; and</p> <p>United Nations Development Program. (2006). <i>Niger Delta Human Development Report</i>. Retrieved June 5, 2011, from <a href="http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/nigeria_hdr_report.pdf">http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/nigeria_hdr_report.pdf</a>.</p>			

<sup>234</sup> The Economist, (2008), "Nigeria: Another deadline goes up in flames", p1

<sup>235</sup> Heather Murdock, (2012), "Nigeria Mulls Gas Flare Crackdown" in Voice of America, voanews.com

<sup>236</sup> O'Neill, "Curse of the Black Gold."

<sup>237</sup> Amnesty International and CEHRD (2015), CLEAN IT UP: Shell's false claims about oil spill response in the Niger Delta.

**Table 3: Top Spill Incidents in Nigeria (1976-2001)<sup>238</sup>**

Year	2007	2008	2009	2010	2011	2012	2013	2014	Total
<b>Total number of spills</b>	320	210	190	170	207	192	200	204	1693
<b>Approx. total volume in barrels</b>	26,000	100,000	120,000	23,000	18,000	22,000	20,000	22,000	351,000

**Table 4: Shell's Report on Recent Oil Spills in the Niger Delta 2007-2014<sup>239</sup>**

The U.S Energy Information Administration reports that 379 billion cubic feet (BcF) of Nigerian associated natural gas which is approximately 12% of its gross production was flared in 2014 in the Niger Delta.<sup>240</sup> In 2012, NOAA National Geophysical Data Centre reports from their satellite data that 15 billion cubic meters of natural gas were flared in the Niger Delta,<sup>241</sup> and most of these gas flaring sites are much closer to the inhabitants of the local communities.<sup>242</sup> Moreover, the

<sup>238</sup> DeSimone Peter, (2012), "Investor Risks Looming in the Niger Delta" , Sustainable Investments Institute, Special Report, p8

<sup>239</sup> Amnesty International and CEHRD (2015), CLEAN IT UP: Shell's false claims about oil spill response in the Niger Delta, p10

<sup>240</sup> Independent Statistics & Analysis (2016), U.S. Energy Information Administration, "Country Analysis Brief: Nigeria"

<sup>241</sup> Christopher D. Elvidge et al. (2012), "Satellite Data Estimation of Gas Flaring Volumes" NOAA National Geophysical Data Centre, p22

<sup>242</sup> Bassey Nnimmo (2008), "Gas Flaring: Assaulting Communities, Jeopardizing the World"

method being implored in the gas flaring - (ground level and horizontal) - results in making the pollutants to be much concentrated in the atmosphere.<sup>243</sup>

Now in most of the Niger Delta communities, the only source of drinking water is rivers, streams and wells. These sources of drinking water are toxic resulting from oil spills and gas flaring. The drinking waters toxic nature is due to the hazardous hydrocarbon constituents of oil which contains high concentration of carcinogen which is over the World Health Organization (WHO) regulations.<sup>244</sup> Some known hydrocarbon constituents of oil are n-hexanes which causes paralysis, benzene (significantly detected in local communities), toluene and xylene which affects the nervous systems that could result to paralysis and eventual death.<sup>245</sup> On the adverse effects of the river waters, a fisherman in one of the local communities says “Different types of sickness are harming our children because of this river water that we are drinking.”<sup>246</sup> More reports on the reality of damages done to the ecosystems of the local communities of the Niger Delta noted that due to heavy oil pollution of the ecosystems fishing and farming has eroded, businesses is collapsing and accessibility to portable drinking water and livelihood is problematic.<sup>247</sup>

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<sup>243</sup> Okonta and Douglas, (2003), “Where the Vultures Feast...”

<sup>244</sup> UNEP Report (2011), Environmental Assessment in Ogoni-land, p11

<sup>245</sup> TOXICOLOGICAL PROFILE FOR TOTAL PETROLEUM HYDROCARBONS (TPH), U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, September 1999

<sup>246</sup> Heather Murdock, (2012), “Poverty, Pollution Lower Life Expectancy in Nigeria”, in Voice of America

<sup>247</sup> DeSimone Peter, (2012), “Investor Risks Looming in the Niger Delta”, Sustainable Investments Institute, Special Report

On the empirical situation of the significant effect of hazardous hydrocarbon impacts on bodily health resulting from oil pollution, UNEP reports in Ogoni-land states: “Hydrocarbon contamination was found in water taken from 28 wells at 10 communities adjacent to contaminated sites. At seven wells the samples are at least 1,000 times higher than the Nigerian drinking water standard of 3 µg/l. Local communities are aware of the pollution and its dangers but state that they continue to use the water for drinking, bathing, washing and cooking as they have no alternative.”<sup>248</sup>

Some situational report indicates some complaints from local communities on the adverse health, environmental and economic implications of incessant gas flaring in the region “...the flares have been making people sick for decades... By night, locals say the flares are so bright in some places they fear it damages their eyes. The flares emit poisonous chemicals that make people sick and damage the farming and fishing industries.,... the flares cause acid rain, cancer and a host of respiratory problems.”<sup>249</sup> Furthermore, it is observed that gas flaring is having significant impacts on the health of the local communities for report has it that: some of the people are suffering from “cancer, deformities in children, lung damage, skin problems, haematological problems like leukaemia, reproductive effects”<sup>250</sup> - all being associated with air quality being contaminated with gas flaring. The acidic rain associated with gas flaring is reported to be affecting the terrestrial and aquatic environment of the region “...the very air they breathe is contaminated with pollutants from gaseous emissions; the rain which falls on their land is acidic which destroys instead of nourishing their crops, which thus become susceptible to

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<sup>248</sup> UNEP Report (2011), Environmental Assessment in Ogoni-land, p11

<sup>249</sup> Heather Murdock, (2012), “Nigeria Mulls Gas Flare Crackdown” in Voice of America

<sup>250</sup> Anslem O. Ajugwo, (2013), “Negative Effects of Gas Flaring: The Nigerian Experience”, p7

strange pestilence.”<sup>251</sup> Worst still, most of the local communities do dry their food in such environmental contaminated condition as shown in the images above.

The Niger Delta local communities find it problematic to be having quality health because the oil pollution “...have caused serious atmospheric pollution, ground water and soil contamination, constant heat around the flare pits and abnormal salinity of pool water, resulting in serious health hazards for the inhabitants, and of course grave disturbance to the life cycle of plants and animals in the region.”<sup>252</sup>

This re-occurring episodes of oil pollution being associated with oil spills and gas flaring constitutes health impairment on the local communities and it is an evidence of long term environmental risk because “... the water they use for washing or cooking is polluted, fish is scarce and contaminated. Agricultural lands are unfit for cultivation. And the air is polluted by flaring or burring of natural gas out of oil.”<sup>253</sup>

Deducing from the situational reports, Nussbaum threshold approach on bodily health is seriously impaired in the Niger Delta local communities for oil pollution has really “compromised livelihoods and health of the region’s impoverished residents.”<sup>254</sup>

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<sup>251</sup> Etuk, U. (2001), “Social and Environmental Responsibility of Oil Companies”, p5

<sup>252</sup> Oviasuyi, P.O. and Uwadiae, J. (2010), “The Dilemma of Niger-Delta Region as Oil Producing States of Nigeria”, p113

<sup>253</sup> Maxine Serignac, (2010), Nigerians dying at 40 in Niger Delta?

<sup>254</sup> DeSimone Peter, (2012), “Investor Risks Looming in the Niger Delta” , Sustainable Investments Institute, Special Report, p9





Figure 14: Some contaminated fishes in Ogoni-land, 22.01.2016 (Photo taken by the researcher)

*Senses, Imagination, Thought* (constructive reasoning) is the third Nussbaum ‘threshold approach’ under the impaired capabilities. Constructive or positive reasoning ought to be the normal way of livelihood within the local communities of the Niger Delta region. However, due to the nature of environmental injustice imminent in the region destructive or negative reasoning is the order of the day resulting to ‘petro-violence’ vis-à-vis arms and weapons proliferation<sup>255</sup>, emergence of militant groups, bunkering, kidnapping etc.

Destructive reasoning is the side effects of education. In any civilised society or environment, access to quality education plays an important role towards constructive reasoning and poverty emancipation. Quality education brings out the nature-nurture wisdom inherent in an individual thereby making the person to having good senses, quality thoughts and imagination. The situational analysis

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<sup>255</sup> Isiaka Alani Badmus (2010), “Oiling the Guns and Gunning for Oil: Oil Violence, Arms Proliferation and the Destruction of Nigeria’s Niger-Delta”.

within the local communities of the Niger Delta region shows that “Education levels are below the national average and are particularly low for women. While 76 percent of Nigerian children attend primary schools this level drops to 30 percent in some parts of the Niger Delta.”<sup>256</sup> In the Niger Delta region greater numbers of the local communities are still illiterate without accessibility to education.<sup>257</sup>



**Figure 15: Some Militant members that escorted us to some oil spill sites in Ogoni-land, 22.01.2016 (Photo taken by the researcher)**

The Nussbaum threshold approach of senses, imagination and thought is dependent upon education and moreover on having a bodily health and safe natural

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<sup>256</sup> World Bank Report, 1995 cited in Oviasuyi, P.O. and Uwadiae, J. (2010), “The Dilemma of Niger-Delta Region as Oil Producing States of Nigeria”, p120

<sup>257</sup> DeSimone Peter (2012), “Investor Risks Looming in the Niger Delta” , Sustainable Investments Institute, Special Report



environment. But where education, good health and natural environment have been impaired upon due to oil exploration, Nussbaum threshold approach of senses, imagination and thought must surely be impaired. The local communities would always be having destructive reasoning resulting to violence as the situation is in the Niger Delta. For instance in *Figure 15* above, it shows two guys who are involved in the act of Niger Delta militancy because they are not privileged to acquire education.

*Emotions* are the fourth Nussbaum ‘threshold approach’ under the impaired capabilities. Possessing emotions for one another or circumstances ought to be the norm within the local communities of the Niger Delta region based on their traditional institutional structures and cultural settings vis-à-vis features of the local communities itself (*see Figures 16 and 17*).

In the Niger Delta region “... the local communities hold that it is the collusion between the oil companies and the Nigerian state not just to deprive them of their resources, but to set them against each other and exploit the resources...”<sup>258</sup> This conspiracy conception of divide and rule tactics being perpetrated by the MNOCs and the Nigerian government does create “domestic bourgeoisie”<sup>259</sup> among the indigenes resulting to exacerbated economic inequalities<sup>260</sup>, distrust, sabotage, fear of the unknown, impacts on moral culture, hatred, violence and hostility within the local communities.

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<sup>258</sup> Iyayi, F. (2006), “Creating an enabling environment for Development in the Niger Delta: The Role of Labour”, p1

<sup>259</sup> Ejumudo Kelly Bryan Ovie (2014), “Youth Restiveness in the Niger Delta: A Critical Discourse”, p4

<sup>260</sup> DeSimone Peter, (2012), “Investor Risks Looming in the Niger Delta” , Sustainable Investments Institute, Special Report



**Figure 16: Cultural Settings within the Local Communities in Ogoni-land, 22.01.2016 (Photo taken by the researcher)**



**Figure 17: Building of a domestic bourgeoisie @ the background in Ogoni-land, 22.01.2016 (Photo taken by the researcher)**

The domestic bourgeoisie act as spy or does the work of espionage for the MNOCs and the Nigerian government. This tactical act of divide and rule displayed itself in Ogoni-land where the MNOCs and Nigerian government “set communities against

one another”<sup>261</sup> as such “Intra and inter community conflicts have become a major phenomenon in the region as a result of the bribery and blocking of the community elders and elites by the TOCs.”<sup>262</sup>

Empirical report in the local communities of the Niger Delta indicates that imploring the act of espionage by MNOCs and Nigerian government is culminating in “Community leaders, who opposed the policies and activities of both the government and the transnational oil companies, are often arrested and detained, and some of them have lost their lives, for example, Isaac Adaka Boro, Ken Saro-Wiwa and his Ogoni compatriots in November, 1999, just to mention a few.”<sup>263</sup> In fact, the emotional impairment of the local communities of the Niger Delta region happens to be a chain of social and moral causality of the MNOCs. Hence, due to this conspiracy conception of divide and rule tactics by the MNOCs and Nigerian government in order to have accessibility to the Niger Delta natural endowments the issue of having positive emotions for each other is no longer feasible within the local communities’ cultural settings and structure.

*Affiliation* is the fifth Nussbaum ‘threshold approach’ under the impaired capabilities. Oil exploration and exploitation in the local communities of the Niger Delta has impaired on the local communities affiliation resulting to betrayal, distrust, fear and hatred among the local communities vis-à-vis citizens. It is being reported that: “The region has also been turned against itself with lot of interests

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<sup>261</sup> The ECCR (2010), Shell in the Niger Delta: A Framework for Change, p22

<sup>262</sup> Oviasuyi, P.O. and Uwadiae, J. (2010), “The Dilemma of Niger-Delta Region as Oil Producing States of Nigeria”, p116

<sup>263</sup> Agbebaku, C. A. (2003), “Law and Development in Nigeria: The Impact of the Niger Delta Development Commission (NDDC) on Development Efforts”, p152

trying to outdo each other communities have been raided, ravaged and destroyed in internal wars and was waged by the states.”<sup>264</sup>

The Ogoni-land struggle is an exemplified issue of betrayal in the Niger Delta region. With the death of Ken Saro-Wiwa, his deputy - Barrister Ledum Mitee who escapes death by a whisker took over the mantle as MOSOP leader. However, as the new leader of MOSOP there is distrust among the Ogoni local communities necessitating to their fear that “...Mitee betrays Ken Saro Wiwa in the trial that led to Ken’s execution including 8 others. The people feel Mitee’s refusal to seek justice for the nine and his inability to sustain the Ogoni cause is an indication that the lawyer has failed the people.”<sup>265</sup>

In the local communities of the Niger Delta most elites have not stand firm in the struggle for the emancipation of the region. Most of these elites have a biased social-economic and political voice in fighting the human and environmental injustice being meted out to them. The recent UNEP report on the restoration of the Ogoni-land is an instant example for report has it that: “While many in the environmentally battered Ogoni communities anxiously await the commencement of the clean-up of their polluted land, the Minister of Environment, Mrs. Amini Ibrahim, recently blamed lingering internal issues among the Ogoni elites for the seeming procrastination in actualizing President Muhammadu Buhari’s directive for the fast-tracking of the exercise.”<sup>266</sup> Buttressing further the problem of ‘affiliation’ the report stated that: “Last December, factional presidents of MOSOP

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<sup>264</sup> Amadi Eric C. (2007), OIL, WAR AND EDUCATION IN NIGER DELTA OF NIGERIA, pp6-7

<sup>265</sup> Lemix Media, April 8 2010 “Betrayed hopes as Ledum Mitee takes over MOSOP” cited in Masterweb Reports Breaking News15/4/16 – “Nigeria: Ogoni still bleeding”

<sup>266</sup> Odimegwu Onwumere (2016), “Nigeria: Ogoni still bleeding”, in Masterweb Reports, Breaking News Fri, 04/15/2016 - 15:25.

emerged, namely; Mr. Legborsi Saro Pyagbara and Mr. Mike Lube-Nwidobie. The two factions subsequently submitted different list of nominees to the Federal Government to be appointed into a board that will oversee the implementation of the UNEP report. This untoward development created confusion that also impeded government's determination to resolve the prolonged remediation.<sup>267</sup>

The aforementioned situations indicate that the local communities of the Niger Delta have not 'being able to live for and in relation to others' for there have been issues of betrayal among themselves. This impairment on affiliation of the local communities is causality chains resulting from oil extraction and exploitation in the region.

*Play* is the sixth Nussbaum 'threshold approach' under the impaired capabilities. Within the cultural settings that embeds rich and diverse culture and prior to the 'curse of the resource rich'<sup>268</sup> in the local communities of the Niger Delta region, football marches, swimming and local wrestling competitions were invoke. The local communities use the three events to relax and have some fun in aftermath of their traditional occupation - farming and fishing activities. Albeit there is lack of empirical evidence to infer that the capabilities of 'play' is being impaired, but based on situational analysis; an environment that is enmesh in environmental consequences of hydrocarbons on water, soil, air, vegetation, people, aquatic and terrestrial wildlife due to an environmental impacts of oil exploration and

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<sup>267</sup> Odimegwu Onwumere (2016), "Nigeria: Ogoni still bleeding", in Masterweb Reports, Breaking News Fri, 04/15/2016 - 15:25.

<sup>268</sup> When a country strikes hydrocarbons, a sudden inflow of dollar-denominated revenues often leads to a sharp appreciation in the domestic currency. That tends to make non-oil sectors like agriculture and manufacturing less competitive on world markets, thus leaving oil to dominate the economy, The Economist, (2005), The curse of oil: The paradox of plenty, December 20, 2005.



production<sup>269</sup> would not be opportune to enjoy any recreational activities. A report has it that “As many as 546 million gallons of oil spilled into the Niger Delta over the last five decades (...)”<sup>270</sup> (See **Figure 18**) of an oil spill site.



**Figure 18: Oil spillage in Ogoni-land of the Niger Delta, 22.01.2016 (Photo taken by the researcher)**

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<sup>269</sup> UNEP Report (2011), Environmental Assessment in Ogoni-land

<sup>270</sup> Nossiter Adam (2010), “Far From Gulf, a Spill Scourge 5 Decades Old”



**Figure 19: This is a boy playing in Bodo creek in the Niger Delta.<sup>271</sup> Photo by Jane Hahn for - The New York Times**

In such an environmental degraded local communities, it would be problematic to have playing grounds for either football pitches or wrestling arena which happens to be the hobbies of the region prior to the emergence of oil exploration and production in the Niger Delta. In terms of swimming it was reported that people more especially children do swim in the polluted waters in the creeks or play in the polluted waters as it is shown in *Figure 19*. Moreover, the local communities are always in a state of anarchy, chaos and hostility, distrust and negative emotions; as such they would not be privilege to be enjoying any recreational activities. This is another instance of chain of social and moral causality of environmental impacts of oil exploratory activities rendering traditional cultures of relaxation impossible in the local communities of the Niger Delta region, thereby impairing on the capabilities of play.

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<sup>271</sup> NOSSITER ADAM (2010), "Far From Gulf, a Spill Scourge 5 Decades Old" in The New York Times, Published: June 16, 2010

#### 4.2.2.2 Violated Moral Entitlements

According to the categorization, *Bodily integrity* happens to be the first Nussbaum 'threshold' capabilities that are being violated in the local communities of the Niger Delta. There ought to be bodily integrity - (freedom of movement, security, ability to have sexual pleasure) - in the local communities, but the situational report seems to be the reverse opposite.

The threshold of bodily integrity in the Niger Delta is more of a chain of social and immoral causality resulting from oil exploration and exploitation in the region. The impacts of environmental injustice in the Niger Delta have tremendously resulted to youth restiveness - defined as "violent activities embarked upon by the youth to back up or press further the demands of the indigenes for a fairer deal in the crude oil business"<sup>272</sup> - which has transmuted into militant groups, hooliganism, kidnapping, oil bunkering and rapid increase in the number of weapons and proliferation of arms among the groups; making the region to be "...enmeshed in conflict and militancy..."<sup>273</sup> The overall situation is terrible indeed. Impacts of capabilities are very likely but hard to proof or measured.

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<sup>272</sup> Okorosaye-Orubite AK (2008), "Education and sustainable development in the Niger Delta: The role of the youth", pp1002- 1013.

<sup>273</sup> Essien, E.S. (2008), *Philosophy of Peace and Conflict beyond the United Nations*, p294





Figure 20: Act of militancy in the Niger Delta region<sup>274</sup>



Figure 21: Act of militancy in the Niger Delta region<sup>275</sup>

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<sup>274</sup> [www.naijapolitica.com](http://www.naijapolitica.com)

<sup>275</sup> [www.saferaficagroup.wordpress.com](http://www.saferaficagroup.wordpress.com)

In the course of the militant groups' agitation for "(...)their rights to health, livelihoods and a habitable environment"<sup>276</sup> most of the militants have taken to destructive agenda - (illegal bunkering and building of artisanal refineries, blowing of oil pipelines, hostage taking of the expatriates and Nigerians and engaging in other criminal activities) - resulting to heavy militarization of the region by the MNOCs and Nigerian government in order to quell the disturbances of the militant groups and take absolute control of the oil explorations. This heavy militarization of the region has become a chain of social and immoral causality resulting to "(...) indiscriminate arrests, torture, rape and extrajudicial execution...contrary to the principles of increasing the wellbeing of the people of the Niger Delta and avoidance of adverse impacts..."<sup>277</sup>



**Figure 22: Militant's Artisanal Refinery Sites that is contributing to ecosystems degradation**<sup>278</sup>

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<sup>276</sup> The ECCR (2010), Shell in the Niger Delta: A Framework for Change, p9

<sup>277</sup> The ECCR (2010), Shell in the Niger Delta: A Framework for Change, p10

<sup>278</sup> UNEP REPORT (2011), Environmental Assessment of Ogoni-land, p101

Due to this situational analysis of the region, there exist restriction of movements and rendezvous for the local communities and visitors to the region. Existing reports emphasize the vulnerability of the female folks in the region. In one of the protests by women from Bodo area of the Niger Delta agitating against environmental injustice by Exxon Mobil and soliciting the oil companies to adopt an appropriate attitude towards nature, human health and human rights, it was reported that: “soldiers guarding an Exxon Mobil site beat women who were demonstrating(...)”<sup>279</sup>

Furthermore, most of the women do experience sexual molestation either from the militant groups or the military forces drafted to protect oil installations for effective free flow of the ‘black gold.’ Most of the times some of these immoral acts result to loss of lives as a report stated: “Death from sexual assault on women is becoming a common event that is posing an undue social problem to the victims, relations and the government in the Niger Delta region of Nigeria. There should be a government intervention to arrest and prosecute the perpetrators of this crime. This will discourage other assailants from committing the crime and thereby reducing the frequency of death.”<sup>280</sup>

The issue of militancy and incessant hostility in the Niger Delta environment is violating the ‘Bodily integrity’ of the local communities because “Militant groups

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<sup>279</sup> NOSSITER ADAM (2010), “Far From Gulf, a Spill Scourge 5 Decades Old” in The New York Times, Published: June 16, 2010

<sup>280</sup> Seleye-Fubara, D. and Etebu, EN. (2011), “Post-mortem findings of victims of sexual assault: a study of 15 autopsies in the Niger Delta region of Nigeria.”

have made the region insecure not only for foreign and Nigeria multi-national oil company workers, but for all and sundry.”<sup>281</sup>

*Practical reason* is classified as the second Nussbaum ‘threshold’ capabilities that are being violated in most local communities of the Niger Delta. There is lack of adequate or functional educational systems that supposed to equip the Niger Delta youths with wholesome scientific and vocational skills or knowledge that would avail them the competency to compete for job within their locality.

Practical reason is a product of functional education which is lacking in most local communities of the Niger Delta and its result has been youth restiveness and act of militancy. Functional education has its own contribution to the development of the psyche because it “...develops the life of the mind that acts from the wholeness of organic life, with relation to practical life in the present and in the future.”<sup>282</sup>

Functional education is one of the factors that sustain the capabilities of practical reason for it “...enables the learner to gain thinking habits and develop the technical means needed in solving practical problems.”<sup>283</sup>

Within the local communities of the Niger Delta, report has it that: “Quality of education in the Niger Delta can best be described to be abysmally low.”<sup>284</sup> The local communities of the Niger Delta lack teachers because they are often scared to

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<sup>281</sup> Abraham Nath M. (2011), “Functional education, militancy and youth restiveness in Nigeria’s Niger Delta: The place of multi-national oil corporations (MNOCs)”, p442

<sup>282</sup> Abraham Nath M. (2011), “Functional education, militancy and youth restiveness in Nigeria’s Niger Delta: The place of multi-national oil corporations (MNOCs)”, *ibid*

<sup>283</sup> Abraham Nath M. (2011), “Functional education, militancy and youth restiveness in Nigeria’s Niger Delta: The place of multi-national oil corporations (MNOCs)”, *Ibid*.

<sup>284</sup> Abraham Nath M. (2011), “Functional education, militancy and youth restiveness in Nigeria’s Niger Delta: The place of multi-national oil corporations (MNOCs)”, p444

be deployed in such environmental terrain of human rights violations. Within the local communities there is lack of educational facilities - (no classrooms, tables, desks and infrastructures) - that would provide the teachers and pupils an environment for practical reason; for existing report states that: “the working environment... is deplorable with dilapidated school structures, insufficient teaching and learning materials.”<sup>285</sup> Another situational report stated that: “Education levels are below the national average and are particularly low for women. While 76 percent of Nigerian children attend primary schools this level drops to 30 percent in some parts of the Niger Delta.”<sup>286</sup>

The cradle of functional education - (primary schools) - that supposed to nurture the capabilities of practical reason yearns for rehabilitation in the Niger Delta. The region could only boast of 2,169 primary institutions. By implication it is at the ratio of one primary school is to a population of 3700 for 14 square kilometres area.<sup>287</sup> Whereas ethical responsibilities talks of moral and social responsibilities expected or desired of the MNOCs. Ethical responsibilities demand a duty in pursuance of a morally correct path by the oil companies. As such, in order not to be impairing on the capability of ‘Practical reason’ of the host communities, the MNOCs are desired to have social responsibility to their host communities like supporting education and thereby making the oil companies to be a good corporate citizen. Moreover, there exist a linkage between bodily health, control over one’s

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<sup>285</sup> Kadzamira EC in Abraham Nath M. (2011), “Functional education, militancy and youth restiveness in Nigeria’s Niger Delta: The place of multi-national oil corporations (MNOCs)”, p444

<sup>286</sup> Wifa, B.M., quoted in Oviasuyi, P.O. and Uwadiae, J. (2010), “The Dilemma of Niger-Delta Region as Oil Producing States of Nigeria” , p120

<sup>287</sup> Duru Emmanuel (2011), “Environment Law and Underdevelopment in the Niger Delta Region”

environment to practical reason; of which absence of the former has a significant implication for the later - practical reason; as it is the situation in the Niger Delta.

*Other species* is the third Nussbaum 'threshold' capabilities that are being violated in the local communities of the Niger Delta. The local communities of the Niger Delta ought to be enjoying the region's ecosystem that is a constituent of forestry, highly diversified species of flora and fauna, beautiful ecological structures of coastal inland, freshwater and mangrove swamps. Niger Delta ecosystem is an epitome of nature conservation - (see *Figures 23 and 24*) - prior to anthropogenic interference by the MNOCs.

However, empirical evidences currently show that an anthropogenic emission of oil extraction is a major threat to the anthropocentric capability to live in concern to a world of nature in the Niger Delta oil-rich region. Human interference such as MNOCs oil exploratory activities in the Niger Delta is quite harmful to the region's nature conservation and ecosystem. Either of the pervasive or directional anthropogenic changes or interference does occur in the form of ecosystem degradation or habitats pollution - both are ubiquitous in the local communities of the Niger Delta - thereby violating human capability to live in accordance with nature in the resource-rich region.





**Figure 23: A grooming party of three endangered Niger Delta monkeys (*Cercopithecus sclateri*) in Imo State - Niger Delta<sup>288</sup>**



**Figure 24: A Niger Delta woman called Hannah Baage footslogged across a crude oil contaminated Gio Creek in Kegbara Dere. She stated “There is Shell oil on my body.”<sup>289</sup>**

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<sup>288</sup> Baker Lynne R. (2003), “Endangered Primates in Southern Nigeria”

The Niger Delta monkey - (*Cercopithecus sclateri*) - in **Figure 23** is endemic to the Niger Delta region. It is an ideal species of non-human primates that is being endangered by Niger Delta environmental degradation and pollution as a result of anthropogenic impacts of oil exploration in the region. A report has it that the *Cercopithecus sclateri* "...has no effective protection across its entire range, except in three communities where it is culturally taboo to hunt monkeys"<sup>290</sup> in the Niger Delta region.

Incessant oil spillage resulting from anthropogenic interference is rendering the beautiful ecological structures of coastal inland, freshwater and mangrove swamps lifeless. These are ecological structures that were once beaming with fishes, shrimps, crabs and other aquatic animals but due to oil spills, these ecological structures are being altered and the colours of the waters change to black-and-brown in coloration - (**Figure 24 of the polluted creek with the woman inside it**) - and none of the aforementioned species do exist anymore in them. In an empirical report in New York Times, a local Niger Delta official by name Claytus Kanye stated: "The aquatic life of our people is dying off. There used to be shrimp. There are no longer any shrimp (...) before the spills; women from Bodo earned a living gathering molluscs and shellfish among the mangroves."<sup>291</sup>

The anthropogenic impacts in the course of utilitarian tendency of non-renewable resources are destroying the natural capitals, thereby violating human capability to live in accordance with nature in the oil-producing Niger Delta region.

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<sup>289</sup> NOSSITER ADAM (2010), "Far From Gulf, a Spill Scourge 5 Decades Old" in The New York Times, Published: June 16, 2010

<sup>290</sup> Baker Lynne R. (2003), "Endangered Primates in Southern Nigeria"

<sup>291</sup> NOSSITER ADAM (2010), "Far From Gulf, a Spill Scourge 5 Decades Old" in The New York Times, Published: June 16, 2010



Nussbaum ‘threshold’ capabilities of ‘*Control over one’s environment*’ are non-negotiable as far as the Niger Delta environment is concern. The right to have some control over one's environment is a right which is clearly and heavily violated in the Niger Delta oil-rich region. This capability has made the Niger Delta environment experiencing five important historical crisis phases namely: “The colonial or pre-independence period that ended in 1959, The early secession/Isaac Boro phase of 1960-1970, The early civil society phase of 1970-1995, Saro Wiwa phase of 1986-1995 and Confrontation/Post Saro Wiwa phase of 1996-date.”<sup>292</sup>

As if oil extraction was predated in Nigeria, report has it that there exist some legal framework for petroleum exploration and other natural resources prior to Nigeria independence in what is known as Petroleum Ordinance Act of 1889 and Mineral Regulation (Oil) Ordinance Act of 1907.<sup>293</sup> During the amalgamation process, there comes up the 1914 Mineral Act that entrusted on the Nigerian government powers and control over natural capitals and non-renewable resources.<sup>294</sup> As such, with Nigerian independence in 1960 the Nigerian government structurally followed the pre-independence Ordinance Acts and enacted the Petroleum Act of 1969<sup>295</sup> and Land Use Decree of 1978<sup>296</sup> which gave the Nigerian government “...the exclusive

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<sup>292</sup> Esikot, I. F. and Akpan, M. (2013), “THE NIGER DELTA CRISIS IN NIGERIA: SOME MORAL LESSONS”, p4

<sup>293</sup> Omorogbe, Y. (2001), Oil and gas law in Nigeria.

<sup>294</sup> Omoweh, D.O. (2006), Shell Petroleum Development Company, the state and underdevelopment of Nigeria’s Niger Delta: A study in environmental degradation.

<sup>295</sup> This military decree of 27th November, 1969, No. 51 vested on the Nigerian government “An Act to provide for the exploration of petroleum from territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all on-shore and off-shore revenue from petroleum resources derivable therefrom in the Federal Government and for other matter incidental thereto.” This decree gave rise for the agitation of resource control by the oil-producing Niger Delta states. **NIGERIA PETROLEUM ACT**

right to issue mineral prospecting and mining licences and the sole power to collect royalties, rents, and fees from the oil companies.”<sup>297</sup> These legislative acts and Land Use Decrees vested on the Nigerian government the custodian of land, natural capitals, non-renewable resources and movable goods not only in the Niger Delta environment but in the whole country.

The Land Use Decree of 1978 has been most pronounced in the Niger Delta environment since Nigeria finds herself in a mono-economic sphere. Moreover, due to the enormous amount of oil dividend involved and for the very fact that Nigerian economy depends on oil for survival, the Nigerian government permits the MNOCs to have a big junk of the Niger Delta environment for all their oil operations ranging from exploration, extraction, pipelines, flow stations, oil terminals, flaring sites, airstrips, offices and quarters. This Land Use Decree and lack of stringent rules on the part of Nigerian government on land usage has given the MNOCs the impetus for reckless utilization of the Niger Delta environment. The incessant quantity of gas flaring by Shell since the genesis of its oil discovery in 1956 is an empirical evidence.<sup>298</sup>

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<sup>296</sup> The Land Use Decree of the 29th March 1978 is one of the revolutionary edicts in the Nigerian law. It is revolutionary in the sense that it forced Nigerians into a uniformed system of land titles and land control. This revolutionary decree was the result of a commission constituted by the Nigerian military government for advice on future land policy. Hence the report of the commission recommended “An Act to Vest all Land compromised in the territory of each State (except land vested in the Federal government or its agencies) solely in the Governor of the State, who would hold such Land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organizations for residential, agriculture, commercial and other purposes while similar powers will with respect to non-urban areas are conferred on Local Governments.(27th March 1978) Commencement.”

<sup>297</sup> Ejumudo Kelly Bryan Ovie (2014), “Youth Restiveness in the Niger Delta: A Critical Discourse”, p3

<sup>298</sup> Omoweh, D.O. (2006), Shell Petroleum Development Company, the state and underdevelopment of Nigeria’s Niger Delta: A study in environmental degradation.

The local communities of the Niger Delta not only depend on marginal lands for livelihood subsistence, but they are also socially, economically, and politically disenfranchised resulting to the causal factor of youth restiveness in the region. Worst still, they are often too powerless to struggle for the preservation of natural systems upon which their livelihood and survival rest.<sup>299</sup> The concept of causality chain is endemic within the local communities of the Niger Delta region. Whenever any of the capabilities are impaired or violated, there must be its resultant effect somewhere. The capabilities of practical reason and senses, imagination and thought are practically undermining the capabilities of ‘... having the right to seek employment on an equal basis with others...’ Due to awful educational system endemic in the local communities of the Niger Delta, the citizenry lacks quality education that would avail them the privilege and eligibility for competition on job placements within the MNOCs in their region, resulting to most them opting for menial jobs based on its availability.<sup>300</sup>

As far as the Niger Delta environment is concern, there abound violations of the right of the inhabitants to an adequate standard of living, including the right to employment, food - as a consequence of the impact of oil-related pollution and environmental damage on agriculture and fisheries, which are the traditional sources of food and economy for many people in the Niger Delta.<sup>301</sup>

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<sup>299</sup> Renner, 1996, cited in Adeola, F.O. (2000), *Cross-National Environmental Injustice and Human Rights Issues: A Review of Evidence in the Developing World*.

<sup>300</sup> Abraham Nath M. (2011), “Functional education, militancy and youth restiveness in Nigeria’s Niger Delta: The place of multi-national oil corporations (MNOCs)”

<sup>301</sup> Amnesty International (2009), *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta -Report PDF*.

### 4.3 Issues of Moral & Legal Rights

“Business-related human rights abuse”<sup>302</sup>, conflict and insecurity are incessant and peculiar in the Niger Delta environment. Stakeholder Democracy Network (SDN) reports that “The oil industry has had a significant impact on the environment and lives of the people of the Niger Delta and on the escalation of conflict.”<sup>303</sup> The phenomenon of causality chains is significant in the Niger Delta where oil exploration and production is resulting to the activities of numerous militant groups, militarisation and human rights abuses of certain degrees are spotted and noticed in every nook and cranny of the Niger Delta region, causing the region to be in a perpetual turmoil and resulting to drastic increase in poverty level and absence of societal and human development. SDN in one of its reports noted that: “The current conflict in the Niger Delta is driven by a powerful mixture of corruption, underdevelopment, poverty and violence.”<sup>304</sup>

However, the fact remains that the MNOCs cannot be wholly held responsible for the precarious situation in the Niger Delta. The Nigerian government is an accomplice and shares in the blames and problems imminent in the region. In the joint venture exploration agreement between the Nigerian government and the MNOCs, the Nigerian government - (under the auspices of Nigerian National Petroleum Corporation (NNPC) is holding 55%, Shell under the auspices of Shell Petroleum Development Company (SPDC) is having 30%, TotalFinaElf has 10% and Agip 5%<sup>305</sup>) - is having the highest percentage in the sharing formula. This

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<sup>302</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p84

<sup>303</sup> STAKEHOLDER DEMOCRACY NETWORK (2016), “Niger Delta conflict drivers”, p1

<sup>304</sup> STAKEHOLDER DEMOCRACY NETWORK (2016), “Niger Delta conflict drivers”, *ibid*

<sup>305</sup> [www.shell.com](http://www.shell.com)

percentage shows that the Nigerian government is making an oil windfall profit but due to heavy corruption and mismanagement among the leaders, the local communities of the Niger Delta remain underdeveloped and impoverished.<sup>306</sup> In as much as the Nigerian government is being apportioning some blames, the MNOCs should note that: "... business does not operate in a vacuum. No multinational company can claim to be ethical if it extracts resources and generates wealth from a society mired in poverty and human rights abuse - unless the benefits of its presence clearly outweigh the negative consequences."<sup>307</sup>

Thus, some of these human rights abuses and conflict are being fuelled by MNOCs and Nigerian government. Amunwa Ben in his report notes: "Shell's close relationship with the Nigerian military exposes the company to charges of complicity in the systematic killing and torture of local residents.... Testimony and contracts seen by Platform implicate Shell in regularly assisting armed militants with lucrative payments."<sup>308</sup>

The Niger Delta inhabitants unable to uphold their liberty, political and social rights make the region to be engulfing in a long-term poverty, underdevelopment and conflict. Of course, when once the Niger Delta local communities and inhabitants are not able to uphold these basic rights to livelihood, their capability to be and to function must equally be hampered upon. The research shall be investigating which rights (liberty, political, social) of the Niger Delta inhabitants that are being infringed upon due to the unsustainable activities of the MNOCs,

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<sup>306</sup> The ECCR (2010), Shell in the Niger Delta: A Framework for Change

<sup>307</sup> The ECCR (2010), Shell in the Niger Delta: A Framework for Change, p9

<sup>308</sup> Amunwa Ben (2011), "**Counting the Cost** Corporations and human rights abuses in the Niger Delta", p06

some policies of the Nigerian government and MNOCs' inextricably intermingling with human rights abuses.

#### 4.3.1 Liberty Rights

Nussbaum fundamental thought of 'dignified livelihood' in her conceptualisation of capabilities approach is part and parcel of the United Nations Universal Declaration of Human Rights (UNUDHR). The General Assembly of the United Nations in the following articles reiterate the need and necessity of 'dignified livelihood', through her proclamations in "**Article 3** Everyone has the right to life, liberty and security of person; **Article 5** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and **Article 9** No one shall be subjected to arbitrary arrest, detention or exile."<sup>309</sup> Nussbaum capabilities on 'Life and Bodily integrity' are quite in consonant with these three articles of the United Nations General Assembly and of which the local communities and inhabitants of the Niger Delta environment are victims of infringement of these rights to liberty, life and security as proclaimed in the UNUDHR three articles.

The act of infringement on the liberty rights of the Niger Delta environment got an international awareness during the era (1986-1995). And this era was when a writer and environmental activist called Ken Saro-Wiwa mobilised and formed the Movement for the Survival of the Ogoni People (MOSOP). The era witnessed "the intensification and internationalization of ethnic minority agitation and non-compromising stance of the oil producing communities."<sup>310</sup> MOSOP organised a peaceful protest against the MNOCs and Nigerian government calling for environmental and social justice in the Niger Delta environment. The aftermath of

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<sup>309</sup> The Universal Declaration of Human Rights (2015), United Nations General Assembly, pp8, 12, 20.

<sup>310</sup> Esikot, I. F. and Akpan, M. (2013), "THE NIGER DELTA CRISIS IN NIGERIA: SOME MORAL LESSONS", p5

the peaceful campaign results to the adoption of what MOSOP called ‘Ogoni Bill of Rights’ which articulated the Niger Delta oil producing communities cause and argued for the “right to control and use a fair proportion of Ogoni economic resources for Ogoni development.”<sup>311</sup> Unfortunately this peace protest march was negatively apprehended by the MNOCs and Nigerian government resulting to “Shell...to encourage and assist the Nigerian military in crimes against humanity and gross human rights violations.”<sup>312</sup>

The counter reaction of the MNOCs and Nigerian government did not deter MOSOP in their advocacy for environmental and social justice in the Niger Delta environment, thus another protest march of 04.01.1993 was held where about 100 thousand people were mobilised marking the climax of the era. The resultant effect of this protest campaign was catastrophic to the Niger Delta cause, for the Nigerian presidential election of 12.06.1993 were boycotted by the oil producing communities of Ogoni coupled with a misunderstanding within some groups in Ogoni which resulted to the killing of four Ogoni chiefs. The killing of these four Ogoni chiefs happens to be a conflict-trigger strategy that consequentially led to the arrest, Kangaroo trial and subsequent hanging of Ken Saro-Wiwa with other eight Ogoni indigenes popularly known as ‘Ogoni Nine’ by the then Nigerian head of state - General Sani Abacha. Reports noted that the hanging of the ‘Ogoni Nine’ attracted international sympathy and condemnation “the hanging of Saro Wiwa in November 1995 could be said to be the turning point in the politics of the Niger Delta”<sup>313</sup> and “On 10 November 1995, Saro-Wiwa and eight other Ogoni activists

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<sup>311</sup> Suberu, R. T. (1996). *Ethnic Minority Conflicts and Governance in Nigeria*, p33

<sup>312</sup> Amunwa Ben (2011), “Counting the Cost Corporations and human rights abuses in the Niger Delta”, p17.

<sup>313</sup> Human Right Watch (1999), “Nigeria: Crackdown in the Niger Delta”, p35

were hanged by the Nigerian military government after a flawed trial that was condemned as “judicial murder.”<sup>314</sup>

The aftermath of the ‘Ogoni Nine’ era triggered another phase of confrontation resulting to series of violent attacks and oil installations bombardment, kidnapping and harassment by the militant groups and subsequent repel and counterforce from the side of MNOCs and Nigerian government, leading to liberty right violations in the Niger Delta environment. As such currently the constituent of the three UNUDHR articles are imminent and explicit in the Niger Delta environment and to the local communities and inhabitants of the region. The presence of some militant groups and the militarization of the region are violating the three UNUDHR articles as far as the Niger Delta environment, local communities and inhabitants are concern. The activities of the militant groups in the Niger Delta environment are constituting nuisance and security challenges to the region and the Nigerian government. These acts of the militant groups facilitate the Nigerian government in alliance with MNOCs to have a total militarization of the Niger Delta environment, for instance “Shell’s over-reliance on government forces subjects’ communities to systematic human rights abuses, as the recent killings and torture in Ogoni-land demonstrate.”<sup>315</sup> Initially the activities of the militants are “...direct response to the human rights violations and the perceived neglect, and marginalization of the region by the Nigerian state and environmental and human hazards imposed on the local Niger Delta communities and inhabitants occasioned by exploration and exploitation by oil multinational oil companies.”<sup>316</sup> But there has been a transformation of the militants’ positive intent to negative intention i.e. criminal

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<sup>314</sup> Amunwa Ben (2011), “Counting the Cost Corporations and human rights abuses in the Niger Delta”, p17.

<sup>315</sup> Amunwa Ben (2011), “Counting the Cost Corporations and human rights abuses in the Niger Delta”, p12.

<sup>316</sup> Okumagba, P.O (2012), “Militancy and Human Rights Violation in the Niger Delta”, p29



activities. Within the local communities of the Niger Delta, some of the militants are involved in crude oil theft sometimes called ‘Blood Oil’, while others engage themselves in hostage taking otherwise known as kidnapping and other immoral acts in the region; all being the causality chain of oil exploration involving the MNOCs, the Nigerian government and the domestic bourgeois.

Nevertheless, existing report shows that the issue of oil theft is quite conspicuous in the Niger Delta; “oil bunkering thrives in a climate of instability, conflict, and political chaos. Nigeria offers the perfect operating environment”<sup>317</sup> resulting to having illegal or artisanal refineries in the region, which has been another source of oil pollution and impact on the fragile ecosystems of the region, thereby contributing to more environmental degradation of the Niger Delta. Although the MNOCs and the Nigerian government are complaining of the oil theft economic impact and accusing the perpetrators’ contribution to most of the oil spills but some of the militants involved in the illegal refineries remark that: “the oil belongs to all Nigerians and that, for many, it is the only way to make a living.”<sup>318</sup>

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<sup>317</sup> Asuni Judith Burdin (2009), “Blood Oil in the Niger Delta”, p3

<sup>318</sup> Heather Murdock (2012), “In Niger Delta, Black-Market Oil Booms” in Voice of America



**Figure 25: “Up the creek in a canoe ferrying containers used to transport oil siphoned from pipelines. The Niger delta is now a much sought-after posting in the military” Reuters reported. “Billions in oil revenue is controlled by a cartel that touches the armed forces” Mr. Patrick Dele Cole postulated<sup>319</sup>**

Then in order to curb the excesses of these militant groups the Nigerian government and the MNOCs solicit to heavy deployment of military in the region. Unfortunately the heavy militarization of the Niger Delta does “... not affect the militia groups but affect mostly armless civilians who inhabit this community.”<sup>320</sup> This act of curbing the excesses of the militant groups is resulting to huge human rights violation in the Niger Delta local communities for the military being deployed systematically commits crimes against humanity and abuse liberty rights in the region - innocent citizens are being killed and sexually abused, they are being tortured, properties are destroyed and there are indiscriminate arrest of innocent citizens whenever the military comes around to look for and effect arrest of some these militants.

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<sup>319</sup> Cole Patrick Dele (2012), Guest column: ‘we have to track down the oil thieves’ in the Financial Times

<sup>320</sup> Okumagba, P.O (2012), “Militancy and Human Rights Violation in the Niger Delta”, p29

### 4.3.2 Political Rights

UNUDHR **article 21** proclaims “(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right to equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will, shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”<sup>321</sup> These aforementioned proclamations are in accordance with Nussbaum capability on “(A) Political: being able to participate effectively in political choices that govern one's life; having the rights of political participation, free speech and freedom of association . . .”<sup>322</sup> These UNUDHR and Nussbaum capability are being violated and abused in the Niger Delta environment.

The environment of the Niger Delta is a custodian of poor democratic institutions and practices resulting to political annihilation of numerous inhabitants of the region from democratic participation. The issue of political rights of the Niger Delta environment and inhabitants are in a state of complete obliteration because there abound in the region an “Unaccountable politics and lack of capacity of institutions to deliver development, protect justice, ensure due process and security resulting in collective public frustration that at times contributed to cycles of violent conflict.”<sup>323</sup> The inhabitants of the Niger Delta lack the absolute freedom to their political rights in the region because the administration is deeply compromised by political patronage, thuggery, corruption, egotism, greed and

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<sup>321</sup> The Universal Declaration of Human Rights (2015), United Nations General Assembly, p44

<sup>322</sup> Nussbaum M.C., *Sex and Social Justice*, pp. 41-42, 1999

<sup>323</sup> STAKEHOLDER DEMOCRACY NETWORK (2016), “Political conflict drivers”

vested interest both on the side of the MNOCs and Nigerian government. Absence of political rights and democratization in the Niger Delta environment “has crippled even nascent efforts at reform, and the resulting social, economic, and political stagnation relates directly to the rising trend of violence.”<sup>324</sup> The issue of rigging, coercion, fraud, intimidation, corruption, co-opting rebels by giving them positions of authority and political thuggery in the Niger Delta is highly overwhelming resulting to disenfranchisement of the inhabitants from active political participation.

Following the political trend of affairs in the region political rights of the Niger Delta environment and inhabitants would continue to be violated if politics “... continued to support patrimonial systems that relay on corruption and the monopoly of violence.”<sup>325</sup> A typical of example of political rights violation based on continued adoption of ‘patrimonial<sup>326</sup> system and monopoly of violence’ was meted out and experienced recently on the 20.03.2016 in a re-run election comprising of Federal and State legislative in the Niger Delta state of Rivers State.

In the said re-run parliamentary election one of the media reports noted: “Many people gloomily expressed fears beforehand that the exercise would be violent and chaotic; and these fears turned out to be very well-founded.”<sup>327</sup> While a political analyst stated thus “The way the Federal government mobilised its coercive forces to harass, intimidate, arrest and hound Independent National Electoral Commission

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<sup>324</sup> Newsom Chris (2011), Conflict in the Niger Delta More Than a Local Affair, Special Report 271 in United States Institute of Peace, June 2011, p10

<sup>325</sup> STAKEHOLDER DEMOCRACY NETWORK (2016), “Political conflict drivers”

<sup>326</sup> This is a form of governance in which all power flows directly from the leader.

<sup>327</sup> Doun Kogbara (2016), “A nightmare scenario”, in Vanguard Nigeria Newspaper.

(INEC) officials, state government officials, judicial officers and others during the Tribunal proceedings, added to the massive deployment of army, police and other security forces for the rerun created a siege atmosphere. The rival political camps freely helped themselves to the use of hoodlums to kill and maim people before and during elections.<sup>328</sup> These documentary evidences show that the political rights of the inhabitants were abused for there were arrest of some individuals, assassination attempts on some persons and killing of some unfortunate inhabitants in the area. Election malpractices and irregularities were the order of the day resulting to cancellation of the election results and subsequent declaration of the parliamentary election as being inconclusive by INEC.



**Figure 26: Citizens demonstrating that no election took place on 20.03.2016 and that they were disenfranchised in Bonny Local Government Area of the Niger Delta region. Courtesy of [www.vanguardngr.com](http://www.vanguardngr.com)**

The photo depicts the outcome of the parliamentary re-run elections (political rights abuse) in Rivers State of the Niger Delta environment.

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<sup>328</sup> Ochereome Nnanna (2016), "Core issues in the Rivers polls", in Vanguard Nigeria Newspaper.

### 4.3.3 Social Rights

The issue of social rights as it concern the Niger Delta environment and inhabitants are explicitly enshrined in the following UNUDHR articles simultaneously. They are “**Article 20** (1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.”<sup>329</sup> “**Article 22** Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”<sup>330</sup> Others are “**Article 23 sub-section (4)** Everyone has the right to form and to join trade unions for the protection of his interests.”<sup>331</sup> “**Article 25** (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”<sup>332</sup> These depict social welfare policies.

The rest of the UNUDHR articles with the peculiarity of the Niger Delta environment and inhabitants are “**Article 26** (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental

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<sup>329</sup> The Universal Declaration of Human Rights (2015), United Nations General Assembly, p42

<sup>330</sup> The Universal Declaration of Human Rights (2015), United Nations General Assembly, p46

<sup>331</sup> The Universal Declaration of Human Rights (2015), United Nations General Assembly, p48

<sup>332</sup> The Universal Declaration of Human Rights (2015), United Nations General Assembly, p52

stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children.”<sup>333</sup>

Finally “*Article 27 sub-section (1)* Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”<sup>334</sup> The aforementioned UNUDHR articles 20, 22, 23 sub-section (4), 27 are in accordance with Nussbaum capability of ‘affiliation’, while article 25 is compatible with Nussbaum capability of ‘bodily health’ and article 26 is consistent with Nussbaum capability of ‘senses, imagination, thought’.

#### 4.4 The Third Generation of Human Rights

The third generation of human rights is fundamentally grounded in entitlements to live a dignified life. It has more to do with the common good of society and issue of collectiveness. This third generation of human rights addresses some rights that are crucial for a dignified life and for capabilities performance. Some of the rights are - right to development, right to peace, right to self-determination, right to decent environmental conditions, right to natural resources, right to food security, right to safe fresh water, right to unspoiled soils, **right against polluters** and right to intergenerational equity and sustainability. This long list of rights has a robust

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<sup>333</sup> The Universal Declaration of Human Rights (2015), United Nations General Assembly, p54

<sup>334</sup> The Universal Declaration of Human Rights (2015), United Nations General Assembly, p56



basis in *Capability Approach*. The Nussbaum list of human functional capabilities (as stated in 4.2.1) elucidates how the third generation approach should be operationalized. Moreover, the third generation of human rights are ‘collective-developmental’ entitlements that the citizens held against their nation-states or countries. It is a consortium of a comprehensive and all-embracing kind of rights that have gained international acclamations in terms of treaties but simultaneously they are highly contested. Evidences of the third generations of human rights are demonstrated in the 1992 Rio Declaration on Environment and Development<sup>335</sup> The middle of the 20th century saw the evolution of the third generation of the human rights. It was the aftermath of many nations of the world seeking for independence, national sovereignty and to be decolonized from the sledge hammers of their colonial masters. The third generation approach significantly made the societal world to realize the need for affiliation and to act collectively.<sup>336</sup>

Amid the aforementioned list of rights, this research focuses only on - *rights against polluters or a right not to be victimized by environmental pollution*. This is predicated on the empirical evidences that the entitlements to live a dignified life and to boast of a decent habitable environment by the oil-producing Niger Delta local communities have been impaired, violated or compromised due to the harmful effects of oil pollutions. This right presupposes an entitlement that one’s natural environment should not be polluted by the external effects of others’ activities. This supposes some material assumptions about pollutants, thresholds of permissible pollution, state’s legislation. It would suffice to see the right against polluters as a right that is grounded in an entitlement to stay in good health without infringement by others.

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<sup>335</sup> The Levin Institute (2017), “Three Generations of Human Rights”

<sup>336</sup> National Centre on Human Rights Information and Documentation, p3



#### 4.5 Rights against Polluters

The Rights against Polluters is one of the principle components of the - third generation of human rights. Mentioning rights against polluters do reiterate the following questions on ‘moral responsibility’ - *is there a moral responsibility of the MNOCs to restore damages that occurred in the past, are there rights of local oil producing communities against polluters, how can ongoing pollution be stopped and how can stocks of pollutants degraded over time?* All sums up the posed research question: *If the MNOCs have created huge external effects on the environment and on human health in the past, and if they have violated and still violate and impair on human rights and entitlements; do they have a moral duty and obligation to restore and rehabilitate the Niger Delta environment?*

In providing answer to the posited research question, an empirical situation of the local communities of the Niger Delta would be emphasized from the perspective of ‘**Rights against Polluters.**’ The local communities of the Niger Delta region are in insoluble dilemma of crude oil pollution of their environment and they are having “one of the world’s most severely petroleum-impacted ecosystems.”<sup>337</sup> Thus, the Nigerian government legislation on petroleum exploration stipulates that: “In Nigeria the company that operates the pipeline or well from which the oil is spilled is responsible under the law, to start the clean-up within 24 hours. It must rehabilitate and restore the affected area as much as possible to its original state, a process known as remediation”<sup>338</sup> and they argued further “that the operators are

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<sup>337</sup> Cited in Environmental Rights International (2009)

<sup>338</sup> Amnesty International and CEHRD (2015), CLEAN IT UP: Shell’s false claims about oil spill response in the Niger Delta, p4

primarily responsible for clean-up and remediation, regardless of the root cause.”<sup>339</sup> However, lack of stringent legislation and corruption in the Nigerian government vis-à-vis regulatory agencies - (Department of Petroleum Resources (DPR) and Nigeria’s National Oil Spill Detection and Response Agency (NOSDRA)) - are militating against this Nigerian legislation on petroleum exploration. Prior to UNEP report on Ogoni-land, UNEP stipulated that the MNOCs must bear the cost of the report because their oil exploration and extraction activities are the causal factor for the harmful effects of pollutants in the region. Moreover, the MNOCs are making enormous windfall from their exploration, necessitating an obligation on the side of the MNOCs to remediate the damages resulting from the pollutions caused - otherwise known as “polluters pay” argument.<sup>340</sup>

Kernohan in his work noted that: “pollution is often both a public and accumulative harm.”<sup>341</sup> According to him, a public harm is a harm done “in terms of their distribution: in being done to one, they are done to all.”<sup>342</sup> An instance of public harm in the Niger Delta region is the triple legacy of gas flaring, crude oil spills and effluent discharges from the MNOCs that are affecting the traditional source of livelihood, threatening the well-being, terrestrial and aquatic habitats, integrity, fundamental human rights and capabilities and promotion of human functioning of the region, local communities and inhabitants.

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<sup>339</sup> DeSimone Peter (2012), “Investor Risks Looming in the Niger Delta” , Sustainable Investments Institute, Special Report, p4

<sup>340</sup> UNEP Report (2011), Environmental Assessment of Ogoniland

<sup>341</sup> Andrew Kernohan (1995), “Rights against Polluters”, in Environmental Ethics, Volume 17, Issue 3, Fall 1995, p245

<sup>342</sup> Andrew Kernohan (1995), “Rights against Polluters”, in Environmental Ethics, Volume 17, Issue 3, Fall 1995, p246



**Figure 27: Gas flares with its associated health consequences - respiratory problems, skin rashes, eye irritations and acidic rains which affects agriculture - for local communities living near the flare sites.<sup>343</sup>**



**Figure 28: Oil spillage in Ogoni-land of the Niger Delta, 22.01.2016 (Photo taken by the researcher)**

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<sup>343</sup> Petroleum Industry Review (2015), Changing Approach to Campaign against Gas Flaring in Nigeria



**Figure 29: Effluent discharges during the cause Oil extraction in a local community of the Niger Delta (Photo taken by the researcher)**

Whereas “an accumulative harm is harm to some person brought about by the actions of many people when the action of no single person is sufficient, by itself, to cause the harm.”<sup>344</sup> An example of accumulative harm in the Niger Delta region is the increasing activities of international oil and gas companies’ and subsequent environmental degradation, loss of biodiversity, regional nature conservation annihilation, increase in poverty and deteriorating wildlife and human health conditions and combined effects of climate change.

These MNOCs activities are being perpetrated with the Nigerian government that fail in her “duty to protect, respect and remedy”<sup>345</sup> the Niger Delta region, oil producing communities and inhabitants human rights and interests “against corporate-related human rights harm.”<sup>346</sup>

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<sup>344</sup> Andrew Kernohan (1995), “Rights against Polluters”, in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p245

<sup>345</sup> Ruggie, J. G. (2013). *Just Business: Multinational Corporations and Human Rights*, p80

<sup>346</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p81

Unfortunately the local communities of the Niger Delta region are suffering from both pollution problems (harms) with an overall emphasis on oil pollution compromising livelihoods and health of the Niger Delta communities. This makes the Niger Delta region and oil producing communities' kind of pollution to be intermixing and environmental harmful. Though in the Niger Delta region and oil producing communities there is "one determinate source of the pollution"<sup>347</sup> embedding in crude oil exploration and extraction, but its effect is multifarious and multifaceted viz.:

- I.** The rivers, coastal and other aquatic ecosystems in the Niger Delta are the only sources of drinking water and food source (fishing) for many communities, but it is being alleged that oil pollution in the region is devastating local fisheries and livelihood of oil producing communities and inhabitants.
- II.** These rivers and coastal systems are known to be recipients of pollutant insults resulting from the oil industry (pipeline leaks and deliberate discharges) and other sources. Furthermore, refinery waste also contains very toxic chemicals, which constitutes potential land, water and air pollutants.
- III.** Liquid refinery effluents usually contain oil and grease. These compounds contain organic chemicals such as - polycyclic aromatic hydrocarbons (PAHs), phenol cyanide, sulphide-suspended solids, chromium and biological oxygen demanding organic matter, which on getting into contact with land and water pollute them because of their carcinogenic properties.<sup>348</sup>

In the Niger Delta region, pollution is an awful accumulative environmental harm being perpetrated on the 'personal security' of the region, oil communities and

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<sup>347</sup> Andrew Kernohan (1995), "Rights against Polluters", in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p245

<sup>348</sup> UNEP Report (2011), *Environmental Assessment of Ogoni-land*

inhabitants, with emphasis on crude oil pollution being “a single source of pollution”<sup>349</sup> This is guilt of the MNOCs. As such the MNOCs being solely responsible for this repugnant act have created huge external effects on the environment and on human health in the past, and have violated and still violate and impair on the Niger Delta region’s human rights and entitlements and “moral right to personal security.”<sup>350</sup> Consequent upon these ‘public and accumulative harms’ aforementioned, I would argue that the MNOCs being the sole polluters are what the law ascribe as “the proximate cause of the harm”<sup>351</sup> and they are to be proclaimed “guilty of harmful conduct”<sup>352</sup> as far as “business and human rights abuses”<sup>353</sup> are concerned in the Niger Delta region. That being the case, the Niger Delta region, oil-producing communities and inhabitants possess “legal rights to impose a duty”<sup>354</sup> on the MNOCs for the “clean-up, remediation, compensation and legal cost...”<sup>355</sup> This is because the Niger Delta region, oil-producing communities and inhabitants possess “...just as urgent an interest in being protected from accumulative harm of pollution...”<sup>356</sup> Perspective of right against polluters is emphatically enunciated.

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<sup>349</sup> Andrew Kernohan (1995), “Rights against Polluters”, in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p247

<sup>350</sup> Andrew Kernohan (1995), “Rights against Polluters”, in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p247

<sup>351</sup> Andrew Kernohan (1995), “Rights against Polluters”, in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p247

<sup>352</sup> Andrew Kernohan (1995), “Rights against Polluters”, in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p247

<sup>353</sup> Ruggie, J. G. (2013). *Just Business: Multinational Corporations and Human Rights*, pp9-12

<sup>354</sup> Andrew Kernohan (1995), “Rights against Polluters”, in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p247

<sup>355</sup> DeSimone Peter (2012), “Investor Risks Looming in the Niger Delta” , Sustainable Investments Institute, Special Report, p2

<sup>356</sup> Andrew Kernohan (1995), “Rights against Polluters”, in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p247

Under the civil law, the citizenry of the Niger Delta region and oil-producing communities possesses “a right to personal security”<sup>357</sup>; thereby making them to possess some legal rights against the MNOCs being the polluters of the region’s environment and her accomplice in the immoral act - the Nigerian government. The Niger Delta region, oil-producing communities and inhabitants’ right to personal security equally “... constituted ... duties imposed on others by the criminal law and by administrative regulation, and in part by various duties of care which are owed...”<sup>358</sup> them under the civil law.

This concept of ‘right to personal security’ makes a recap to the research question section and it asks - *are there rights of oil-producing communities against polluters?* I would respond from the legal viewpoint of yes, that the oil-producing communities have some rights against the MNOCs and Nigerian government as being substantiated paragraphs below.

In a circumstances that the Niger Delta oil-producing communities intend pursuing their rights against polluters from the legal viewpoint (as the oil producing communities of Ogoni-land have done) in order to demand protection of their interest based on ‘right to personal security’ and seeking redress for stocks of pollutants degraded over time; Kernohan explicitly stated tripartite proofs that would be a sine qua non for the oil-producing communities’ rights against polluters: “that some defendants owed us a duty of care, that the defendant breached this duty, and that the defendant’s breach of duty caused the harm to our interests.”<sup>359</sup>

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<sup>357</sup> Andrew Kernohan (1995), “Rights against Polluters”, in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p247

<sup>358</sup> Andrew Kernohan (1995), “Rights against Polluters”, in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p248

<sup>359</sup> Andrew Kernohan (1995), “Rights against Polluters”, in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p248



With particular reference to the resource-rich Niger Deltas' rights against the MNOCs (polluters), there is the need "...to demonstrate causation by establishing two analytically distinct links between the defendant's conducts or product and the plaintiff's injury."<sup>360</sup> In the case of the Niger Delta oil-producing communities' an establishment on how oil-pollution and ongoing climate change affect environmental and human health, biodiversity, nature conservation and human well-being should be considered as the "determinate plaintiff."<sup>361</sup> In other words, the 'determinate plaintiff' is the Niger Delta region, oil-producing communities and inhabitants. Simultaneously, the oil-rich Niger Delta producing communities are stating that - the MNOCs' ability to carry out their operational act of crude oil exploration without taking responsibility for their actions have resulted to associated environmental impacts and gross abuse of human rights. This should be called "determinate defendant."<sup>362</sup> It follows that the MNOCs are the 'determinate defendant'.

Deducing from the Niger Delta region versus MNOCs case study illustration above, the Nigerian legislation on oil exploration and "polluters pay" argument, I could affirm that there is both a -'determinate plaintiff and determinate defendant', thereby substantiating that the Niger Delta region, oil-producing communities and inhabitants have rights against polluters and at the same time morally justified to lay claims that - MNOCs have a moral duty and obligation to restore and rehabilitate damages that occurred from the past and moral responsibility to compensate victims of pollutions in the Niger Delta environment due to fact that

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<sup>360</sup> Andrew Kernohan (1995), "Rights against Polluters", in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p248

<sup>361</sup> Andrew Kernohan (1995), "Rights against Polluters", in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p248

<sup>362</sup> Andrew Kernohan (1995), "Rights against Polluters", in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p248



the MNOCs "...had violated duties of care owed to the..."<sup>363</sup> citizenry of the Niger Delta region, oil-producing communities and inhabitants. Furthermore, the rate of pollutions in the local communities of the Niger Delta - (either through oil spillage, gas flaring or effluent discharges) - were all prompted by oil exploration. Now the MNOCs and the Nigerian government are benefitting immensely from oil extraction from the Niger Delta, as such both have an obligation to restore the damage environment that results from the oil exploration and perhaps compensate victims of the environmental harm under the 'polluter pays and beneficiary pays' arguments.

The capability entitlements in a synopsis pragmatically imply a right against polluters and a right not to be victimized by external effects of others. A pragmatically implication (as distinct from a logical implication) is a rightful and legitimate expectation of how others should behave, given my/our entitlements. Such expectation is not based on empirical probabilities, but on moral ground. For instance - I may rightfully expect that you compensate the damage you caused. If not, the damage turns into a moral evil. Third generation rights, as operationalized via capability approach imply rights against polluters: namely the MNOCs. Rights against polluters constitute, amid other duties - duties of remediation and compensation against past injuries. The right against polluters starts as a moral right, but it should become a legal right, being dressed in real/actual policy making. (The people of the Niger delta, as particular persons, hold this right individually. For legal and political purposes, it might make sense to construe a kind of "collective right", but collective rights are ambivalent legal constructs.)

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<sup>363</sup> Andrew Kernohan (1995), "Rights against Polluters", in *Environmental Ethics*, Volume 17, Issue 3, Fall 1995, p249

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## Chapter 5

# Responsibilities

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### 5.1 Introduction

Responsibilities for human rights abuses within the local communities of the Nigerian Niger Delta region have triggered question on the custodian of human rights standards and raise the issues on ‘*rights holders*’ and ‘*duty bearers*’ in terms of human rights accountability. Both the question and the issues encapsulate the universal tenet as enshrined in the human rights framework and the human rights based approach (HRBA), whose core theme enunciates “that ‘democracy’ ... is based on mutual respect and the protection of the rights of all the people in that country.”<sup>364</sup> Meanwhile, “...human rights perspective is a deontological ethical theory, according to which agents must respect certain absolute standards.”<sup>365</sup> With emphasis on the issue of human rights being accountable for, some political philosophers held notions on ‘rights holders and duty bearers’ via there postulation that while “some actors hold rights... others have duties.”<sup>366</sup>

Suffice it to ask - *within the jurisdiction of the wetland region of the Niger Delta of Nigeria, who should the rights holders be and what are their claims, who are the duty bearers and what are their duties?* The rationale for this question is that “...rights for someone imply duties for others.”<sup>367</sup> By implication, the rights of individuals of the local communities of the Niger Delta as such invoke duties from

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<sup>364</sup> Greater Manchester Voluntary Sector Support (2015), “Rights-holders and duty-bearers”

<sup>365</sup> Kolstad Ivar (2007), Human Rights and Assigned Duties: Implications for Corporations, p3

<sup>366</sup> Human Rights Advocacy and the History of International Human Rights Standards, p2

<sup>367</sup> Kolstad Ivar (2007), Human Rights and Assigned Duties: Implications for Corporations, p2

the Nigerian government and the MNOCs. This is what is termed “division of moral labour”<sup>368</sup> which emphasizes that “different agents fulfil different duties whose sum total is full coverage in terms of rights realization.”<sup>369</sup>

## 5.2 Rights Holders

According to the framework of the human rights criteria “Rights-holders are individuals ... that have particular entitlements in relation to specific duty-bearers.”<sup>370</sup> Subsequently, rights holders are “entitled to the rights set out in the treaties, laws and conventions and ... entitled to claim these rights, although the rights-holders also has a responsibility to respect the rights of others.”<sup>371</sup>

Thus, the local communities of the Niger Delta are the proximate ‘right holders’ when it has to do with “business-related human rights abuse”<sup>372</sup> in the region. Of which “...rights-based approach can empower rights-holders to claim or protect their rights from duty-bearers.”<sup>373</sup>

## 5.3 Duty Bearers

The United Nations defines ‘duty bearers’ as “...those actors who have a particular obligation or responsibility to respect, promote and realize human rights and to

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<sup>368</sup> Kolstad Ivar (2007), Human Rights and Assigned Duties: Implications for Corporations, Ibid.

<sup>369</sup> Kolstad Ivar (2007), Human Rights and Assigned Duties: Implications for Corporations, Ibid.

<sup>370</sup> Gender Equality, UN Coherence & You, United Nations Document, p5

<sup>371</sup> Greater Manchester Voluntary Sector Support (2015), op. cit.

<sup>372</sup> Ruggie, J. G., (2013), Just Business: Multinational Corporations and Human Rights, p84

<sup>373</sup> Paudel Bikash and Sthapit Sajal (2013), Empowering Rights-holders and Facilitating Duty-bearers to secure Farmers’ Rights in Nepal, p.121

abstain from human rights violations.”<sup>374</sup> In the Niger Delta case, the duty bearers is an inclusive terminology referring to the Nigerian government being the State actors, the Nigerian security forces happens to be the non-State actors and the MNOCs acting as individual entities and perpetrators of the environmental harms. Consequent upon, the aforementioned duty bearers have obligation to “respect, protect and fulfil”<sup>375</sup> their respective rights to the local communities of the Niger Delta.

It is the primary duty of the Nigerian government to protect the local communities of the Niger Delta from “corporate-related human rights harm”<sup>376</sup> of the MNOCs, thereby upholding the inhabitants’ rights to health, livelihoods and habitable environment.

**Table 5: An Illustration of the Niger Delta Right Holders and Duty Bearers Dilemma with adherence to the tenet-framework of the universal and global human rights:**

<p><b>Problem</b></p>	<ul style="list-style-type: none"> <li>❑ Oil pollutant is affecting human health, human well-being and environment.</li> <li>❑ Oil pollution, poverty and environmental degradation have impaired and violated capabilities of the local communities of the Niger Delta region.</li> </ul>
<p><b>Right</b></p>	<p><b>Local communities of the Niger Delta have rights to health, livelihoods and habitable environment.</b></p>
<p><b>Rights Holders</b></p>	<ul style="list-style-type: none"> <li>❖ <b>The local communities of the Niger Delta region.</b></li> </ul>

<sup>374</sup> Gender Equality, UN Coherence & You, United Nations Document, p1

<sup>375</sup> Ruggie, J. G. (2013), Just Business: Multinational Corporations and Human Rights, p83

<sup>376</sup> Ruggie, J. G. (2008), “Protect, Respect and Remedy”, A Framework for Business and Human Rights, p189

	❖ <b>Claim:</b> MNOCs and Nigerian government ought to address anomalies of social justice and strong sustainability in the region.
<b>Duty Bearers</b>	
Nigerian government	☐ <b>Obligation:</b> Expected to protect the local communities from environmental injustice and human rights abuse from the MNOCs.
Multinational Oil Companies	▪ <b>Obligation:</b> Desired to adopt ethical responsibilities and appropriate attitude towards nature, human health and rights.
Nigeria National Oil Spill Detection and Response Agency (NOSDRA) – Nigerian government regulatory agency.	☐ <b>Obligation:</b> Required to fulfil its statutory responsibility of ensuring compliance to petroleum laws, regulations and guidelines on oil spillages and making sure that oil spilt sites are well remediated prior to issuing certification to MNOCs.

#### 5.4 Tripartite Framework of - Protect, Respect and Remedy - in the Management of Business and Human Rights

For business and human rights to co-exist, Ruggie propounded the tripartite framework of ‘*protect, respect and remedy*’ that would act as the guiding principle of check and balances.

In Ruggie’s submission to the United Nations, he explicitly noted that it is the duty of the states to protect her citizens against ‘corporate related human rights harm.’ This protection of the citizens by the states has to do with third parties who include

business operations and militant groups (as the case may be in the Niger Delta.)<sup>377</sup> The citizens' protection by the states is predicated on the saying that the States are the conservator of human rights both the ones described in treaties and customary law. In the case of the Niger Delta region, it is the duty and obligation of the Nigerian government to protect the local communities of the Niger Delta against the "fundamental and systemic disregard for human rights"<sup>378</sup> by the MNOCs, which has been resulting to human rights abuse and environmental injustice, the issues of security forces deployment by the MNOCs and some militant groups that are worsening the already existing environmental damage, thereby making the environment to be more vulnerable and harmful for human condition. The Nigerian government has the obligation to protect the local communities' human rights abuse by the MNOCs by means of law and simultaneously it is the Nigerian government duty and responsibility to have the internal political willingness to enforce the law. The rationale for the enforcement of the law is being predicated on the assumption that having laws just on paper does not and cannot protect the inhabitants. As such the enforcement of this law requires some variables such as - administration, police and court for adjudication. Moreover, at the aftermath of these aforementioned variables the Nigerian government ought to apply some stringent actions as to making sure that the MNOCs do comply with the laws and regulations that have been enacted and promulgated. But unfortunately, in the situation of the Niger Delta versus Nigerian government, it has been observed that the "Nigerian government has frequently failed to meet its obligation to respect, and protect human rights, while providing security to the oil industry, because of its importance to the economy."<sup>379</sup>

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<sup>377</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, pp.81-83

<sup>378</sup> Ayanruoh Felix Ebruba (2009), "Corporate Responsibility and Human Rights Abuse in the Niger Delta", p1

<sup>379</sup> Ayanruoh Felix Ebruba (2009), "Corporate Responsibility and Human Rights Abuse in the Niger delta", *Ibid.*

Ruggie in his submission noted that business has the legal duties to respect the human rights of the people. However, the empirical situations in the Niger Delta clearly indicate that the MNOCs are operating legally, abusing the weak regulatory structures, maximizing profits and possessing lack of respect for human rights. Whereas based on Ruggie's submission, the MNOCs are required to abide by all the regulatory laws as to obtain and maintain their legal licence to operate.<sup>380</sup> That being the case, the MNOCs operating in the Niger Delta region are expected to abide by all the legal duties as it concerns human rights abuse in the region. This act is termed "the corporate responsibility to respect"<sup>381</sup> which would result in the reduction of the high rate of environmental and human rights harm due to crude oil pollution which culminates in human rights abuse, ecosystems degradation that necessitates loss of biodiversity, high poverty-rate and ubiquitous rate of capabilities' impairments and violations.

Ruggie's framework on remedy stipulated an integration of the states and business in such responsibilities. He stated that under the conditions of 'caeteris paribus' i.e. with all things being equal that "corporate-related human rights harm will occur."<sup>382</sup> Of course in situation of such issues of unintended, eminent, existential or perceived consequences; the states have the duty to protect its citizens by investigating the causal factor of the business induced human rights and environmental harms vis-à-vis seeking for redress from business to remedy the situation. Thus, in the resource-rich Niger Delta, it is the prerogative duty of the Nigerian government to deploy "judicial, administrative and legislative"<sup>383</sup> approaches into the MNOCs business related human rights abuse such as crude oil

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<sup>380</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p90

<sup>381</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, Ibid.

<sup>382</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p102

<sup>383</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, Ibid.

spillages, incessant gas flaring, cases of effluent discharges into seas and environment and having the political will to call the MNOCs to regulatory orders as to ensure that they “provide effective remedies to individual victims”<sup>384</sup> and if necessary compensate the local communities of the Niger Delta.

### 5.5 State Responsibility

The impact of “business and human rights agenda”<sup>385</sup> in the oil-rich Niger Delta has triggered and attracted global attention on the health and environmental impact of crude oil exploration and exploitation in Nigeria. Unfortunately, the Nigerian government are yet to device an appropriate measure on the modus operandi of tackling its responsibilities of protecting the Niger Delta region “against corporate-related human rights harm”<sup>386</sup> from the “wrongful acts”<sup>387</sup> of the MNOCs.

In the Niger Delta, there are abundant and empirical verifiable evidences of “harmful environmental effects of oil exploration and production”<sup>388</sup> which urgently demand responsibilities on the part of the Nigerian government as the primary duty bearer to abide by the core obligations to “respect, protect, and fulfil”<sup>389</sup> the right to health and the right to a healthy environment<sup>390</sup> of the Niger

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<sup>384</sup> Ayanruoh Felix Ebruba (2009), “Corporate Responsibility and Human Rights Abuse in the Niger Delta”, p1

<sup>385</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p9

<sup>386</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p81

<sup>387</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, Ibid.

<sup>388</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p10

<sup>389</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p83

<sup>390</sup> Konne, Barisere Rachel (2014), “Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland,” p185

Delta inhabitants. This is predicated on the fact that the local communities of the Niger Delta possess the right to health and the right to a healthy environment as enshrined in the UN Human Rights Treaty Bodies<sup>391</sup> and the International Legal Frameworks<sup>392</sup> of the International Convention on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples Rights, of which the treaties, convention and charter are legally binding between the sovereign parties states involved and Nigeria as an independent party member state happens to be signatories to them.

These treaty bodies and international legal frameworks “identifies the legal duties and related policy rationales of states with regard to business and human rights; the independent social responsibilities of companies, particularly multinational corporations, in relation to human rights - where “independent” means that they exist irrespective of whether states are living up to their commitments...”<sup>393</sup> This entails that if States do not enforce laws and do not protect the rights of their citizens, then MNOCs should take the role of duty bearers voluntarily based on moral ground. Thus, Nigeria being a party member state and signatories to the treaty bodies and international legal frameworks is thereby legally, duty bound and obliged to abide by the ordinances of the treaties by respecting, fulfilling and protecting the Niger Delta against human rights abuse by the MNOCs “through appropriate policies, regulation, and adjudication.”<sup>394</sup> Subsequent upon the Nigerian government’s “... failure to protect, respect, or fulfil constitutes a

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<sup>391</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p84

<sup>392</sup> Konne, Barisere Rachel (2014), "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland", *Ibid*.

<sup>393</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p83

<sup>394</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p82



breach...<sup>395</sup> on the right to health and right to healthy environment of Niger Delta region, based on the fact that “the treaties commit states parties themselves to refrain from violating the enumerated rights of persons within their jurisdiction (“respect”).<sup>396</sup>

According to the International Commission on Intervention and State Sovereignty, for a state to be termed independent it calls for responsibility, and of which the basic responsibility of a State remains in protecting her citizens.<sup>397</sup> The United Nations (UN) General Assembly lays emphasis on the responsibility of the State to protect its citizens saying “states have a responsibility to protect their own populations from mass atrocities... and crimes against humanity”<sup>398</sup> and against many other evils.

The United Nations Human Rights treaty equally advocates State’s responsibility in protecting its citizens “...against human rights abuse by third parties - ... include business enterprises.”<sup>399</sup> According to John Ruggie, the UN Human Rights treaty recommend states “... to refrain from violating the ...rights of persons within their jurisdiction (“respect”) ... to ensure the enjoyment or realization of those rights by rights-holders.”<sup>400</sup> This aspect of assurance of enjoyment by or for the rights

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<sup>395</sup> Konne, Barisere Rachel (2014), "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland," p187

<sup>396</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p84

<sup>397</sup> ICISS (2001), “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty”

<sup>398</sup> Glanville Luke (2012), *The Responsibility to Protect Beyond Borders*, p3

<sup>399</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p83

<sup>400</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p84

holders “requires protection by states against other social actors, including businesses, whose actions impede or negate the rights.”<sup>401</sup>

Now based on the international legal framework of the International Convention on Economic, Social and Cultural Rights (ICESCR), it guarantees in its Article 12 “... the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>402</sup> Albeit, the right to a healthy environment is not well explicit in ICESCR as it is in African Charter on Human and Peoples Rights, hitherto, ICESCR implicitly noted the rights to healthy environment in the sub-sections of its following Articles: Article 12 sub-section (b) lays emphasis on “the improvement of all aspects of environmental and industrial hygiene.”<sup>403</sup> While, Article 7 sub-section 7a (ii) and 7(b) stipulate rights for “a decent living ... safe and healthy working conditions”<sup>404</sup> respectively. However, the African Charter on Human and Peoples Rights in its Article 24 establishes that “All people shall have the right to a general satisfactory environment favourable to their development.”<sup>405</sup> It is significant to remark that the Nigerian government signed and ratified the charter on 31.08.1982 and 22.06.1983<sup>406</sup> respectively. This indicates that by these very acts, the Nigerian government has committed itself to the charter.

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<sup>401</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, Ibid.

<sup>402</sup> International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, p4

<sup>403</sup> International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, Ibid.

<sup>404</sup> International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, Loc.cit. p3

<sup>405</sup> African Charter on Human and Peoples Rights, Adopted in Nairobi June 27, 1981, p4

<sup>406</sup> African Charter on Human and Peoples Rights, Adopted in Nairobi June 27, 1981

Responsibilities on the part of the Nigerian government to abide by the core obligations to “respect, protect, and fulfil”<sup>407</sup> the right to health and the right to a healthy environment of the Niger Delta region is a sine qua non. This is based on the rationale that the inhabitants of the Niger Delta being the rights holders possess the right to health and the right to a healthy environment as enshrined in the international legal frameworks of the ICESCR and the African Charter on Human and Peoples Rights, of which the state of Nigeria as a duty bearer happens to be party member signatories to the duo as it is in the UN Human Rights Treaty as well.

Furthermore, the ICESCR and African Charter enforced “certain core or minimum obligations on States, including the obligations to protect, respect and fulfil”<sup>408</sup> the right to health and the right to healthy environment of her citizens. In Article 11(1) of ICESCR it asserted that: “the States parties recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...” While Article 11 (2) ...recognizes the fundamental right of everyone to be free from hunger...<sup>409</sup> Under the African Charter, its Article 16 stated that: “1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”<sup>410</sup>

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<sup>407</sup> Ruggie, J. G. (2013), *Just Business: Multinational Corporations and Human Rights*, p83

<sup>408</sup> Konne, Barisere Rachel (2014), "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland," p186

<sup>409</sup> DAS, JATINDRA KUMAR (2016), *HUMAN RIGHTS LAW AND PRACTICE*, p91

<sup>410</sup> African Charter on Human and Peoples Rights, Adopted in Nairobi June 27, 1981, p3

### 5.5.1 Issue of Oil Spillages

Prima facie, oil spill is an anthropogenic emission of crude oil substances with its intense hydrocarbon concentration into an ecosystem in a form of environmental harm with its potential negative environmental consequences. Of which the U.S Energy and Information administration made a remark on the impact of crude oil spills and its environmental devastations in the Niger Delta saying “poorly maintained, aging pipelines and pipeline sabotage from oil theft have caused oil spills. The oil spills have resulted in land, air, and water pollution, severely affecting surrounding villages by decreasing fish stocks and contaminating water supplies and arable land.”<sup>411</sup> Nevertheless, the State of Nigeria has promulgated some regulatory legislations guiding oil spillage in the cause of the MNOCs oil exploration and extraction. Hence, the Nigerian law on crude oil spills establishes that - oil companies are by obligation required to clean up any spills arising in the cause of their operation, that no matter the causal factor of such oil spillage, the oil company that owns the oil pipeline has the responsibility of cleaning-up the spills.<sup>412</sup>

The Nigerian Petroleum Act otherwise called the Petroleum Act, Decree No. 51 of 1969 constitutes the basic responsibility for regulating the crude oil and gas exploratory activities in the local communities and requires the MNOCs to uphold “good oil field practice”<sup>413</sup> in the Niger Delta. The MNOCs are required to observe this ‘good oil field practice’ by ensuring that they keep to “internationally

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<sup>411</sup> U.S. Energy Information Administration (2016), Country Analysis Brief: Nigeria, p7

<sup>412</sup> Westby Joe (2016), “Niger Delta: Government clean-up does not let Shell off the hook” Amnesty International Publication on Business and Human Rights.

<sup>413</sup> Konne, Barisere Rachel (2014), "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland," p192

recognized standards in conducting oil operations... standards include the American Petroleum Institute (API) and American Society of Mechanical Engineers (ASME) standards for petroleum production, which focus primarily on reduction of the risk of oil spills.”<sup>414</sup> The Nigerian Petroleum (Drilling and Production) Regulations requires the MNOCs operating in the local communities to observe the aforementioned API and ASME standards and equally “to prevent the pollution of inland waters, rivers, watercourses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might contaminate the water, banks or shoreline or which might cause harm or destruction to fresh water or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and, if possible, end it.”<sup>415</sup> The Nigerian Petroleum Act empowers the Minister of Petroleum Resources to revoke and withdraw the operational licence to any MNOCs that fail to uphold any of the earmarked regulations and recognized international standards.

Nonetheless oil spills have subjected the Niger Delta into an insoluble dilemma of crude oil pollution due to the fact that most MNOCs are not complying with the clean-up legislation as enacted by the Nigerian Petroleum Act, Nigerian Petroleum (Drilling and Production) Regulations and the international recognized API and ASME standards governing oil spills. Worst still the duty bearer being the Nigerian government through its crude oil regulatory institutions “has fail to monitor the extent of the oil spills and enforce existing environmental laws that require quick

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<sup>414</sup>Konne, Barisere Rachel (2014), "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland" Ibid.

<sup>415</sup> Petroleum (Drilling and Production) Regulations [L.N. 69 of 1969.] under section 9

oil spill response for oil operators.”<sup>416</sup> Some of the Nigerian government regulatory agencies include - Department of Petroleum Resources (DPR) who is the primary trustee for petroleum regulations in the oil industry. Its fundamental obligation and responsibility is to “ensuring compliance to petroleum laws, regulations and guidelines in the Oil and Gas Industry.”<sup>417</sup> In order to checkmate and regulate the MNOCs in the course of their crude oil exploratory activities, the DPR articulated some environmental guidelines for the MNOCs called Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) which “covers the control of the pollutants from the various petroleum exploration, production and processing operations.”<sup>418</sup>

Another regulatory agency called National Oil Spill Detection and Response Agency (NOSDRA) was established in the 2006 through the National Assembly of the Federal Republic of Nigeria Act of 2006.<sup>419</sup> NOSDRA has the mandate of preparedness, to monitor, to detect, to respond to oil spill sites and to enforce proper compliance on clean-up of the oil spills sites by the MNOCs. Nigerian government being a party member signatory to International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 90) gave rise to the establishment of NOSDRA. However, Amnesty International oversight functional fieldwork research on some oil spill sites locations in Ogoni land in 2015 “found

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<sup>416</sup> Konne, Barisere Rachel (2014), "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland", p182

<sup>417</sup> The Department of Petroleum Resources (2016), "Function"

<sup>418</sup> The Department of Petroleum Resources (2016) "Function", Ibid.

<sup>419</sup> National Oil Spill Detection and Response Agency (NOSDRA)

serious shortcomings...<sup>420</sup> of NOSDRA lack of diligence as a Nigerian government regulatory institution established “to co-ordinate the implementation of the National Oil Spill Contingency Plan (NOSCP) for Nigeria in accordance with the International Convention on Oil Pollution Preparedness, Response and Cooperation.”<sup>421</sup>

This lack of NOSDRA diligence as a Nigerian government regulatory institution was explicitly shown in Ogoni land. At the aftermath of the United Nations Environment Program (UNEP) unique detailed report findings of 2011 in Ogoni land, UNEP earmarked up to 60 oil spills location sites where oil spills “have a devastating impact on the fields, forests and fisheries that majority of the people in the region depend on for their food and livelihoods. Oil spills also contaminated drinking water and exposes people to serious health risks.”<sup>422</sup> However in the year 2015 precisely between July and September, the Amnesty International and CEHRD conducted a field work research on four sites viz.: *Boobanabe, Bomu Manifold, Barabeedom swamp and Okulube* - out of the earmarked 60 sites and made a bogus discoveries that after 4 years of UNEP findings, report and recommendatory guidelines to both the Nigerian government and Shell Petroleum Development Company (SPDC) on how to remediate the effects of the damage, these oil spill sites “were either too small or too far away to have re-contaminated

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<sup>420</sup> Amnesty International and CEHRD, (2015), “CLEAN IT UP: Shell’s false claims about oil spill response in the Niger Delta”, p4

<sup>421</sup> National Oil Spill Detection and Response Agency (NOSDRA)

<sup>422</sup> Amnesty International and CEHRD (2015), “CLEAN IT UP: Shell’s false claims about oil spill response in the Niger Delta”, p4

the sites, or had already been cleaned-up...”<sup>423</sup> as SPDC and NOSDRA have indicated of total remediation of the four spilled sites.

These are some photos (*Figures 30, 31, 32, 33 & 34*) of the claimed remediated oil spill sites by SPDC which culminates in issuing a clean-up bill certificate of remediation by NOSDRA to SPDC:



**Figure 30: Shell’s pipelines in Ogoni land are old and poorly maintained. There have been several spills and in 2009 there was a huge fire, at the Bomu Manifold, at K. Dere, Rivers state. September 2015, © Michael Uwemedimo/cmapping.net<sup>424</sup>**

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<sup>423</sup> Amnesty International and CEHRD (2015), “CLEAN IT UP: Shell’s false claims about oil spill response in the Niger Delta”, p5

<sup>424</sup> Amnesty International and CEHRD (2015), “CLEAN IT UP: Shell’s false claims about oil spill response in the Niger Delta”, p11





**Figure 31: The land surrounding Shell pipelines at the Bomu Manifold, K. Dere is visibly contaminated with oil, despite attempts by the company to clean it up, August 2015, © Amnesty International<sup>425</sup>**



**Figure 32: Stream at Barabeedom swamp is visibly contaminated with oil. August 2015 © Amnesty International<sup>426</sup>**

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<sup>425</sup> Amnesty International and CEHRD (2015), "CLEAN IT UP: Shell's false claims about oil spill response in the Niger Delta", p18

<sup>426</sup> Amnesty International and CEHRD (2015), "CLEAN IT UP: Shell's false claims about oil spill response in the Niger Delta", p24



**Figure 33: Oil has been left to soak into the ground next to a cassava field by the Shell pipeline at Okuluebu, Ogale. There is no sign of any attempt to clean it up. August 2015, © Amnesty International<sup>427</sup>**

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<sup>427</sup> Amnesty International and CEHRD (2015), "CLEAN IT UP: Shell's false claims about oil spill response in the Niger Delta", p29

**Figure 34: This is an Oily sheen in the swamp at Boobanabe, August 2015. According to Nigerian government regulations, there should be no oil in water after 60 days. The spill at Boobanabe took place in 1970. © Amnesty International.<sup>428</sup>**



These photos (*Figures 30, 31, 32, 33 & 34*) were taken in 2015 by Amnesty International from the aforementioned four crude oil spilled sites. Empirical facts by the Amnesty International and CEHRD confirms that the crude oil spill sites still consist of heavy constituents of crude oil pollutants, whereas the Nigerian government regulator - NOSDRA have already issued SPDC a certified clean-up bill on absolute remediation of the oil spill sites. Based on the 2015 situational facts finding of the Amnesty International and CEHRD, they remarked that Nigerian government “is currently failing to fulfil its duty to protect the human rights of the people living in the Niger Delta, including by ensuring that they enjoy their human right to a remedy and proper clean-up”<sup>429</sup> of their environment.

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<sup>428</sup> Amnesty International and CEHRD (2015), “CLEAN IT UP: Shell’s false claims about oil spill response in the Niger Delta”, p32

<sup>429</sup> Amnesty International and CEHRD (2015), “CLEAN IT UP: Shell’s false claims about oil spill response in the Niger Delta”, p6

This issuance of a certified clean-up bill by the Nigerian government regulatory agency to SPDC whereas the aforementioned crude oil spill sites are heavy laden with oil pollutants and contaminants are an indictment on the Nigerian government. This is due to the fact that Nigeria as a state member party of the ICESCR and African Charter on Human and Peoples Rights has the obligation as a duty bearer to discharge its responsibility to protect, to respect and to fulfil the right to health and the right to habitable environment of the local communities of the Ogoni land, because this wrongful act of SPDC on crude oil pollutant is exposing the Ogoni-land "...to petroleum hydrocarbons in outdoor air and drinking water, sometimes at elevated concentrations."<sup>430</sup>

As the crude oil spill negative impact is wholly-spread in Ogoni-land, so it is in the entirety of the local communities' ecosystems devastating the vegetation, creeks, mangrove forests, swamps, ground waters, surface waters, land and air, thereby exposing the inhabitants to "serious short and long-term health impacts, including skin infections, gastrointestinal and respiratory ailments, and increased risk of cancers, and neurological and reproductive problems."<sup>431</sup> This is a breach of obligation to protect the citizens by the Nigerian government against issues of their public health. Furthermore by this very act of failing to protect, the Nigerian government has equally failed to uphold its obligation and responsibility to respect the local communities "right to enjoy the best attainable state of physical and mental health."<sup>432</sup>

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<sup>430</sup> United Nations Environment Programme (2011), Environmental Assessment of Ogoniland, p10

<sup>431</sup> Konne, Barisere Rachel (2014), "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland," p188

<sup>432</sup> African Charter on Human and Peoples Rights, Adopted in Nairobi June 27, 1981, p3



### 5.5.2 Issue of Gas Flares

The process of gas flaring is an act of burning-up (separation) the gaseous component that is embedded with crude oil in the course of exploration and extraction processes, though with its hazardous environmental harmful repercussion on health, livelihoods and habitable environment. Due to gas flaring unintended environmental harm on land, air, water and ecosystems however, the rights to health, livelihoods and the rights to habitable and healthy environment of the Niger Delta ought to be protected and respected by the Nigerian government vis-à-vis the MNOCs by putting to an end the issue of incessant flaring of associated gas (AG) by the MNOCs in the region. The core obligations to protecting and to respecting the local communities' human rights against AG flaring by the MNOCs is required of the Nigerian government and expected of the MNOCs. This call to protect and to respect is predicated on the normative and empirical evidences that gas flaring by the MNOCs "is a violation of human rights"<sup>433</sup> and constitutes "... a human rights, environmental and economic monstrosity"<sup>434</sup> in the Niger Delta region. The Economist remarked that the "continued gas flaring harms both the environment and the economy"<sup>435</sup> of the Niger Delta region, whereas the issue of gas flaring is already forbidden by the Nigerian law.

The unregulated flaring of associated gas is a violation on the capabilities of the Niger Delta citizens and it culminates in "... impoverishment of the communities

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<sup>433</sup> Environmental Rights Action/Friends of the Earth Nigeria (2005), Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity, p27

<sup>434</sup> Environmental Rights Action/Friends of the Earth Nigeria (2005), Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity, p5

<sup>435</sup> The Economist (2008), Nigeria: Another deadline goes up in flames,p1

where it is practiced, with attendant environmental, economic and health challenges.”<sup>436</sup> Consequent upon, the inhabitants are complaining that “... the flares have been making people sick for decades...By night, ...the flares are so bright in some places they fear it damages their eyes. The flares emit poisonous chemicals that make people sick and damage the farming and fishing industries...the flares cause acidic rain, cancer and a host of respiratory problems.”<sup>437</sup> The associated gas flares causes acidic rain “through the emissions of large quantities of sulphur dioxide and nitrogen oxides into local areas which combine with atmospheric moisture to form sulphuric acid and nitric acid”<sup>438</sup> which abuses the aquatic and terrestrial environment of the region resulting to a descriptive claim that “...even the very air they breathe is contaminated with pollutants from gaseous emissions; the rain which falls on their land is acidic rain which destroys instead of nourishing their crops, which thus become susceptible to strange pestilence.”<sup>439</sup>

The causality chains of associated gas flaring in the resource-rich Niger Delta violates the fundamental human rights of the local communities as enshrined under the Nigerian legislation of the 1999 constitution of the Federal Republic of Nigerian as follows:

- Rights to habitable and healthy environment as guaranteed in the 1999 Nigerian constitution in its Article 20 “*Protection of environment*”

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<sup>436</sup> Ajugwo, Anslem O., (2013), “Negative Effects of Gas Flaring: The Nigerian Experience.”, p1

<sup>437</sup> Heather Murdock, (2012), “Nigeria Mulls Gas Flare Crackdown” in Voice of America

<sup>438</sup> Gas Flare Tracker (2014), Mapping Nigeria's Gas Flares, p1

<sup>439</sup> Etuk, U. (2001), “Social and Environmental Responsibility of Oil Companies”, p5

establishing that “The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.”<sup>440</sup>

- The local communities of the Niger Delta possess rights to life as established in the 1999 Nigerian constitution in its Article 33 “***Right to life***” (1) stipulating that “Every person has a right to life, and no one shall be deprived intentionally of his life...”<sup>441</sup>
- They equally have the fundamental rights to dignity as provided in the 1999 Nigerian constitution “***Prohibition of cruel treatment and Prohibition of torture***” Article 34(1a) establishing that “Every individual is entitled to respect for the dignity of his person, and accordingly - no person shall be subject to torture or to inhuman or degrading treatment;...”<sup>442</sup>

Since the exploration of crude oil and its subsequent exploitation and extraction in the Niger Delta in 1956 by the MNOCs, associated gas flaring has been the modus operandi implored in the act of separating the crude oil from the associated gas (major component of the Nigerian crude oil). Associated gas flaring activities by the MNOCs are been done at the flow stations. The rationale for the associated gas flaring is based on the fact that “when crude oil is extracted from onshore and offshore oil wells it brings with it raw natural gas to the surface. Where natural gas transportation, pipelines and infrastructure are lacking this gas is instead burned off or flared as a waste product as this is the cheapest option, particularly when gas prices are low and fines are not collected by National regulatory bodies.”<sup>443</sup>

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<sup>440</sup> Nigeria's Constitution of 1999, [constituteproject.org](http://constituteproject.org), PDF generated: 18 Apr 2016, 15:14, p16

<sup>441</sup> Nigeria's Constitution of 1999, [constituteproject.org](http://constituteproject.org), PDF generated: 18 Apr 2016, 15:14, p20

<sup>442</sup> Nigeria's Constitution of 1999, [constituteproject.org](http://constituteproject.org), PDF generated: 18 Apr 2016, 15:14, Ibid.

<sup>443</sup> Gas Flare Tracker (2014), Mapping Nigeria's Gas Flares, p2

Nigerian government legislations of prohibiting gas flaring since crude oil exploratory activities has been a herculean task with policy implementations, deadlines and penalties to MNOCs being on a constant postponement.<sup>444</sup> In terms of global gas flaring ranking, Nigeria has been notorious after Russian Federation. However, as at 2014 Nigeria ranked the fifth position as against the second position it was in 2011.<sup>445</sup> Nigerian fifth ranking as at 2014 is necessitated by "... various attempts by the government to reduce gas flaring in the past, including introduction of penalties for the amount of gas flared by the producing companies."<sup>446</sup> Of which Nigeria coming to the fifth position in the 2014 global ranking of gas flaring, is an indication that is positive in the right direction meaning that there is a progress in curbing the menace of gas flaring.

This is the chronological survey of associated gas flaring legislation and regulation in the Nigerian crude oil exploratory activities. Prior to the year 1969, there was no regulation or legislation prohibiting or guiding associated gas flaring in Nigeria.<sup>447</sup> This unregulated measure is predicated on some variables that "Gas flaring started under British rule, with its double standards and Nigerian oil benefits multinational and the corrupt local elite."<sup>448</sup> However, 1969 saw the dawn of associated gas flaring legislation and regulation through Decree No. 51 of the 1969 Petroleum

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<sup>444</sup> U.S. Energy Information Administration (2016), Country Analysis Brief: Nigeria

<sup>445</sup> U.S. Energy Information Administration (2016), Country Analysis Brief: Nigeria, Ibid.

<sup>446</sup> Environmental Rights Action/Friends of the Earth Nigeria (2005), Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity, p31

<sup>447</sup> Environmental Rights Action/Friends of the Earth Nigeria (2005), Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity

<sup>448</sup> Environmental Rights Action/Friends of the Earth Nigeria (2005), Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity, pp6-9



Act.<sup>449</sup> The Petroleum Act basically regulates the crude oil and gas exploration and exploitation in the local communities of the Niger Delta.

The Decree No. 51 of the 1969 Petroleum Act under Sub-section 9(1) (b) (iii) dwells on regulations<sup>450</sup>, which empowers the Minister of Petroleum Resources to make regulations, to undertake matters concerning issuance of licenses to MNOCs and prevention of environmental pollutions.<sup>451</sup> In pursuance of the Sub-section 9 of the Petroleum Act (Drilling and Production) regulations, emanates Regulation 43 with the theme - *Utilisation of natural gas: feasibility study* - establishing that “not later than five years after the commencement of production from relevant area, the licensee or lessee shall submit to the minister, any feasibility study, programme or proposals that he may have for the utilization of any natural gas, whether associated with oil or not, which has been discovered in the relevant area.”<sup>452</sup>

Thereafter in 1979, Decree No. 51 was amended and strengthened, given rise to the promulgation of Decree No. 99 - the Associated Gas Reinjection Act of 1979. The Section 2(1) of the Decree No. 99 of 1979 with sub-heading ‘*Duty to submit detailed plans for implementation of gas re-injection*’ stated: “Not later than 1 October, 1980, every company producing oil and gas in Nigeria shall submit to the Minister detailed programmes and plans for either - (a) the implementation of programmes relating to the re-injection of all produced associated gas; or (b) schemes for the viable utilization of all produced associated gas.”<sup>453</sup>

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<sup>449</sup> Petroleum Act, Decree No. 51, 27<sup>th</sup> November, 1969

<sup>450</sup> Petroleum Act, Decree No. 51, 27<sup>th</sup> November, 1969, p334

<sup>451</sup> Petroleum Act, Decree No. 51, 27<sup>th</sup> November, 1969, Ibid.

<sup>452</sup> PETROLEUM (DRILLING AND PRODUCTION) REGULATIONS [L.N. 69 of 1969.] under section 9

<sup>453</sup> Associated Gas Re - injection Act, 28<sup>th</sup> September, 1979, p1

In furtherance to, Decree No.99 of the 1979 of the Petroleum Act as amended (37 years ago) in its Section 3 with sub-heading '*Flaring of gas to cease*' explicitly stated:

“(1) Subject to subsection (2) of this section, no company engaged in the production of oil or gas shall after 1 January, 1984 flare gas produced in association with oil without the permission in writing of the Minister.

(2) Where the Minister is satisfied after 1 January, 1984 that utilization or re-injection of the produced gas is not appropriate or feasible in a particular field or fields, he may issue a certificate in that respect to a company engaged in the production of oil or gas -

(a) specifying such terms and conditions, as he may at his discretion choose to impose, for the continued flaring of gas in the particular field or fields; or

(b) permitting the company to continue to flare gas in the particular field or fields if the company pays such sum as the Minister may from time to time prescribe for every 28.317 Standard cubic metre (SCM) of gas flared: Provided that, any payment due under this paragraph shall be made in the same manner and be subject to the same procedure as for the payment of royalties to the Federal Government by companies engaged in the production of oil.”<sup>454</sup>

Of course, Nigerian government attempt on curbing the practice of associated gas flaring in the Niger Delta was first banned in 1979<sup>455</sup> and totally made illegal

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<sup>454</sup> Associated Gas Re - injection Act, 28th September, 1979, pp1-2

<sup>455</sup> The Economist (2008), Nigeria: Another deadline goes up in flames.

thereafter in 1984.<sup>456</sup> However, “No legislation regulates the gas industry; penalties and procedures are irregularly enforced.”<sup>457</sup> Unequivocally, associated gas flare prohibition has been in principle without stringent enforcement of the legislated regulations by the Nigerian government; such that in 2016 (*see Figures 35 & 36 below*) there are empirical evidences of associated gas flaring in some nook and cranny of the Niger Delta region. The lack of enforcement of both the 1979 and 1984 deadlines popped-up a child of necessity in an amendment of the Associated Gas Reinjection Act of 1979 which culminates in instituting Decree No. 7 of 1985<sup>458</sup> as a form of “economic enforcement mechanism”<sup>459</sup> establishing monetization penalty depending on the standard cubic feet (SCF) of gas flared by any of the MNOCs. The pecuniary penalty fixed for each standard cubic feet of gas flared happens to be infinitesimal, thus giving the MNOCs leverage to paying the fine being imposed by the Nigerian government as against desisting from associated gas flaring.

The Nigerian government is required to impose a fine that must be far higher than money being saved by an illegal practice. If the waste deposit is 100\$/m<sup>3</sup>, a fine for illegal waste dumping must not be 1\$/m<sup>3</sup>. This is trivial economy. The Nigerian government should increase fines and enforce payments. While the payment made

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<sup>456</sup> Environmental Rights Action/Friends of the Earth Nigeria (2005), Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity.

<sup>457</sup> The Economist (2008), Nigeria: Another deadline goes up in flames, p2

<sup>458</sup> Otiotio Dennis (2013), Gas Flaring Regulation in the Oil and Gas Industry: A Comparative Analysis of Nigeria and Texas Regulations

<sup>459</sup> Otiotio Dennis (2013), Gas Flaring Regulation in the Oil and Gas Industry: A Comparative Analysis of Nigeria and Texas Regulations, p27

should be channelled to the Niger Delta region for sustainability and restoration initiatives.



**Figure 35: Shell's Gas Flare at its Kolo Creek Site, Bayelsa State in Nigeria's Niger Delta<sup>460</sup> causing both 'short term and long term environmental risks'.**

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<sup>460</sup> Aloja Israel, Environmental Rights Action/Friends of the Earth Nigeria [ERA/FoEN]



**Figure 36: The Burning oil flares. Gas flaring in the Niger Delta has caused tremendous damage to the environment and human health**<sup>461</sup>

In the year 2008, the Nigerian government and the MNOCs reached a consensus once again to outlaw the practice of associated gas flaring but were hampered by “...no controls on the behaviours of the companies and corporations handling the exploration of oil in the Niger Delta.”<sup>462</sup> Hitherto, there were high expectations to phase out the practice of associated gas flaring through the Petroleum Industry Bill (PIB) Act of 2012 which in its Section 6 themed “*Environment and Air Quality Emissions*” and 6 (2) establishes that “In accordance with the provisions of subsection (1) of this section, the Federal Government shall introduce and enforce integrated health, safety and environmental quality management systems with specific quality, effluent and emission targets for oil and gas related pollutants, without regard for fuel type such as gas, liquid or solid, in order to ensure

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<sup>461</sup> Glovatskiy/Shutterstock (2012), Environment and Disasters: Gas flares still a burning issue in the Niger Delta

<sup>462</sup> Ekeh Peter P. (2001), “Pictures And Images From Scenes Of Oil Spills, Oil Fires, Gas Flares And Other Environmental Damages In Nigeria's Niger Delta”, p1

compliance with international standards.”<sup>463</sup> But until 2017 the PIB is still with Nigerian National Assembly waiting to be enacted and legislated into law.

There exist numerous environmental legislative laws to curb the practice of associated gas flares since 1969 due to its negative effects and longstanding regulatory measures on oil spills and its subsequent clean-up due to its devastating impact. However, *why are there lack of stringent enforcement on the side of the Nigerian government and lack of compliance by the MNOCs - so as to respect, to protect and to fulfil the human rights to health, livelihoods and habitable environment of the local communities?* The following responses highlight some reasons for or why the status quo.

- The Nigerian government through its ***Nigerian National Petroleum Corporation*** (NNPC) is into joint venture (JV) partnership with all the big 5 MNOCs<sup>464</sup> - ***Shell, ExxonMobil, ChevronTexaco, Agip and TotalFinaElf*** - that are involved in the associated gas flaring and crude oil spillages. Nigerian government major source of revenue (58%) and export (95%) comes from crude oil as of 2014 fiscal year<sup>465</sup> and of which they are highly

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<sup>463</sup> Nigerian National Petroleum Corporation (2016), The Petroleum Industry Bill

<sup>464</sup> See footnote reference 49, pp16-17 for details of the NNPC joint-ventures with the oil majors.

<sup>465</sup> U.S. Energy Information Administration (2016), Country Analysis Brief: Nigeria

indebted and dependent on the MNOCs. Due to this empirical situation of the joint venture-ship and act of dependency, the Nigerian government finds it difficult and lacks the moral rectitude to monitor the wrongful act of crude oil exploratory activities of the MNOCs and “to enforce domestic and international environmental standards, which require safety measures and prompt oil spill response to prevent further environmental pollution and ecological devastation.”<sup>466</sup> By this very act, the Nigerian government breaches its obligation to protect and thereby violating the human rights to health and habitable environment of the local communities of the Niger Delta.

- ❑ The MNOCs complain of lack of infrastructures to capture the flared associated gas for economic utilization. Hence, they prefer paying the infinitesimal pecuniary penalties instead of curbing the practice.
- ❑ Some MNOCs blame their non-compliance to the security situation in the Niger Delta region, which has not given them the opportunity to provide infrastructures that would facilitate associated gas commercialization. This MNOCs’ claim seems to be fallacious.
- ❑ There exist over-sight functional conflicts of interest among the Nigerian government regulatory agencies - Department of Petroleum Resources (DPR)<sup>467</sup>, National Oil Spill Detection and Response Agency (NOSDRA)<sup>468</sup>

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<sup>466</sup> Konne, Barisere Rachel (2014), "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland", p183

<sup>467</sup> This is a Nigerian government agency that is within the confines of the Petroleum Resources Ministry and its core responsibilities has to do with the technical matters and to ensure compliance with petroleum industry regulations, process applications for the MNOCs’ licenses, leases and permits and simultaneously institutes and enforces environmental regulations (Awogbade et al. (2014), Oil and gas regulation in Nigeria: overview).



and National Environmental Standards and Regulations Enforcement Agency (NESREA).<sup>469</sup> Moreover, the aforementioned Nigerian government regulators lack sophisticated equipment required to perform their statutory functions and responsibilities, thus making them to rely heavily upon the available data from the MNOCs which are deceptive and lack reliability most of the times.

- ❑ Corruption among some Nigerian government regulatory agencies, self-interest and sabotage on the side of domestic bourgeoisies and Nigerian elites has impeded the stringent enforcement of the various legislative measures.

Sequel to the aforementioned responses, it should be noted that the State of Nigeria:

- a. Has an obligation against the local communities of the Niger Delta.
- b. Made joint ventures (JV) partnership with the MNOCs and does profit from the JV.
- c. Prohibits gas flaring and is being backed up by the law of the Federal Republic of Nigeria - an implication of (a).
- d. Does not enforce the law prohibiting the flaring of gas - an implication of (b).

Consequent upon, the question is - *who can force the State of Nigeria to enforce the law against gas flaring?*

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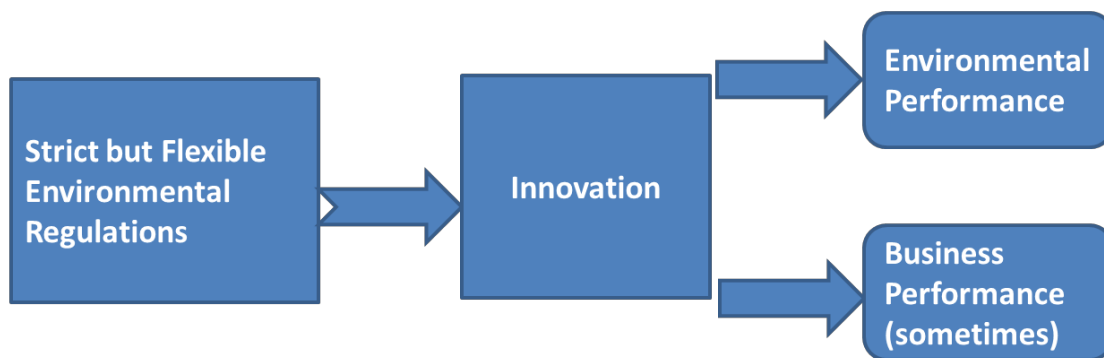
<sup>468</sup> It is a Nigerian government agency whose responsibility is to regulate how waste and effluent discharges due to oil exploratory and production activities are remedied. (Awogbade et al. (2014), Oil and gas regulation in Nigeria: overview).

<sup>469</sup> It is equally a Nigerian government agency with the responsibility to prevent the emission of harmful substances, preservation and maintenance of public health and welfare. (Awogbade et al. (2014), Oil and gas regulation in Nigeria: overview).

1. The morally correct answer is - the people i.e. the local communities of the Niger Delta.
2. The economic answer is - the MNOCs themselves.

The illustrated paradigm seems to corroborate with the so-called Porter Hypothesis (PH).<sup>470</sup> Porter and van der Linde gave a practical illustration (*see Table 6 below*) of their conception on how properly guided environmental regulations could not only yield to innovations but simultaneously would take care of the regulatory cost and enhance corporate performance.

**Table 6: Schematic Representation of the Porter Hypothesis**<sup>471</sup>



Be it as it maybe, Porter Hypothesis does induce that the MNOCs are obliged legally and morally to obey the law curbing gas flaring and through this compliance, an innovation would emanate that would enhance the MNOCs' environmental and corporate performances. Moreover, the MNOCs have the capacity to build infrastructure themselves. Porter Hypothesis adds a prudential

<sup>470</sup> Ambec Stefan et al. (2011), "The Porter Hypothesis at 20: Can Environmental Regulation Enhance Innovation and Competitiveness?" in his work describes PH thus: "pollution is often a waste of resources and that a reduction in pollution may lead to an improvement in the productivity with which resources are used. More stringent but properly designed environmental regulations (in particular, market-based instrument such as taxes or cap-and-trade emissions allowances) can "trigger innovation [broadly defined] that may partially or more than fully offset the costs of complying with them" in some instances.", p2

<sup>471</sup> Ambec Stefan et al. (2011), "The Porter Hypothesis at 20: Can Environmental Regulation Enhance Innovation and Competitiveness?", p3

reason of enlightened self-interest in regulation or follows the law even if the state does not enforce the law.

The government of Nigeria should realise that the right to health and the right to a healthy environment are interwoven and intertwined. The intermingling of the right to health and the right to a habitable environment was explicit in 2001, through a legal tussle that was instituted on behalf of the Ogoni people by SERAC a non-governmental organization against the Nigerian government for causing environmental degradation and health issues in her joint venture crude oil exploratory activities with Shell before the African Commission on Human and Peoples Rights. In the said legal matter, “the Commission highlighted the Nigerian government’s breaches of the obligations to respect, protect, and fulfil the right to health and the right to a healthy environment under the African Charter.”<sup>472</sup>

Hence be it as it may be, in order to avert further crude oil exploration and extraction impacts on the livelihoods, health and habitable environment of the Niger Delta inhabitants, the Nigerian government is highly obliged to respect the fundamental human rights of the Niger Delta citizens due to the fact that under the ICESCR international legal framework, states are required to “refrain from interfering directly or indirectly with the enjoyment of the right...”<sup>473</sup> i.e. right to health. Moreover, the Nigerian government is duty bound to protect the local communities of the Niger Delta “against political, economic and social

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<sup>472</sup> Konne, Barisere Rachel (2014), "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland," p189

<sup>473</sup> Quoted in Konne, Barisere Rachel (2014), "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland," p187

interferences.”<sup>474</sup> This is because “the obligation to protect imposes an affirmative duty on states to prevent third parties, including corporations, from interfering with the right to a healthy environment and hence, the right to health.”<sup>475</sup>

As such, the Nigerian government need to come up with stringent legislative measures against outlawing associated gas flaring and oil spills clean-up regulations that the MNOCs must abide with in the course of their crude oil exploratory activities in a way that respects the right to health and habitable environment of the local communities of the Niger Delta. For the Nigerian government failure to protect and regulate the exploratory acts of the MNOCs against the Niger Delta region constitutes a breach of obligation to protect, to respect, to fulfil and is gross violation of the citizens’ human right to health, right to livelihood and right to a habitable environment. At the same time, the Nigerian government is obliged to “fulfil the rights and freedoms it freely undertook under the various human rights regimes.”<sup>476</sup> This duty and responsibility to fulfil by the Nigerian government requires it to “take positive measures that enable and assist individuals and communities to enjoy the right to health.”<sup>477</sup>

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<sup>474</sup> Environmental Rights Action/Friends of the Earth Nigeria (2005), *Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity*, p28

<sup>475</sup> Konne, Barisere Rachel (2014,) "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland," p187

<sup>476</sup> Konne, Barisere Rachel (2014), "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland," Ibid.

<sup>477</sup> A quote in Konne, Barisere Rachel (2014), "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland," p187

### 5.5.3 Issue of Conflicts

The Nigerian Petroleum Act of 1969 was drafted in consonant with pre-colonial legal frameworks of Petroleum Ordinance of 1889, Mineral Regulation (Oil) Ordinances of 1907 - both has to do with the development of non-renewable resources<sup>478</sup> and 1914 Mineral Act<sup>479</sup> - which established the “vesting of petroleum in the state.”<sup>480</sup> Sequel to these, the Nigerian constitution pronounced “... all minerals, oil, and gas belong to the Nigerian federal government, which negotiates the terms of oil production with international oil companies.”<sup>481</sup> Hence, the emergence of more MNOCs like ExxonMobil (1955), Tenneco (1960) and Gulf (1965) outside the pre-existence of Shell into the crude oil exploration and exploitation activities in the Niger Delta region witnessed the rate of increase of environmental injustice and human rights abuse.

The Nigerian government failure in its duty of providing basic social amenities that would enhance quality of life - (economic quality, health care, housing, human rights, environmental protection and democracy<sup>482</sup>) - from the economic dividends of the region’s natural endowed resources to the benefits of the local communities of the Niger Delta “in spite of its phenomenal contribution to national wealth...”<sup>483</sup>

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<sup>478</sup> Omorogbe, Y. (2001), Oil and gas law in Nigeria. Lagos, Nigeria.

<sup>479</sup> Omoweh, D.O. (2006), Shell Petroleum Development Company, the state and underdevelopment of Nigeria’s Niger Delta: A Study in environmental degradation.

<sup>480</sup> Petroleum Act, Decree No. 51, 27th November, 1969, p330

<sup>481</sup> Manby Bronwen (1999), The Price of Oil: Corporate Responsibility and Human Rights Violations ..., pp6-7

<sup>482</sup> Bauler Tom (2013), “Environmental (in)justice”

<sup>483</sup> A quote in Abraham Nath M. (2011), Functional educational, militancy and youth restiveness in Nigeria’s Niger Delta: The place of multinational oil corporations (MNOCs), p445

and its inability to regulate the wrongful acts of crude oil exploratory activities of the MNOCs are acting as the catalyst promoting the incessant inter-intra conflicts in the region. The insensitivity of the Nigerian government and the MNOCs to the precarious ecological degradation of the local communities' environment happens to be causing conflicts in the region. The cause of these inter-intra hostilities boils down to the question: *why should the local communities of the Niger Delta suffer from environmental pollution and harmful consequences of crude oil exploration and exploitation because of the greediness and selfishness of the MNOCs and the Nigerian government?* This question is predicated on the assumption that no one should suffer from the greediness and selfishness of others. *But how can one change matters and how could one break the "devils circle"?* I am doubtful whether moral philosophy (ethics) could do these i.e. providing adequate answers for the posited questions. The rationale for this is that - the power of moral reasoning is insufficient - necessitating us to face ethical limitations herein.

From the ongoing, it could be descriptively claimed that the Nigerian Petroleum Act of 1969 was "designed to strengthen the instrument of oppression, suppression, marginalization, dispossession, deprivation, and disempowerment of the Niger Delta people by the state in collaboration with its allies, the multi-national oil corporations, and the local bourgeoisie."<sup>484</sup> Subsequently, the Nigerian government lack of will power in regulating and breach in protecting the Niger Delta citizens from the crude oil exploration and extraction activities yielded to severe environmental injustice, human rights abuse and inequality in the region. Thereby fuelling corruption, underdevelopment and impoverishment with their resultant offshoot of incessant conflict and hostilities vis-à-vis youth restiveness.

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<sup>484</sup> Ejumudo, K.B.O. (2014), "Youth Restiveness in the Niger Delta: A Critical Discourse", p3

Environmental injustice and human rights abuse are the root causes of hostilities in the oil-rich Niger Delta. No wonder in the year 2006 that MEND - (*see footnote 83 for details on MEND*) - pronounced and proclaimed to the Nigerian government that “there will be no rest for the Nigerian government and collaborating oil companies until all the stolen oil is returned to its rightful owners with compensation for all the years of theft and slavery.”<sup>485</sup> Actually, these are interesting demands by MEND but it sounds too ideal and utopian and moreover, someone may ask - *who are the ‘rightful owners’ meant by MEND?* However, suffice it to note that since then, there has been incessant violence in the Niger Delta till now. As such, it is the duty and obligatory responsibility of the Nigerian government to have a profound comprehension of the region’s problem as against opting for short-term interventionist approaches via the establishments of some institutions such as: Niger Delta Basin Development Authority (NDBDA) in 1959, Oil Mineral Producing Areas Development Commission (OMPADEC) of 1992, Niger Delta Development Commission (NDDC) established in 2000 and Ministry of Niger Delta Affairs (MNDA) created on 2008, for these aforementioned institutions have failed woefully to facilitate development and curb incessant conflicts in the local communities of the Niger Delta.

The issues of adaptation, decontamination, compensation, restoration and rehabilitation should be the paramount agenda of the Nigerian government, for it would tackle the issues of crude oil pollutions, poverty, inequality vis-à-vis the

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<sup>485</sup> International Crisis Group (2006), *The Swamps of Insurgency: Nigeria’s Delta Unrest*, p20



“holistic issues of demobilisation and development needed to achieve peace”<sup>486</sup> in the region, for “where there is no justice, there can never be peace.”<sup>487</sup>

### 5.6 Multinational Corporations Responsibility

Indisputably the MNOCs are very powerful actors<sup>488</sup> in Nigeria. MNOCs’ presence in Nigeria has witnessed tremendous and numerous considerable positive economic impact, empowerment and enhanced social welfare.<sup>489</sup> The ubiquitous presence of the MNOCs has generally promoted Nigerian technological innovations, encourage an increase in foreign direct investments (FDI), investment capitals and trade flows.

But the MNOCs’ crude oil exploratory operations have been potentially criticised against “factors in the societal environment.”<sup>490</sup> The existence of the MNOCs have been characterised by ethical challenges, human rights abuse and harmful impacts on the ecosystems of the region. The issues of environmental injustice and human rights abuse have been a recurrence. The ethical dimensions of the MNOCs crude oil exploratory activities on the natural environment, marine ecosystem, biodiversity and terrestrial habitants seems not to be environmental sustainable.

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<sup>486</sup> Newsom Chris (2011), “Conflict in the Niger Delta, More Than a Local Affair”, p1

<sup>487</sup> Oviasuyi, P.O. and Uwadiae Jim (2010), “The Dilemma of Niger-Delta Region as Oil Producing States of Nigeria”, p110

<sup>488</sup> J. Aguilera-Caracuel et al. (2015), “Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries”, p437

<sup>489</sup> J. Aguilera-Caracuel et al. (2015), “Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries”, Ibid.

<sup>490</sup> Carroll, Archie B. and Buchholtz, Ann K. (2006), “Corporate citizenship, social responsibility, responsiveness and performance”, p31

The MNOCs' responsibility in the Niger Delta demands a recapitulation of the 'Protect, Respect and Fulfil' triadic framework and the guiding principles which call for "corporate responsibility to respect human rights."<sup>491</sup> Moreover, that the MNOCs operating in the resource-rich "should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved."<sup>492</sup> This becomes an obligatory sine qua non due to the fact that "the corporate responsibility to respect human rights is one of the commitments companies undertake in joining the UN Global Compact."<sup>493</sup> The UN Global Compact is a corporate sustainability initiative of the United Nations. It "is a leadership platform for the development, implementation and disclosure of responsible and sustainable corporate policies and practices...it seeks to align business operations and strategies everywhere with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption."<sup>494</sup> The Royal Dutch Shell one of the MNOCs operating in the resource-rich Niger Delta is a founding member of the UN Global Compact agenda (*see footnote references 696 and 697*).

It is the duty of the MNOCs to realise the need for corporate responsibility to respect the human rights of the local communities. This becomes imperative in such a country - (like Nigeria) - where "human rights laws are poorly enforced"<sup>495</sup> and

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<sup>491</sup> Ruggie, J. G., (2013), *Just Business: Multinational Corporations and Human Rights*, p82

<sup>492</sup> Ruggie, J. G., (2013), *Just Business: Multinational Corporations and Human Rights*, *ibid.*

<sup>493</sup> Ruggie, J. G., (2013), *Just Business: Multinational Corporations and Human Rights*, p92

<sup>494</sup> The Global Compact (2014), "Corporate Sustainability in The World Economy", p2

<sup>495</sup> Ruggie, J. G., (2013), *Just Business: Multinational Corporations and Human Rights*, p92

“lax environmental and social regulations”<sup>496</sup> are the order of the day. The MNOCs “are expected to obey the law, even if it is not enforced, and to respect the principles of relevant international instruments where national law is absent.”<sup>497</sup> The MNOCs are not expected to be adopting the principle of “when in Rome, do as the romans do” instead they are expected to uphold the principle of “good oil field practices.”<sup>498</sup> The MNOCs are required to adopt global standards, irrespective of Nigerian standard by putting into their business practices what each MNOC stated in their mission statements. If they are globally operating companies, they are equally duty bound to have global standards of business operation. This is the case for business ethics.

Be that as it may, the MNOCs operating in the Niger Delta need to know that they have both moral and “legal duties in relation to human rights.”<sup>499</sup> Thus, they are expected to respect the legal norms of the host country and home states of the Niger Delta, being the custodians of the legal license to operate. Simultaneously they are required to respect the social norms of the local communities, who are the custodian of the social license to operate so as to “sustain their legal license to operate.”<sup>500</sup> This is because in the course of business enterprise “noncompliance

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<sup>496</sup> J. Aguilera-Caracuel et al. (2015), “Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries”, p437

<sup>497</sup> Ruggie, J. G., (2013), *Just Business: Multinational Corporations and Human Rights*, p92. (ExxonMobil claimed to abide with vis-à-vis putting into business practices this Ruggie’s postulation - see footnote reference 757).

<sup>498</sup> Konne, Barisere Rachel (2014), "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland," p194

<sup>499</sup> Ruggie, J. G., (2013), *Just Business: Multinational Corporations and Human Rights*, p90

<sup>500</sup> Ruggie, J. G., (2013), *Just Business: Multinational Corporations and Human Rights*, Ibid.

with social norms can affect a company's social license to operate."<sup>501</sup> Shell lost its social license to operate and was forced out of Ogoni-land in 1993 due to their wrongful act of excessive crude oil spills and incessant gas flares in Ogoni-land - (negligence to respect human rights of Ogoni-land) - thereby damaging the ecosystems of Ogoni-land and subjecting the Ogoni people to hazardous long-term health risks and various degrees of environmental harms. Shell did not recognize "that a stable social, environmental, and political environment ensures profitable business."<sup>502</sup>

The MNOCs' crude oil exploratory activities in the oil-rich Niger Delta need not to be inclined to the neoclassic thesis that lays claim that "The social responsibility of business is to increase its profits."<sup>503</sup> This idea for the business executives to shun social responsibility initiatives, to maximize profit and to create as much wealth as necessary only for the stockholders i.e. the owners of the business without reference to the stakeholders is obsolete in this modern era. Rather the MNOCs need to abide by the Kantian moral duty - (the deontological ethics) - stated in the stakeholder theory of the modern capitalism otherwise known as Kantian capitalism.<sup>504</sup>

Kantian capitalism propounded some deontology namely - hypothetical imperative and categorical imperative. Kantian hypothetical imperative is being guided by

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<sup>501</sup> Ruggie, J. G., (2013), *Just Business: Multinational Corporations and Human Rights*, p91

<sup>502</sup> J. Aguilera-Caracuel et al. (2015), "Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries", p440

<sup>503</sup> Friedman Milton (1970), *A Friedman doctrine - "The Social Responsibility of Business Is to Increase Its Profits"* p1

<sup>504</sup> William M. Evan and R. Edward Freeman (1993), "A stakeholder theory of the modern corporation: Kantian capitalism"

conditional clauses or If-clauses, whereas his categorical imperative is being guided by pure reason. In the course of discussing multinational corporations' responsibility in the Niger Delta, Kantian categorical imperative seems to be quite *ad rem* and of significant importance. In his created three categorical imperatives, which he earmarked as the basic tenets of ethics; Kant explicitly stipulates the face and outlook "of what a business corporation ought to look like if it were organized as a moral firm."<sup>505</sup> The three formulated categorical imperatives which form the fundamentals of Kantian deontology are "1. Act only on that maxim by which you can at the same time will that it should become a universal law. 2. Always treat the humanity in a person as an end, and never as a means merely. 3. So act as if you were a member of an ideal kingdom of ends in which you were both subject and sovereign at the same time."<sup>506</sup>

A correlation of Kantian first formulated categorical imperative with the MNOCs' business activities in the Niger Delta triggers the question - *would the business principles, strategies and practices being adopted by the MNOCs withstand as a global good practices and legal standards outside the territorial parameters of the Niger Delta in particular and sub-Saharan Africa entirely?* In providing an answer to the question posited, Kantian categorical imperative has this response for the MNOCs "Unless the principle of your action can be universalized, to make an exception for yourself is immoral."<sup>507</sup> The MNOCs has the moral responsibility to adopt the principle of good will in the course of their business operations in the Niger Delta and Kant termed it the highest good. According to Kantian moral philosophy, for the MNOCs "To act from a good will is to act from duty...Persons

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<sup>505</sup> Bowie, N. E. (2015), Kantian Capitalism. Wiley Encyclopaedia of Management 2:1–3.

<sup>506</sup> Bowie, N. E. (1999), A Kantian approach to business ethics, p4

<sup>507</sup> Bowie, N. E. (1999), A Kantian approach to business ethics, p6

of good will do their duty because it is their duty and for no reason.”<sup>508</sup> Thus, the MNOCs are expected to possess the good will, to act from duty, out of enlightened self-interest, to make great improvement and never to abuse the local communities’ human rights to health, livelihood and good habitable environment.

Second Kantian categorical imperative is built within the realm of “respect for persons”<sup>509</sup> proposition. Kant’s moral philosophy stipulates that human beings have dignity and should not be monetized or quantify with pecuniary dividend. Kantian “respect for persons” argument infers “that any business practice that puts money on a par with people is immoral.”<sup>510</sup> Kantian second categorical imperative corroborate the fundamental thought behind Nussbaum capabilities approach that is anchored on the idea of Human dignity. In line with Kantian ethics for business practices, the MNOCs cannot use the inhabitants of the Niger Delta to satisfy their own economic interest and gain; instead the MNOCs should “Always treat the humanity in a person as an end and never as a means merely.”<sup>511</sup> The MNOCs’ responsibility ought to be built on the principle of Kantian idea of positive freedom, which he said that it “is the freedom to develop one’s human capacities...meaning developing one’s rational and moral capacities.”<sup>512</sup> Kantian ethics on business activities made us to understand that in the course of human interaction and MNOCs’ business practices in the local communities, greater effort should be employed not “to diminish or inhibit these uniquely human capacities.”<sup>513</sup> Kantian second categorical imperative earmarked two important factors in business relationship and of which if imbibed by MNOCs [it] would alter in a positive

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<sup>508</sup> Frederick, Robert (1999), A companion to business ethics, pp3-4

<sup>509</sup> Bowie, N. E. (2015), Kantian Capitalism. Wiley Encyclopaedia of Management 2:1–3.

<sup>510</sup> Bowie, N. E. (1999), A Kantian approach to business ethics, p3

<sup>511</sup> Bowie, N. E. (1999), A Kantian approach to business ethics, p7

<sup>512</sup> Bowie, N. E. (1999), A Kantian approach to business ethics, p8

<sup>513</sup> Bowie, N. E. (1999), A Kantian approach to business ethics, Ibid.

direction the nature of business practices in the Niger Delta region. These two important factors are “First, it requires that people in a business relationship not be used, i.e. they not be coerced or deceived. Second, it means that business organizations and business practices should be arranged so that they contribute to the development of human rational and moral capacities, rather than inhibit the development of these capacities.”<sup>514</sup>

Kantian third formulated categorical imperative is equally quite relevant and significant as it concerns the MNOCs’ responsibility in the oil-rich Niger Delta. In the said categorical imperative Kant stated that “Organizations are composed of persons and, given the nature of persons, organizational structures must treat the humanity in persons with dignity and respect (as an end).”<sup>515</sup> According to Kant, the MNOCs are to consider their business corporations as a moral community. As a moral community, an all-inclusive rules and regulations governing the MNOCs should be endorsed and accepted by all the stakeholders involved. It is based on this all-inclusive endorsement and acceptability that Kant noted “that everyone is both subject and sovereign with respect to the rules that govern them.”<sup>516</sup> According to Kantian third categorical imperative, the following seven principles are required for an ‘organizational design of a business’ and they are: “1. The business firm should consider the interests of all the affected stakeholders in any decision it makes. 2. The firm should have those affected by the firm’s rules and policies participate in the determination of those rules and policies before they are implemented. 3. It should not be the case that, for all decisions, the interests of one stakeholder automatically take priority. 4. When a situation arises where it appears that the interest of one set of stakeholders must be subordinated to the interests of

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<sup>514</sup> Bowie, N. E. (1999), A Kantian approach to business ethics, Ibid.

<sup>515</sup> Bowie, N. E. (1999), A Kantian approach to business ethics, p10

<sup>516</sup> Bowie, N. E. (1999), A Kantian approach to business ethics, Ibid.

another set of stakeholders, that decision should not be made solely on the grounds that there is a greater number of a stakeholder in one group than in another. 5. No business rule or practice can be adopted which is inconsistent with the first two formulations of the categorical imperative. 6. Every profit-making firm has a limited, but genuine, duty of beneficence. 7. Every business firm must establish procedures designed to ensure that relations among stakeholders are governed by rules of justice.”<sup>517</sup> Kantian third categorical imperative is a forerunner and has much emphasis on stakeholder theory and corporate social responsibility. Generally speaking, Kantian moral philosophy is an epitome of unique significance for the MNOCs’ business practices in the resource-rich Niger Delta.

Kantian capitalism has a normative moral claim that the local communities of the Niger Delta as stakeholders in the crude oil exploratory activities “has a right not to be treated as a means to some end, and therefore must participate in determining the future direction of the firm in which they have a stake”<sup>518</sup> Simultaneously, the MNOCs could contribute to the local communities’ social reform, improvement and maximise welfare if the sacredness or value of each person in the locality of the Niger Delta should be treated and taken as an end. It is worth noting that “it is morally wrong, socially unacceptable and politically ill-conceived to use”<sup>519</sup> the rural dwellers of the Niger Delta as a means to an end by the MNOCs joint venture business transactions with the Nigerian government.

In the oil and gas explorations business enterprise in the Niger Delta, the local communities are stakeholders. Defining what (who) a stakeholder is becomes ad rem at this point. Freeman states, “A stakeholder in an organization is any group or

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<sup>517</sup> Bowie, N. E. (1999), *A Kantian approach to business ethics*, p10

<sup>518</sup> Vilcox, Mary W.; Mohan, Thomas O. (2007), *Contemporary issues in business ethics*, p32

<sup>519</sup> Esikot I. F. and Akpan M (2013), “The Niger Delta Crisis in Nigeria: Some Moral Lessons”, p12



individual who can affect or is affected by the achievement of the organization's objectives."<sup>520</sup> While Boutelle defined stakeholders as "individuals or organizations who stand to gain or lose from the success or failure of a system."<sup>521</sup> Buchholz R.A. and Rosenthal S.B. in Frederick (Ed) said, "A stakeholder...is an individual or group that has some kind of stake in what business does and may also affect the organization in some fashion."<sup>522</sup> The concept of stakeholder is centred on the Principle of Corporate Rights (PCR) - "The corporation and its managers may not violate the legitimate rights of others to determine their own future"<sup>523</sup> and on the Principle of Corporate Effects (PCE) - "the corporation and its managers are responsible for the effects of their actions on others."<sup>524</sup> Thus, the local communities are expected to be treated with dignity - the basic thought behind Martha Nussbaum capabilities approach. Their human rights must be respected by the MNOCs and they must not be treated merely as means to an end. The MNOCs are expected to be good corporate citizens and "...cannot expose the community to unreasonable hazards in the form of pollution, toxic waste, and so on."<sup>525</sup> If the MNOCs should abide by the Kantian deontological claim, it subsequently implies that the framework to '*Protect, Respect and Fulfil*' the human rights, the autonomy and the subjective value of the Niger Deltas individuality would be uphold.

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<sup>520</sup> Freeman, R.E. (1984), Strategic Management: A Stakeholder Approach, p46

<sup>521</sup> Boutelle, Jonathan (2004), 'Understanding Organizational Stakeholders for Design Successes, boxes and arrows', p1

<sup>522</sup> Frederick, Robert E. ed. (2002), A Companion to Business Ethics, p 315

<sup>523</sup> Chryssides, George D and Kaler, John H. (1993), An Introduction to Business Ethics, p 259

<sup>524</sup> Chryssides, George D and Kaler, John H. (1993), An Introduction to Business Ethics, ibid.

<sup>525</sup> William M. Evan and R. Edward Freeman (1993), "A stakeholder theory of the modern corporation: Kantian capitalism", p261

The course of the MNOCs adherence to the corporate responsibility to respect the human rights of the Niger Delta has the potentiality to enhance economic and sustainable development in the region and concurrently improve the MNOCs' financial performance. Moreover, the MNOCs' commitment and obligation 'to respect, to protect and to fulfil' the human rights to health, to livelihoods and to a healthy environment - known as social responsibility by business<sup>526</sup> - of the local communities ought to increase their chances for corporate responsiveness to stakeholders<sup>527</sup>, corporate social performance (CSP) and financial performance (CFP).<sup>528</sup> These business practices invariably would tag them as potential corporate citizenship which "is related to firm's role in assuming social responsibility"<sup>529</sup> or "an inclusive reference to social responsibility issues."<sup>530</sup>

In as much as most of the developmental initiatives in the oil-rich Niger Delta should not be laid on the door steps of the MNOCs, however, the MNOCs "can undertake voluntary activities to promote and pursue social goals that extend

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<sup>526</sup> Carroll, Archie B. and Buchholtz, Ann K. (2006), "Corporate citizenship, social responsibility, responsiveness and performance", p30

<sup>527</sup> Carroll, Archie B. and Buchholtz, Ann K. (2006), "Corporate citizenship, social responsibility, responsiveness and performance", p31

<sup>528</sup> J. Aguilera-Caracuel et al. (2015), "Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries", p437

<sup>529</sup> J. Aguilera-Caracuel et al. (2015), "Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries", p440

<sup>530</sup> Carroll, Archie B. and Buchholtz, Ann K. (2006), "Corporate citizenship, social responsibility, responsiveness and performance", p29

beyond their legal obligations to meet the demands of their stakeholders.”<sup>531</sup> Of which, an implementation of such philanthropic gestures could significantly skyrocket the MNOCs’ corporate financial performance<sup>532</sup> The MNOCs are to be considering the business impact of their crude oil exploratory activities in the Niger Delta environment. This is based on the ethical implications of Kantian capitalism, for Kantian capitalism will not maximize profit at the expense of stakeholders’ rightful claims. MNOCs are to be protecting the welfare of the Niger Deltas through “the avoidance of negative impacts”<sup>533</sup> of their crude oil exploratory activities. At the same time, the MNOCs are expected to improve the welfare of the local communities by “the creation of positive benefits for society.”<sup>534</sup> This is based on the normative claim “that business must pursue profits but that business wealth should be used for the benefit of the community. Philanthropy, therefore, became the most efficient means of using corporate wealth for public benefit.”<sup>535</sup>

We shall review the MNOCs’ responsibilities in four spheres namely - Economic Responsibility, Legal Responsibility, Ethical Responsibility and Philanthropic Responsibility. This is because “...social responsibility of business encompasses

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<sup>531</sup> J. Aguilera-Caracuel et al. (2015), “Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries”, p438

<sup>532</sup> J. Aguilera-Caracuel et al. (2015), “Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries”

<sup>533</sup> Carroll, Archie B. and Buchholtz, Ann K. (2006), “Corporate citizenship, social responsibility, responsiveness and performance”, p34

<sup>534</sup> Carroll, Archie B. and Buchholtz, Ann K. (2006), “Corporate citizenship, social responsibility, responsiveness and performance”, p34

<sup>535</sup> Carroll, Archie B. and Buchholtz, Ann K. (2006), “Corporate citizenship, social responsibility, responsiveness and performance”, p33

the economic, legal, ethical, and discretionary (philanthropic) expectations that society has of organizations at a given point in time.”<sup>536</sup> Meanwhile, conceptual clarifications of - Corporate Citizenship and Corporate Social Responsibility (CSR) - would be relevant to what is being discussed.

❑ **Corporate Citizenship:** The concept of corporate citizenship encompasses the overall issues of social responsibility of business or corporations. It has broad and narrow definitions; however we shall inclined more to its broad viewpoint. According to Charles J. Fombrum, corporate citizenship is a composition of three viewpoints “a reflection of shared moral and ethical principles, a vehicle for integrating individuals into the communities in which they work, and a form of enlightened self-interest that balances all stakeholders’ claims and enhances a company’s long-term value.”<sup>537</sup> Whereas Kimberly S. Davenports conceived corporate citizenship as “a commitment to ethical business behaviour and balancing the needs of stakeholders, while working to protect the environment.”<sup>538</sup> Corporate citizenship for Archie B. Carroll is the intertwining of the four - economic, legal, ethical, and philanthropic responsibilities and posited thus: “just as

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<sup>536</sup> A quote cited in Carroll, Archie B. and Buchholtz, Ann K. (2006), “Corporate citizenship, social responsibility, responsiveness and performance”, p35

<sup>537</sup> A quotation cited in Carroll, Archie B. and Buchholtz, Ann K. (2006), “Corporate citizenship, social responsibility, responsiveness and performance”, p54

<sup>538</sup> A quotation cited in Carroll, Archie B. and Buchholtz, Ann K. (2006), “Corporate citizenship, social responsibility, responsiveness and performance”, Ibid.

private citizens are expected to fulfil these responsibilities, companies are as well.”<sup>539</sup>

- ❑ **Corporate Social Responsibility:** Series of corporate social responsibility definitions abound. However, I would proffer CSR definitions within the Nigerian context where CSR is being seen from the prism of corporate philanthropy. A business executive of a consulting firm in Nigeria conceived CSR as “The corporate act of giving back to the immediate and wider community in which organisations carry out their business in a manner that is meaningful and valuable and relevant to that community.”<sup>540</sup> A senior executive of an oil and gas company stated thus: “[CSR] is a way for the companies to reach out to their host communities by positively impacting on their environment.”<sup>541</sup> While a bank executive sees CSR as “... a way of saying ‘thank you’ to the environment in which they [sic] operate and a way of also showing a sense of belonging to the society at large.”<sup>542</sup>

### 5.6.1 MNOCs Economic Responsibility

This is the bedrock of the MNOCs oil and gas exploration business enterprise in the local communities of the Niger Delta. Economic responsibility is being required of the MNOCs business enterprise in the Niger Delta. J. Aguilera-Caracuel et al. in

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<sup>539</sup> A quotation cited in Carroll, Archie B. and Buchholtz, Ann K. (2006), “Corporate citizenship, social responsibility, responsiveness and performance”, *Ibid.*

<sup>540</sup> A quotation cited in Amaeshi Kenneth M. et al. (2006), *Corporate Social Responsibility (CSR) in Nigeria: western mimicry or indigenous practices?*, pp22-23

<sup>541</sup> A quotation cited in Amaeshi Kenneth M. et al. (2006), *Corporate Social Responsibility (CSR) in Nigeria: western mimicry or indigenous practices?*, p23

<sup>542</sup> A quotation cited in Amaeshi Kenneth M. et al. (2006), *Corporate Social Responsibility (CSR) in Nigeria: western mimicry or indigenous practices?*, *Ibid.*

their work on corporate citizenship conceived and classified economic responsibility of corporations to be in the “equivalent view perspective”<sup>543</sup> that considers corporate citizenship to be on an equal footing with corporate social responsibility.<sup>544</sup> Economic responsibility of the MNOCs is an absolute necessity for their business responsibility. No wonder Carroll and Buchholtz in justifying the economic responsibility of business corporations -MNOCs inclusive - require them to “Be profitable. Maximize sales, minimize costs. Make sound strategic decisions. Be attentive to dividend policy. Provide investors with adequate and attractive returns on their investments.”<sup>545</sup>

Carroll and Buchholtz still in their work made us to understand that the economic responsibility of corporations is being classified under social responsibility, although that it sounds incomprehensible but that in actual fact that is where it belongs. Furthermore, they used the United States social system that referred business as an economic institution to justify their claims on the economic responsibility of corporations by stating that business is “an institution whose orientation is to produce goods and services that society wants and to sell them at fair prices - prices that society thinks represent the true value of the goods and

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<sup>543</sup> J. Aguilera-Caracuel et al. (2015), “Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries”, p440

<sup>544</sup> J. Aguilera-Caracuel et al. (2015), “Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries”, p441

<sup>545</sup> Carroll, Archie B. and Buchholtz, Ann K. (2006), “Corporate citizenship, social responsibility, responsiveness and performance”, p38

services delivered and that provide business with profits adequate to ensure its perpetuation and growth and to reward its investors.”<sup>546</sup>

The MNOCs as an economic and business corporation is required by law to make profit for the stockholders for the sustenance of their investments, to make sales as much as possible without making a loss, to be in compliance with the rule of good business practices and moreover not to maximize profit and employ business as usual principle that would be to the detriment of the Niger Delta region who are the custodian of their social license to operate. The idea of MNOCs pursuing their economic responsibility and simultaneously taking into consideration the social and environmental responsibilities of the local communities is what Andrew Carnegie in his book - *The Gospel of Wealth* originally published in 1889 called “*progressive business ideology*”, where he stated “that business must pursue profits but that business wealth should be used for the benefit of the community.”<sup>547</sup>

### 5.6.2 MNOCs Legal Responsibility

Archie B. Carroll in his ‘pyramid of corporate social responsibility’ noted that the legal responsibility of business firms has to comply with the law of the society, for the societal laws define what is morally wrong and right.<sup>548</sup> Of which legal responsibility is being required of MNOCs in the Niger Delta. In his famous theory of profit maximization, Milton Friedman requires the business executives to maximize profits and serve the interest of the shareholders and concurrently obliges

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<sup>546</sup> Carroll, Archie B. and Buchholtz, Ann K. (2006), “Corporate citizenship, social responsibility, responsiveness and performance”, p35

<sup>547</sup> Cited in Carroll, Archie B. and Buchholtz, Ann K. (2006), “Corporate citizenship, social responsibility, responsiveness and performance”, p33

<sup>548</sup> Archie B. Carroll (1991), “The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders,” *Business Horizons* (July-August 1991), 42.

the business executives on the need to be “conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom.”<sup>549</sup> In fact, for Milton Friedman the pursuance of profit for the stockholders should be done within the ambient of ethical behaviour and environmental laws of the land. Another review on legal responsibility required business firms to “comply with laws and regulations at local, national, and international levels to avoid penalties and legal sanctions.”<sup>550</sup> Legally the MNOCs operating in the Niger Delta have no excuse not to comply with the entire legal and social norms domicile in Nigeria. Whereby the MNOCs fail to comply with the legal and social norms then is left for the Nigerian government to adjudicate and mandate the MNOCs to observe well “contemporary business practices.”<sup>551</sup>

### 5.6.3 MNOCs Ethical Responsibility

Moral responsibility is a voluntary corporate action that local communities of the Niger Delta expect from the MNOCs. The MNOCs are not legally bound to ethical responsibility adherence, but they are expected to “avoid questionable practices”<sup>552</sup> and “avoid harm and obliged to do what is right, just and fair”<sup>553</sup> during the course of their business dealings in the region. An ethical responsibility demands a duty in pursuance of a morally correct path by the MNOCs, for they are required to have

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<sup>549</sup> Friedman Milton (1970), A Friedman doctrine - “The Social Responsibility of Business Is to Increase Its Profits” p1

<sup>550</sup> J. Aguilera-Caracuel et al. (2015), “Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries”, p441

<sup>551</sup> Bowie, N. E. (1999), A Kantian approach to business ethics, p3

<sup>552</sup> Carroll, Archie B. and Buchholtz, Ann K. (2006), “Corporate citizenship, social responsibility, responsiveness and performance”, p38

<sup>553</sup> Archie B. Carroll (1991), “The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders,” *Business Horizons* (July-August 1991), p42.



moral responsibility to the natural environment and social responsibility to the local/host communities. In fact, the local communities expects the MNOCs to do the right thing bearing in mind that the corporate existence and social licenses to operate of their crude oil exploratory activities depends on the local communities.

The freedom to perform a corporate act is permissible and the ability to own up the subsequent responsibility emanating from such corporate action is moral. As such, the MNOCs operating in the Niger Delta have the ability and capacity to carrying out their crude oil and gas exploration activities, simultaneously they are expected to own up to the ethical responsibility resulting from their corporate acts. Ethically, every human being on this planet-earth has a certain responsibility for the welfare of other people, hence; people must behave correspondingly. Consequent upon, the MNOCs owe some degree of ethical responsibility towards the welfare of the local communities vis-à-vis conservation of the region's natural environment.

The MNOCs are required to fully abide with the human rights framework of protect, respect and fulfil cum environmental laws in the local communities. MNOCs are expected to act responsibly, accordingly and avert unethical behaviours. Unequivocally, the MNOCs' ethical responsibility in the Niger Delta demands "environmental and social standards, norms, and expectations that reflect what consumers, employees, shareholders, and the community consider right and fair or in keeping with the respect or protection of stakeholders' moral rights."<sup>554</sup> In fact, the MNOCs in the local communities are expected to adhere to John Elkington's concept of triple bottom line that states that a conceptual framework of a business enterprise corporate acts has to do with "a measure of corporate success

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<sup>554</sup> J. Aguilera-Caracuel et al. (2015), "Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries", p441

that takes into account, not just profit and loss but also social and environmental impact.”<sup>555</sup>

#### 5.6.4 MNOCs Philanthropic Responsibility

Philanthropic gesture of the MNOCs in the local communities of the Niger Delta happens to be the crux of the matter. It is paramount in the notion of ethical and responsibility of business in the Niger Delta, more especially where the Nigerian government have “fail even to provide basic public goods, which are those that are essential and universally provided to all citizens regardless of income such as education, health care, water services, policing services, waste management ...”<sup>556</sup>

In situations of non-provision of such basic amenities to the local communities by the Nigerian government “... companies may take over certain functions with regard to the protection, facilitation and enabling of citizens’ rights.”<sup>557</sup>

Philanthropism concerns the issue of corporate responsibility and it triggers the concepts of corporate social responsibility and corporate citizenship. In fact, philanthropic responsibility is the bone of contention in view of a business enterprise to becoming a potential good corporate citizenship. Philanthropic responsibility desired the MNOCs not only to be accountable and responding to the stockholders alone but also to the stakeholders. In the Niger Delta, corporate responsibility in business demands an inherent culture that is embedded and

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<sup>555</sup> Kreitner, Robert (2009), *Principles of Management*, p120. (See footnote reference 868 for more information on John Elkington’s concept of triple bottom line (TBL) that consists of three Ps: profit, people and planet).

<sup>556</sup> J. Aguilera-Caracuel et al. (2015), “Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries”, p443

<sup>557</sup> J. Aguilera-Caracuel et al. (2015), “Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries”, *Ibid.*

fundamentally rooted on ethical values and subsequent application of these ethical values to all business behaviours and functions by the MNOCs. These ethical values have to do with the procedural way business is being conducted.<sup>558</sup>

The MNOCs should be aware that the local communities of the Niger Delta know the social and environmental responsibilities desired of them “notwithstanding considerable disagreement about the meaning of the term corporate responsibility and its various versions and implications”<sup>559</sup> that warranted Milton Friedman to come up with his neoclassical approach and vehemently noted that using the stockholders money for philanthropism is act of stealing on the side of business executives.

However, philanthropic responsibility is being desired by the local communities of the Niger Delta but is not necessarily expected from the MNOCs. Niger Delta region desired philanthropic responsibility from the MNOCs due to the “growing pressure to account for social, environmental and ethical problems occurring in various locations of operations.”<sup>560</sup> The hazardous environmental harm and oil pollution imminent in the wetland region ignites “the idea that there are incentives for business to proactively embrace environmental and community development concerns.”<sup>561</sup>

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<sup>558</sup> Institute of Business Ethics (2006)

<sup>559</sup> Lodge, George C.; Wilson, Craig (2006), A Corporate Solution to Global Poverty: How Multinationals Can Help the Poor and Invigorate Their Own Legitimacy, p72

<sup>560</sup> Kolk Ans (2015), “The social responsibility of international business: From ethics and the environment to CSR and sustainable development”, p2

<sup>561</sup> Hilson Gavin (2012), “Corporate Social Responsibility in the extractive industries: Experiences from developing countries”, p132

The idea of MNOCs' philanthropic responsibility in the oil-rich region is an anthropocentric initiative. However, the restoration of nature as a mixed 'Phil-anthropocentric and Phil-nature' project could be an alternate best innovative idea of green philanthropic initiatives the MNOCs could adopt in the Niger Delta. It would be a better approach if the MNOCs could contribute to a "green philanthropy" idea and seeking solutions on 'green causes' i.e. the best method on nature and environmental conservations, preservation of wild habitats, developing initiatives on how to preserve the Niger Delta natural capitals, biodiversity and maintenance of the region's marine ecosystems, ecological structures of coastal inland, fresh waters and mangrove swamps.

The MNOCs operating in the resource-rich Niger Delta are to realise that there is a fundamental shift from the neo-classical approach of Milton Friedman by most of the business firms to the issue of business integration of social objectives with business goals and balancing profit with social objectives via adopting the business framework of corporate social responsibility in order to be corporate citizenship. Be that as it may; economic and legal responsibilities are sine qua non business responsibilities, while ethical and philanthropic responsibilities are voluntary but mandatory corporate actions that differentiate corporate behaviour from mere compliance.<sup>562</sup>

These are some attestation by some business executives:

"Corporate social responsibility is not itself our business but rather it is a way of conducting our business which, we believe, helps us to be more successful over the long-term. To commit to a socially responsible way of working is not, as some critics claim, a distraction from our core business. Nor does it in any way conflict with our promise and our duty to deliver value to our shareholders. In fact, just the reverse is true.

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<sup>562</sup> J. Aguilera-Caracuel et al. (2015), "Corporate Citizenship of Multinational Enterprises and Financial Performance: The Moderating Effect of Operating in Developing Countries", p442

This agenda is an attendant duty to our shareholders who make investments for the long-term and who need to have confidence they will see a return on those investments over the long-term”<sup>563</sup> (Adrian Loader, Director of Strategic Planning, Sustainable Development and External Affairs, Royal Dutch/Shell Group)

However, some critique has noted that self-interest to increase stockholders’ return by the business executives happens to be the motive behind the philanthropic responsibility and has brandished it as insincere corporate action.<sup>564</sup>

### 5.7 Sustainability Case in the Niger Delta Oil-rich (Restoration)

The local communities in particular and the Niger Delta region in its entirety cannot be talking of sustainability when the area has been marred with issues of human rights predicaments and environmental injustice resulting from the potential wrongful practices of the MNOCs. The local communities of the Niger Delta possesses the worst crude oil polluted terrestrial and aquatic habitable environment in the world and of which the harmful impacts of oil and gas pollutions on the human rights to health, livelihoods and natural environment of the region is tremendously catastrophic. The 2011 UNEP report on Ogoni-land helps to elucidate the empirical environmental situation of some of the local communities of the Niger Delta where they “found severe and widespread contamination of soil and ground water across Ogoniland. In a number of locations public health was severely threatened by contaminated drinking water and carcinogens. Delta ecosystems such as mangroves had been utterly devastated.”<sup>565</sup>

The traditional economy of farming in the land and fishing in the rivers and seas are no longer feasible as it was, prior to crude oil exploratory and extraction

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<sup>563</sup> A quotation cited in Kolstad Ivar (2007), Human Rights and Assigned Duties: Implications for Corporations, p1

<sup>564</sup> Balkan Joel (2004), The corporations - The pathological pursuit of profit and power

<sup>565</sup> UNEP (2017), Nigeria Launches \$1 Billion Ogoniland Clean-up and Restoration Programme, p1

activities. In some local communities of the Niger Delta, it is repugnant for birds to fly around in the sky as a result of oil pollution and gas flaring by the ubiquitous MNOCs involvement in crude oil exploration. Of course, the scope and negative impact of economic forces of the MNOCs have been associated with geometrical progression of environmental damage, toxicity, ecological disaster of the marine ecosystems/organisms and abuse of human rights - (*confer photographs in Figures: 37, 38, 39 & 40 below*) - within the local communities of the Niger Delta.

Moreover, the empirical evidences exhibit that sustainability concept is still enigmatic and to a certain degree rudimentary in the local communities of the Niger Delta. This was exemplified in the UNEP report which observed that crude oil pollution in Ogoni-land and within most areas of the Niger Delta “is extensive and is having a grave impact on the environment, with pollution penetrating further and deeper than previously thought.”<sup>566</sup> The clean-up call and restoration programme of the local community of Ogoni-land is first-hand knowledge that sustainability practices in the local communities of the Niger Delta would be a herculean task. Because only in Ogoni-land, UNEP observed and indicated in their report that it would require between 25-30 years to remediate the ecosystem back to its status quo from the environmental impact of crude oil in the local community provided that no new oil spillage would occur. In fact, the UNEP Executive Director Erik Solheim postulated that: “The task to clean up Ogoniland will neither be easy nor fast, but it needs to be done. If we succeed here, it will demonstrate that degraded environments can be restored, sending a signal to many other communities around the world that peaceful co-operation can lead to positive outcomes.”<sup>567</sup> Based on the principle of sustainability UNEP noted that: “The clean-up is vital for the

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<sup>566</sup> UNEP (2017), Nigeria Launches \$1 Billion Ogoniland Clean-up and Restoration Programme, Ibid

<sup>567</sup> UNEP (2017), Nigeria Launches \$1 Billion Ogoniland Clean-up and Restoration Programme, Ibid

future of the region. It will help create new livelihoods, establish old livelihoods and change the lives of a million people. It will also establish a new model for working towards sustainable development, even in the most challenging of environments.”<sup>568</sup>



**Figure 37: Public notice in one of the local communities in Ogoni-land by the Hydrocarbon Pollution Restoration Project (HYPREP) of the Federal Ministry of Petroleum Resources inaugurated in July, 2012 warning that “do not drink, fish or swim” because it is a “polluted water” due to oil spills (photo taken by the researcher).**

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<sup>568</sup> UNEP (2017), Nigeria Launches \$1 Billion Ogoniland Clean-up and Restoration Programme, Ibid





**Figure 38:** Also a public notice in one of the local communities in Ogoni-land by the Hydrocarbon Pollution Restoration Project (HYPREP) of the Federal Ministry of Petroleum Resources inaugurated in July, 2012 warning that “the area is contaminated” because of oil spills (photo taken by the researcher).



**Figure 39:** One of the oil spill sites, formally a farmland is now heavily contaminated and polluted (photo taken by the researcher).





**Figure 40: The researcher with the “Drittgutachter” (Third Doctoral Supervisor) - Professor Augustine Arukwe of the Norwegian University of Science and Technology – Trondheim (NTNU) in one of the oil spill sites (at the background) earmarked as “Contaminated Area” by the Hydrocarbon Pollution Restoration Project (HYPREP) of the Federal Ministry of Petroleum Resources.**

Indisputably most of the MNOCs have been branding sustainability issues and practices in their corporate business websites, albeit as corporate social responsibility but descriptively some are yet at the realm of policy framework than reality due to the fact that “the essence of sustainability is using a resource no faster than the resource can replenish itself”<sup>569</sup> which is a direct opposite of non-renewable resources - (crude oil and gas reserves) - usage in the Niger Delta region. Moreover, sustainability concept postulates “that the welfare of present and future generations can be achieved only by balancing environmental protection and restoration with a healthy economy and social justice.”<sup>570</sup>

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<sup>569</sup> Kibert Charles J. et al. (2012), Working Towards Sustainability, p1

<sup>570</sup> Kibert Charles J. et al. (2012), Working Towards Sustainability, p3

Prima facie, sustainability is in the domain of ethical conceptual framework.<sup>571</sup> The conceptual framework of sustainability “requires decisions to be rooted in moral principles, rather than based solely on economic calculation or convenience.”<sup>572</sup> However, the MNOCs and Nigerian government practical applications of ethical commitment to the welfare of the Niger Delta and their well-being with the mindset of their future generations have been contentious and encountering series of wrangling. The MNOCs and the Nigerian government are undermining the human rights to health, livelihoods and habitable environment of the local communities as they strive to meet their crude oil joint business ventures in the region, without taking into consideration the future of human generations of the local communities and nature conservation of the region. Oil spills, gas flaring and environmental degradation have devastated the local communities because of the irresponsibility and culpability of the MNOCs and the Nigerian government. In fact, the MNOCs and the Nigerian government are compromising the Niger Delta ‘environmental health or social justice’ in pursuance of their ‘economic security.’<sup>573</sup>

Sustainability issue in the local communities of the Niger Delta does not require conceptual framework instead a pragmatic approach that focuses on the principle of intra and intergenerational fairness, on issues of environmental justice and equity with emphasis on natural resources.<sup>574</sup> The concept of intra and intergenerational within the local communities of the Niger Delta signifies members of the same, different and future generations of the people. The future generations of the Niger

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<sup>571</sup> Ott Konrad et al. (2011), “Strong Sustainability as a Frame for Sustainability Communication”

<sup>572</sup> Kibert Charles J. et al. (2012), Working Towards Sustainability, p. xvii

<sup>573</sup> Kibert Charles J. et al. (2012), Working Towards Sustainability, p. xviii

<sup>574</sup> Ott Konrad et al. (2011), “Strong Sustainability as a Frame for Sustainability Communication”

Delta are entitled to an overall fair legacy, for bequeathing bad unto them when it has to do with the region's endowed natural capital is *prima facie* wrong.<sup>575</sup> As such, the MNOCs and Nigerian government has to take responsibility for the ecological and social impacts of their crude oil exploratory activities as to enhance the sustainability of the region and the region's habitat that is domicile to some of the endangered species because "For the people of the Niger Delta, environmental quality and sustainability are fundamental to their overall wellbeing and development."<sup>576</sup> Hence the MNOCs and Nigerian government are morally obliged to synergize and sees it as their responsibility to enhance the sustainability of the Niger Delta region because report from a team of Nigerian and international environmental experts in the region noted that "The damage from oil operations is chronic and cumulative, and has acted synergistically with other sources of environmental stress to result in a severely impaired coastal ecosystem and compromised the livelihoods and health of the region's impoverished residents."<sup>577</sup>

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<sup>575</sup> Ott Konrad et al. (2011), "Strong Sustainability as a Frame for Sustainability Communication", *Ibid.*

<sup>576</sup> Amnesty International (2009), *Petroleum, pollution and poverty in the Niger Delta*, p14

<sup>577</sup> Amnesty International (2009), *Petroleum, pollution and poverty in the Niger Delta*, *Ibid.*

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## Chapter 6

# Prospects for Restoration in the Niger Delta

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### 6.1 Introduction

The restorations policy of the Niger Delta ecosystems, natural landscapes and environmental biospheres are as problematic as the problem of MNOCs' business related impact on the social and environmental spheres in the region.<sup>578</sup> In tackling the issue of restoration agenda in the Niger Delta, some definition of terms which are of an absolute necessity would be stated. Moreover, those definitions are simultaneously controversial because of divergent conceptions - (on ecological restorations thesis) - being held by some environmentalist thinkers and ecologists which are having relevant implications for environmentalist policy. The research will explore some principles which are ad rem and of immense importance to the restorations prospect which invariably will culminate in compensation acts in the local communities of the Niger Delta. Some of the principles are -

- ❖ Polluter pays principle
- ❖ Beneficiary pays principle
- ❖ Ability to pay principle

The issue of corporate identity as it concerns the MNOCs self-appreciation and self-respect would be reviewed. The reactions and responses on the MNOCs vis-à-vis host communities will be elucidated. The rationale for the Nigerian state failure within the confines of the petroleum industry would be revealed.

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<sup>578</sup> The difficultness of the restorations prospect are predicated on the information about some MNOCs restorations techniques vis-à-vis counter views from UNEP and Amnesty International empirical findings - that there abound hydrocarbons laden - in most of the areas that the MNOCs have claimed to have ecologically restored and being issued with a clean-up bill by the Nigerian government environmental regulatory agencies.

## 6.2 Explication of Terms

### 6.2.1 Ecosystem

Ecosystem is a natural domain that is composed of living things - (plants, animals and microorganisms) - otherwise called biotic components that does an interaction and intermingles with non-living species known as abiotic components within an environmental enclave. An ecosystem is a habitat for living organisms that consist of producers, consumers and decomposers. There exist a synergy between the living things and non-living things via the process of nutrient cycles and energy flow (*confer Figure 41*).

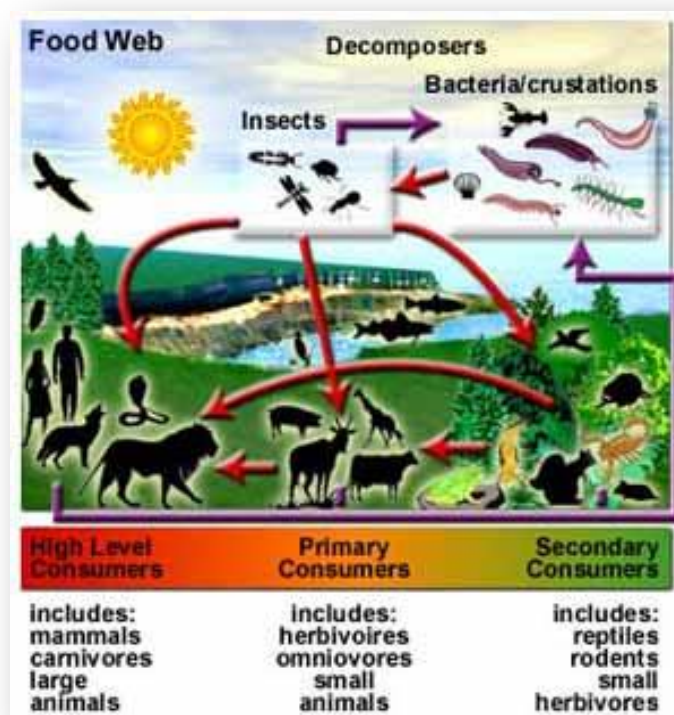


Figure 41: The diagram is a prototype of an ecosystem generalized food cycle. A food cycle is a cluster of organisms, including producers, consumers and decomposers, whereby energy and materials can associate in an ecosystem.<sup>579</sup>

<sup>579</sup> Ecological Communities: Networks of Interacting Species

Ecosystem do not have definite borderline nor does it have the technical equipment that has developed gradually to control specific series of actions. Ecosystem does not manifest clearly any type of transmutation of vital importance, e.g. the act of reproduction being done in individual organisms. The word 'ecosystem' is useful in an empirical sense for referring to species and having series of actions taking place in specific environs.<sup>580</sup> In an ecosystem the interaction between the biotic and abiotic components are called 'holocoenosis.' In the year 1930, Roy Clapham propounded the concept of the physical and biological composition of an environment as a composite entity. While the British ecologist and botanist - Arthur George Tansley, conceived the term ecosystem in the beginning of the 20<sup>th</sup> century and defines ecosystem as a mode of interaction that exist between living organisms called biocoenosis and the environment in which happens to be its habitat termed their biotope.<sup>581</sup>

The Niger Delta ecosystem is naturally laden with non-renewable resources - (crude oil and natural gas) & natural capitals - (agriculture, forest and fishing). Its ecosystem is an epitome of highly diversified species of flora and fauna. The biodiversity of the Niger Delta ecosystem is tropical rainforest zone, while its ecological structures are constituent of coastal inland, freshwater and mangrove swamps. The Niger Delta ecosystem is habitat to most of the Nigerian endemic or near-endemic mammal species<sup>582</sup> and endangered primates.<sup>583</sup>

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<sup>580</sup> Davis Mark A. and Slobodkin Lawrence B. (2004), "The Science and Values of Restoration Ecology"

<sup>581</sup> Vreugdenhil Daan et al. (2003), Comprehensive Protected Areas System Composition and Monitoring (IUCN task force on Protected Areas System Composition and Monitoring)

<sup>582</sup> An endemic mammal species are "species which is found uniquely in the geographic area under consideration. Its presence suggests there are possibly other unique features about the area's ecology or biodiversity." While the endangered primates' talk of species which are "under some danger of eventual extinction." - Roger Blench (2007), Mammals of the Niger Delta, Nigeria, p.vi

<sup>583</sup> UNDP Project Document (2012), "Niger Delta Biodiversity Project", p161

The Niger Delta ecosystem is naturally endowed with some of these endemic mammal species - forest elephant (*Loxodonta Africana cyclotis*), West African manatee (*Trichechus senegalensis*), White-throated guenon (*Cercopithecus erythrogaster*), and pygmy hippopotamus (*Choeropsis liberiensis heslopi*).<sup>584</sup> Niger Delta ecosystem endangered primates' that are at the verge of total extinction are some fish species - Denticipidae (denticle herrings), birds' species - Anambra waxbill (*Estrilda poliopareia*), amphibians and reptiles species - the leatherback (*Dermochelys coriacea*) and a species of an African monkey (Guenon species). The African monkey is among the most beautiful species of monkey in the world and the Niger Delta ecosystem in particular and West Africa are their terrestrial habitats.

Unfortunately, the once naturally endowed Niger Delta ecosystem could no longer be sustainable based on some empirical evidences. The natural capital<sup>585</sup> is being destroyed for the utilization of non-renewable resources, otherwise known as - curse of the resource rich syndrome.<sup>586</sup> The Niger Delta ecosystem has been marred by anthropocentric abuse, violation and impairment for decades.

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<sup>584</sup> UNDP Project Document (2012), "Niger Delta Biodiversity Project", p161

<sup>585</sup> The World Forum on Natura Capital (2015) stated that "Natural Capital can be defined as the world's stocks of natural assets which include geology, soil, air, water and all living things. It is from this Natural Capital that humans derive a wide range of services, often called ecosystem services, which make human life possible. The most obvious ecosystem services include the food we eat, the water we drink and the plant materials we use for fuel, building materials and medicines. There are also many less visible ecosystem services such as the climate regulation and natural flood defences provided by forests, the billions of tonnes of carbon stored by peatlands, or the pollination of crops by insects. Even less visible are cultural ecosystem services such as the inspiration we take from wildlife and the natural environment."

<sup>586</sup> The paradox of plenty otherwise known as the "curse of the resource rich syndrome" occurs when natural capitals such as - agriculture, forest and fishing are been destroyed for the utilization of non-renewable resources such as - crude oil and natural gas. (See footnote references 74, 268 & 661 for some information on the paradox of plenty too).



The first anthropocentric factor buttresses on the presumptive immoral business behaviours of the MNOCs oil exploration impacts on human rights and the natural ecosystem consisting of aquatic and terrestrial habitats. The corporate acts of oil exploration by the MNOCs and its failure to take up responsibility of their actions have greatly impacted - (severe pollution, biota toxicity, ecological effects, loss of biodiversity, and human rights abuse to health, livelihood and habitable environment) - on the Niger Delta ecosystem, thereby causing short and long term environmental risks. Second anthropocentric factor is the existence of Nigerian government weak regulatory laws against the business related acts of the MNOCs. The third anthropocentric factor is some local communities and individuals who are worsening the already existing damaged ecosystem, thereby making the ecosystem to be vulnerable and harmful for human condition. However, these anthropocentric forces and variables are to realise that “humankind must remember its ethical responsibility for the damage done to natural systems and make reparations accordingly.”<sup>587</sup>

### 6.2.2 Restoration

Restoration is the process of trying to reconstruct, mend, repair or refurbish damaged structures, ecosystem and natural landscapes back to what seems to be its original state, nature or structure. For the Society for Ecological Restoration (SER), restoration is the process of helping the retrieval of ecosystem that have been degenerated, harmed or ruined.<sup>588</sup> SER defines ecological restoration as the act of helping the reclamation and administration of ecological integrity. They are advocating that ecological integrity is associated to biodiversity, ecological

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<sup>587</sup> John Cairns, Jr. (2003), “Ethical issues in ecological restoration”, p51

<sup>588</sup> Society for Ecological Restoration

processes and structures, regional and historical ideas and sustainability usage.<sup>589</sup> Ecological restoration incorporates lots of objectives - from duplicating a historical or place of origin, to customized restoration for particular species, to reinstating of a damaged ecosystem and natural landscapes for high-yielding purposes. Ecosystem restoration ought to be scientifically enlightened by ecological propositions and expertise.<sup>590</sup> Restoration is an anthropocentric act. It falls within the domain of an ethical theory called 'environmental ethics', whose principles are built on intrinsic value autonomy, justice, ecosystem health and conservation of ecological integrity. Restoration enhances natural value. In spite of the fact that ecology acts a vital and indispensable role in the execution of restoration prospects, we believe that spelling out restoration *raison d'être* and intent is basically a value-based and not a purely scientific task.<sup>591</sup> Restoration within this research contextual framework is pertinent to the degraded ecosystem or natural environments of the local communities of the Niger Delta biospheres that are yearning for environmental rehabilitation and remediation due to anthropocentric impacts. Ethics of restoration shall be the core of the restoration prospects in this research, for it is quite *ad rem* to the environmental remediation of crude oil pollutants and contaminants on the soils, sediments, atmospheres, underground and surface waters of the local communities of the Niger Delta ecosystem and environmental biospheres.

The practical aspect of the environmentalist policy on restitution of a degraded ecosystem and environmental biospheres are becoming a subject of controversy, culminating in questions like - *could environmental biospheres that has been damaged be reverted to its original state, natural or full value?* Although experts in

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<sup>589</sup> Swart Jacques A.A. et al. (2001), "Valuation of Nature in Conservation and Restoration"

<sup>590</sup> Aronson James and Clewell Andre F. (2006), "Motivations for the Restoration of Ecosystems"

<sup>591</sup> Davis Mark A. and Slobodkin Lawrence B. (2004), "The Science and Values of Restoration Ecology"

environmentalist restorations have frequently attempt to provide a rationale for their aims by showing them as satisfying varied ecological imperatives such as rehabilitating ecosystem health and reinstating natural environments. However, it is imperative that environmentalist restorations experts should endeavour to intelligibly differentiate between their science and their values in their public discourse with policy makers, stakeholders and also between themselves. The research study will be sampling some environmentalist thinkers' opinions as to highlight the controversial nature of the restoration prospects and its implication for the Niger Delta natural landscapes.

Paul Taylor's restitution ideas (a derivative from the biocentrism perspective) justify humans' intent to make reparations in some way for the damage done to the natural landscapes and ecosystem. Taylor applies the principle of "restitutive justice"<sup>592</sup> as the fundamental regulations of duty in his bio-centric ethics and also as a "priority principles"<sup>593</sup> to reconciling challenging affirmations. He is of the opinion that anthropocentric negative impacts on an ecosystem and natural landscapes should try seeking for a way to make reparations and invariably compensate the damaged natural entities.

Peter Wenz conforms to Taylor's restoration principle as a sine qua non in environmentalist policy and of utmost relevancy for environmental ethics theory. Albeit, he criticizes Paul Taylor for not positing a logical and sequential restoration approach. However, he is of the opinion that humans are ethically bound for restitution and making partial reparations of the damaged ecosystem and natural landscapes and it should be the pivotal concern for an applied environmental

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<sup>592</sup> Katz Eric, (1992), "The Big Lie: Human Restoration of Nature", p443

<sup>593</sup> Katz Eric, (1992), "The Big Lie: Human Restoration of Nature", Ibid.

ethics.<sup>594</sup> It was recorded that Paul Taylor and Peter Wenz were the known protagonists of the “restitutive environmental justice.”<sup>595</sup> Both environmentalist thinkers think that human are compelled to give restoration in the form of rehabilitating or repaying for acts of demolition of the ecosystem and natural landscapes we generate.

The stated restoration ideas of these environmental thinkers highlight that the Niger Delta ecosystem and natural landscapes require some restitution of its environmental biosphere which its damages are very extensive in order to uphold sustainable principle of nature. The restoration ideas demand that the MNOCs and the Nigerian government have the moral responsibility to repair the damages that their business related actions and corporate negligence or lack of due diligence have caused the natural environments of the region. This act of reparation may be done under the auspices of polluter or beneficiary pays principles or a combination of the duo principles.

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<sup>594</sup> Katz Eric (1992), “The Big Lie: Human Restoration of Nature”

<sup>595</sup> Katz Eric, (1992), “ The Big Lie: Human Restoration of Nature”, p445



**Figure 42: This is a Niger Delta ecosystems and environmental biospheres that require some restitution and compensation as advocated by Taylor and Wenz due to MNOCs negative impacts. The photo was taken by the researcher in 2016.**

Robert Elliot in his “restoration thesis” noted that environmentalist thinkers and ecologists emphasizes on how natural ecosystem and natural landscapes are continuously being degraded and exploited by humans, thereby damaging the primitive-wild states of the affected areas.<sup>596</sup> He analysed the ethical objections to the empirical environmentalist policy of reinstating degraded ecosystem, natural landscapes and environments. Elliot is of the notion that the value of a degraded ecosystem and environmental biospheres could be restored temporary through environmental engineering techniques. He observed that there abound reasonable and logical ethical systems that lend credence to the restoration thesis objections and that the said ethical systems lack nothing in normative appeal.

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<sup>596</sup> Elliot, Robert (2008), Faking nature. In Inquiry 25

However, Elliot argued that even if the restitution techniques - (high-tech engineering techniques) - being deployed in such restoration agenda is empirically successful, it would not have a fully restoration value for the primitive-wild states of the affected areas cannot be fully restored to status quo ante instead it will be “counterfeits.”<sup>597</sup> He explains that the worth of an ecosystem and natural landscapes are neither in the quality that are instantly perceptible to us, instead in its unbroken and consistent existence with the past and its liberty from anthropocentric exploitation. He is of the emphasis that it does not matter how ideal a repair is, the worth of the prototype cannot be reclaimed. Elliot is of the assumption that his “restoration thesis” under certain condition is applied “as a way of undermining the arguments of the conservationists.”<sup>598</sup>

Elliot cited the following rationale in support of his claim - before degradation takes place, the ecosystem or natural landscapes provides subsistence to biodiversity of plants and animal life, being terrestrial or aquatic habitats to some endangered species and might be having some ecological structures such as rock formations or beautiful specimens of mountainous ash. But in post-restitution techniques, the ecosystem or natural landscapes cannot be ‘natural’ rather ‘non-natural’ and he defines natural as something that has never being modified by human activity.<sup>599</sup> Elliot finally claimed that “restoration policies do not always fully restore value because part of the reason that we value bits of the environment is because they are natural to a high degree.”<sup>600</sup>

Suffice it to state that the claims of not being able to remediate, revegetate, rehabilitate and restore a degraded ecosystem and natural landscapes back to its

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<sup>597</sup> Elliot, Robert (2008), Faking nature. In Inquiry 25

<sup>598</sup> Katz Eric, (1992), “ The Big Lie: Human Restoration of Nature”, p444

<sup>599</sup> Elliot, Robert (2008), Faking nature. In Inquiry 25

<sup>600</sup> Elliot, Robert (2008), Faking nature. In Inquiry 25, p84

original intrinsic value has been the bone of contention among environmentalist thinkers and ecologists. The impossibility of not being able to have an absolute natural restitution of degraded natural landscapes back to its natural entity and original value makes some environmentalist thinkers and ecologists terming such environmentalist policy as “faking art and faking nature”<sup>601</sup> or “artefacts.”<sup>602</sup>

The Niger Delta ecosystem and natural landscapes is a prototype of Robert Elliot’s analogy. According to the empirical evidences, the original primitive-wild states of the Niger Delta ecosystem and natural environments has already been eroded through the anthropocentric impact of the MNOCs’ crude oil exploration and exploitation activities in the region’s natural entity. That being the situation, according to Elliot; there will be no amount of environmental engineering techniques that would be able to restore, remediate, revegetate and rehabilitate the already degraded Niger Delta ecosystem and natural landscapes back to its natural and original primitive-wild states prior to the crude oil exploratory activities.

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<sup>601</sup> Elliot, Robert (2008), Faking nature. In Inquiry 25, p81

<sup>602</sup> Ladkin, Donna (2005), "Does 'Restoration' Necessarily Imply the Domination of Nature?", p204





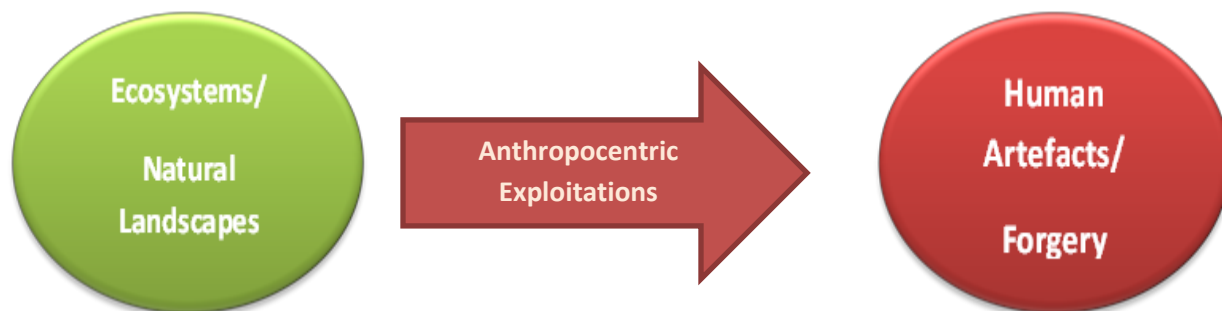
**Figure 43: This is a prototype of an ecosystem and natural environment that has been degraded and exploited by the MNOCs in Ogoni-land of the Niger Delta, hence damaging the “original primitive state” of the topography. This photo was taken by the researcher in 2016.**

However, the MNOCs and the Nigerian government are expected to have moral responsibility to the Niger Delta ecosystem, natural landscapes and environmental biospheres thereby making some reparations for the damage done by them in the course of their crude oil exploratory activities. Though such reparations and remediation might look as an artefact or faking nature as Eric Katz and Robert Elliot noted in their restoration techniques, but it would be a lesser evil argument according the principles of double effect (PDE).<sup>603</sup>

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<sup>603</sup> Catholics United for the Faith, Inc. (1997) stated that The Principle of Double Effect is biblical and also traceable to the scholastic philosophy of Thomas Aquinas. PDE is an ethical rule that provides someone with an alternate option of evaluating the moral rectitude of a moral problem that seems complex in nature. The evaluation may consist of outcomes that could either be positive and negative or good and bad. PDE plays a role when actions that

Eric Katz in his work<sup>604</sup> commenced from this observable fact - the notion that humans could restore the natural environment is beginning to dominate important decisions-making as it concerns environmentalist policy.<sup>605</sup> He claimed that restoration is a worrisome present-day environmentalist policy and that even environmentalist thinkers and ecologists believe that it is good, of which for Katz it is a mistake. Katz denounces the opinions of the environmentalist thinkers and conservationists on the obligation of humans' involvement in making reparation for the damages done on the ecosystems, natural landscapes and environments due to their anthropocentric impacts. Instead, Katz believes that the restoration agenda of the environmentalist policy is avenue humanity wants to dominate the environment in the pretence of trying to be environmental conscious. Katz is of the view that restoration act in essence is morally worrisome and its results are morally bothering because it manufactures an artefact. He argued that environmental restoration is a counter-statement in terms and that it is built on mistaken belief of nature and fallacious perception of human's position in the world of nature. Katz's opinion on the possibility of a restitution policy consists of visceral idea.<sup>606</sup>



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are morally good are being considered but simultaneously involving some unintended consequences. Because the unintended consequences are accidental and not directly willed the process by which it takes place will be morally acceptable.

<sup>604</sup> Katz Eric (1992), 'The Big Lie: Human Restoration of Nature'

<sup>605</sup> Katz Eric (1992), 'The Big Lie: Human Restoration of Nature'

<sup>606</sup> Katz Eric (1992), 'The Big Lie: Human Restoration of Nature'

He conceived the restoration thesis as a - technological fix whose outcome he called an anthropocentric artefact<sup>607</sup> and termed it fake nature or forgery. He classified technological fix as a manifestation of human egoism, in the sense that humanity has damaged nature and is at the same time striving to give a false identity of nature as reality.<sup>608</sup> Katz draws a paradigm differentiation between conservation and restoration in environmental management. He explains that conservation which falls in the domain of biology simply keeps habitats safe from harm or injury, whereas restoration which is in the realm of ecology fallaciously alters habitats. He argues that “Natural individuals were not designed for a purpose. They lack intrinsic functions, making them different from human-created artefacts.”<sup>609</sup> Katz asserts that artefacts are fundamentally anthropocentric and are laden with intrinsic functions. Artefacts are deliberately arranged to accomplish some motive and of which its role is decisive of what it is. He states that reinstated ecosystems have intrinsic functions and as such are artefacts.

Katz maintains that natural objects are deficient of the type of motive and task endowed in artefacts. He cited Andrew Brennan in his argument that pure existence or beings possess no inherent task because they are not consequence of a blueprint. They are not designed for a specific cause. He posited that it is an allegorical and fallacious to postulate that natural individuals possess some roles to play in ‘ecosystemic well-being’ and maintains that nobody produced or manufactured the mountain lion as a monitor or controller of the deer population.<sup>610</sup>

Katz is of the idea that interventions that have intent to reproduce and restore nature actually exploit, influence and eventually belittle the worthiness of nature.

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<sup>607</sup> Katz Eric, (1992), “The Big Lie: Human Restoration of Nature”, p439

<sup>608</sup> Katz Eric, (1992), “The Big Lie: Human Restoration of Nature”, p440

<sup>609</sup> Katz Eric, (1992), “The Big Lie: Human Restoration of Nature”, p446

<sup>610</sup> Katz Eric, (1992), “The Big Lie: Human Restoration of Nature”, p445

He maintained that restitution of nature bids at domination which is of a utilitarian value to human and that it prevents nature from the pursuit of its own development. Katz argues that artefacts are modelled by humanity to please human ends in contrast to natural entities and systems which exist without an input from human modelling and possess no motive or endings. For Katz, natural entities are self-determining and devoid of human control, whereas artefacts evidently are not. Immediately humanity restores natural entities, nature is ruin. Human fabricates a fake reality that is trivially figment of the imagination of a natural environment.<sup>611</sup>

However, Katz is not advocating that humanity should abstain from cleansing or repairing damaged ecosystem, natural landscapes and environments. Instead Katz simply reminds humanity not to misconstrue what they are doing when rehabilitating natural areas and environments. He states that humanity is not reinstating original nature rather is building the desirable model out of a substandard circumstances and cleaning up of human-caused pollution. In fact, he explicitly alert that humanity fashion technology and not nature.<sup>612</sup>

Katz's thought on human reparation of an ecosystems and natural environments undertaking prominence in decision-making on environmentalist policy was observed in Ogoni-land of the Niger Delta on Thursday 2 June 2016.<sup>613</sup> The date marks the Nigerian government, MNOCs and local communities' initiation of the clean-up and restoration schedule in the oil polluted and contaminated Ogoni-land. The clean-up and restoration implementation scheme was consequential to the 2011

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<sup>611</sup> Katz Eric, (1992), "The Big Lie: Human Restoration of Nature"

<sup>612</sup> Katz Eric, (1992), "The Big Lie: Human Restoration of Nature", p440

<sup>613</sup> Channels Television (2016), "FG Launches Ogoni Clean-Up Exercise"

recommendations of the UNEP report at the aftermath of their more than 14-months period of empirical fact findings in over 200 locations in Ogoni-land.<sup>614</sup>



**Figure 44: Environmental ruins to an ecosystem and natural environment of Ogoni-land in the Niger Delta. This is among the locations visited by UNEP experts in their empirical fact findings. This photo was taken by the researcher in 2016.**

In the said UNEP 2011 report, UNEP discovered dreadful and extensive contamination of soil and ground water throughout the width and expanse of Ogoni-land. In some scenes public health was acutely jeopardize by polluted drinking water and carcinogen. The Niger Delta ecosystems and natural environments like mangrove swamps, freshwaters, coastal inland, terrestrial and aquatic habitats, and nature conservations have been absolutely annihilated. UNEP noticed that institutional control mechanisms in the MNOCs and Nigerian government were not administered appropriately. Hence UNEP advocated the

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<sup>614</sup> The Nation (2016), "Ogoni clean-up: What it means to Nigeria"

setting up of a repairing authority with a clear-cut instruction to clean-up Ogoni-land and rehabilitate the ecosystem and natural environments.<sup>615</sup>

Based on the aforementioned UNEP report and subsequent recommendation - (explicit mandate to clean-up and rehabilitate the ecosystems and natural environments of Ogoni-land) - suffice it to note that the realization of this environmentalist policy of UNEP is only achievable through environmental engineering techniques as Elliot argued and technological fix as Katz indicated. That being the case, the claims of these two environmentalist thinkers could be confirmed because there is no quality of environmental engineering techniques and technological fix that the MNOCs and Nigerian government would deploy in order to repair, reconstruct and rehabilitate the ecosystem and natural environments of Ogoni-land that will revert it to its natural and original entities. Whatever restoration technology deployed will be a carbon-copy and fabrication of the ideal, reality, original and natural ecosystems and environment of Ogoni-land. Elliot called it faking nature of Ogoni-land and Katz termed it artefacts or forgery of Ogoni-land. In their comparative analysis between natural environments and reinstated or art of forgery ecosystem, the two environmentalist thinkers hold that a rehabilitated ecosystem will certainly not have the worth of the original, and in some situations, it may merely diminish the ecosystems more. Obviously stating the empirical fact, the restoration of the ecosystem and natural environments of the Ogoni-land will lack its original primitive-wild value and would be a figment of imagination of the original environments and ecosystem of Ogoni-land.

Katz's argument at the end noted that, humanity should not abstain from restoring damaged ecosystem and natural environments. The aforementioned Katz postulation happens to be a boost to the Niger Delta ecosystem and natural

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<sup>615</sup> UNEP (2017), "Nigeria Launches \$1 Billion Ogoni land Clean-up and Restoration Programme"



environments restoration techniques. Hence the UNEP recommendations and Nigerian government, MNOCs and local communities' implementations of the report are ethically required, morally justifiable and in consonance with Katz directives. Some environmentalist thinkers and ecologists attacked Katz on this conclusion, stating that he is not entitled to hold the aforementioned view because of his earlier stated arguments on restoration thesis. They cajole him that maybe Katz will reason that anthropocentric exploitations to ecosystem and natural landscapes have earlier on generated an artefacts, while reinstating that it will advance artefactual-nature of the ecosystem on his view. They are of the conception that Katz could welcome restoration for human-caused rationale but will not be able to welcome restoration for nature's own sake.

Be that as it may be a restoration ecologist and environmental pragmatist called Andrew Light expresses a different opinion from Katz, Elliot and other environmentalist thinkers and ecologists who perceived restorations of nature as an erroneous strive to reproduce and reinstate its original value. According to Light, almost all environmentalist philosophers have declined to comprehend the conceptual and empirical significance of ecological restoration. He is of the idea that the failure is fundamentally because of the fallacious opinion that ecological restoration is solely an effort to rehabilitate nature itself instead of an attempt to reinstate an essential section of the human connection with non-human nature.<sup>616</sup>

In his work "Ecological Restoration and the Culture of Nature"<sup>617</sup>, he admits that restoration of nature is at no time in the past or future identical as the untouched but proposes that the method be better seen as nearer to humane art restoration (that

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<sup>616</sup> Andrew Light (2000), "Ecological Restoration and the Culture of Nature: A Pragmatic Perspective"

<sup>617</sup> Andrew Light (2000), "Ecological Restoration and the Culture of Nature: A Pragmatic Perspective", p440



attempts to find restorative means for previous harms) instead of a mischievous imitation (that seeks to be brought to a conclusion a forgery as the actual thing).<sup>618</sup>

He argued that it is not true that humane art restoration does harm and exercise control over nature or had intent to outwit us. Instead they are sincere efforts to rectify abuse done to the ecosystem and natural environments by anthropocentric intervention, to remedy the stability of nature, and to allow nature continue or proceed along its own interest or own natural course.<sup>619</sup> Light is of the view that ecological restoration not only bring back or re-establish nature but equally rehabilitate our moral interconnection with the environments. He is of the opinion that the further humanity takes part in reconstruction of nature the more attached we become to nature (and to one another) and the lower probability of allowing nature to be injured.<sup>620</sup> Light declares public approval and affirmed the value of engaging jointly in restorations prospects. In fact, for Light “nothing but good comes from restoring nature.”<sup>621</sup>

Andrew Light’s unequivocal argument on ecological restoration is quite relevant and in accordance with the UNEP report which recommends the clean-up and ecological restoration of Ogoni-land in particular and the Niger Delta in its entirety after sequence of crude oil pollutions. The empirical fact remains that the ecological restoration of the Niger Delta will never return the degraded ecosystem and natural landscapes to its natural and original environments. But the reality is prosperous and growing restored Niger Delta ecosystems that can foster biodiversity appear to be more desirable and satisfactory than oil polluted and devastated ecosystem. It was based on this thoughtful idea that environmentalist

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<sup>618</sup> Andrew Light (2000), “Ecological Restoration and the Culture of Nature: A Pragmatic Perspective”, *Ibid.*

<sup>619</sup> Andrew Light (2000), “Ecological Restoration and the Culture of Nature: A Pragmatic Perspective”, *Ibid.*

<sup>620</sup> Andrew Light (2000), “Ecological Restoration and the Culture of Nature: A Pragmatic Perspective”, *Ibid.*

<sup>621</sup> Andrew Light (2000), “Ecological Restoration and the Culture of Nature: A Pragmatic Perspective”, p440

thinkers, policy makers, ecologists and various stakeholders gladly received the Nigerian government adherence to eventually put into practice the UNEP recommendation report.

Though the restored Niger Delta ecosystem could be seen as faking nature and anthropocentric artefacts as Elliot and Katz stipulated respectively, but it does not make it valueless for the environmental restoration will be beneficial to the Niger Delta people and the ecosystem. In the case of Alaskan restorations prospect, Katz is even of the view that Exxon ought to be compelled to clean-up and reinstate the Alaskan waterways and landscapes that were degraded by its corporate negligence. So in the Niger Delta case-study, some environmentalist thinker and ecologists are of the affirmation that the reinstated Niger Delta ecosystem will accommodate enough and adequate biotic and abiotic resources to proceed with its evolution in the absence of additionally help and based on the fact that those possible dangers to the health and integrity of the reinstated ecosystems have been abolished.<sup>622</sup> Ecologists are of the notion that an ecosystem is deemed reinstated when it evidently operates ordinarily for its ecological phase of development and symptoms of impairment are not present anymore.

Even the UNEP executive director - Erik Solheim noted that the duty to clean-up Ogoni-land is required because it is essential to be done. He postulates that the ecological restoration is absolutely necessary for the sustainability of the Niger Delta. For it will assist bring into existence new-fashioned livelihoods, get going antiquated livelihoods and adjust the lives of the Niger Delta people. The restoration of the Niger Delta will also initiate an advanced model for working

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<sup>622</sup> Cited in Davis Mark A. and Slobodkin Lawrence B. (2004). 'The Science and Values of Restoration Ecology'

towards sustainable development even in the most demanding and challenging environments.<sup>623</sup>

### 6.2.3 Compensation

The historic environmental and social injustice due to the harmful effects of oil pollutions in the Niger Delta has raised some ethical issues that yearn for compensatory obligations to the victims of the harmful effects of the oil pollutants. However, the questions still remain - *how would the compensation policies be made practicable based on the empirical situations of (in) the environment and among the participants in the action or process of crude oil exploratory activities in the Niger Delta who ought to be held responsible for the compensation policies - should it be carried out by the perpetrators, beneficiaries or all the parties involved in the harmful effects of the oil pollutions?*

Morally speaking, Goodin (1989) noted that the purpose of compensation is uncomplicated. He states that compensation performs duties for correcting what ought to be taking into account as unjustified or undeserved injuries to persons or their possessions.<sup>624</sup> Compensation is a form of corrective justice.<sup>625</sup> He postulates

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<sup>623</sup> UNEP NEWS CENTRE (2017), "Nigeria Launches \$1 Billion Ogoni land Clean-up and Restoration Programme"

<sup>624</sup> Goodin Robert E. (1989), "Theories of Compensation", p56

<sup>625</sup> Corrective justice demands that persons responsible for harm or injury ought to rectify what they have caused. Weinrib Ernest J (2013) noted that - Corrective or rectificatory justice is traceable to Aristotelean philosophy and Kantian philosophy of right. Aristotle conceives it as a pattern of private law relationship. He postulates that it deals with the wrong and redirection of resources that repeal it, as a sole focal point of activity and passivity where the actor and the victim are explained in interconnection with one another. With emphasis on structure, Aristotelian idea of corrective justice is formal for it sees it as an egalitarianism as compare to distributive justice. Kantian philosophy of right follows the normative assumptions of corrective justice to his notion of the will i.e. freedom and indicating conscious intention of self-determining actions. For Kant, there abound interconnectivity between corrective justice and institutions of legal order. No wonder that in the American legal thought, corrective justice happens to be among the two strong and influential theories of tort.

that the idea of compensation is to furnish the person with ‘a full and perfect equivalent’ replacement of what (something) he or she has been deprived off. Moreover, that in the course of compensating; the person ought to be given the exact replacement of something being deprived off and should neither be ‘over-compensated’ nor ‘under-compensated’. He posited that the goal of compensation is to elevate the victim to certain thresholds of well-being with emphasis on the initial position - (status quo ante) - of the person before inflicting the unjustified injuries.<sup>626</sup> He explicitly stated that there is a clear-cut differentiation between restitution<sup>627</sup> and compensation.<sup>628</sup>

According to Goodin, there are two types of compensation - *means replacing compensation* and *ends displacing compensation*.

- Means replacing compensation aims to supply the victims with identical means in pursuance of the same ends. It is a compensation that is equal in value, amount, function and meaning prior to the person’s suffering from the loss or injury. He called this *compensation1*.
- Ends displacing compensation has the goal of compensating persons not by assisting them in pursuance of the same ends through another means, instead by assisting them in pursuance of “some other ends in a way that leaves them subjectively as well off overall as they would have been had they not suffered the loss at all.”<sup>629</sup> He termed this *compensation2*.

He made a contrast between these two types of compensation. *Compensation1* aims to supply the victims with identical means in pursuit of the same ends.

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<sup>626</sup> Goodin Robert E. (1989), “Theories of Compensation”, p59

<sup>627</sup> This is the act of restoration of something that was lost or stolen to its proper owner.

<sup>628</sup> This is the act of recompense done through pecuniary means to someone or persons in recognition of loss, suffering, or injury inflicted upon.

<sup>629</sup> Goodin Robert E. (1989), “Theories of Compensation”, p60

*Compensation*<sup>2</sup> objective is to give the victims an identical contentment through dissimilar (various) ends. However, the overall idea of the duo compensation is “that people must be made as well off as they would have been, had it not been for the loss for which they are being compensated.”<sup>630</sup>

Prima facie, Goodin (1989) analysis on compensation seems relevant to the Niger Delta case scenario. *But how would his analysis of compensating people be applied and implemented in the case of the environmental and social injustice due to the harmful effects of oil pollution in the Niger Delta?*

The practical application of the compensation policies in the Niger Delta involves what Goodin (1989) termed “compensation for pecuniary harms and non-pecuniary ones.”<sup>631</sup> Judging from the empirical situations of the Niger Delta environment and her inhabitants, justice demands that the region needs monetary vandalism awards i.e. ‘monetary value for actions involving deliberate destruction or damage to public or private property’. And if so, it entails that *means replacing compensation* is a sine qua non in the Niger Delta region. Simultaneously, the same empirical situations make it apparent that some capabilities were either impaired or violated by the third person and of which this action indicates that *ends displacing compensation* is an absolute necessity in the region too. *Now due to the involvement of the two types of compensation policies, how could both be balanced?*

The *compensation policy* entails that remittance is needed in the Niger Delta for restoration activities of the environment and injuries associated with the harmful

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<sup>630</sup> Goodin Robert E. (1989), “Theories of Compensation”, Ibid.

<sup>631</sup> According to Goodin (1989), pecuniary harms comprise of injury or vandalization of a person’s possessions, resources or capitals. Non-pecuniary harms consist of bodily injury, emotional trauma, dishonour, terror and apprehension, deprivation of companionship, loss of freedom and anguish caused by an abuse of a third person, p61.

effects of the oil pollution. While *compensation policy*<sup>2</sup> demands an equivalent settlement for the capabilities - (pain and suffering, loss of faculties and amenities) - that were either impaired or violated. This is because the essence of compensation policies is to give comfort or consolation in a time of great distress or sadness rather than replacement and for the welfare economists it imply - "... to leave people as well off as we found them."<sup>632</sup> The welfare economists are of the conception that the bottom-line of the two compensation policies has to do with costs. However, some writers have a comparative analysis of the two in terms of which of the compensation policies is more superior to the other (which is outside the scope of this research). Instead the words of the welfare economist ought to be applied and it asserts - "If gainers actually compensate losers and still have some gains left over, then the policy constitutes a paretian improvement: someone wins, no one loses. If gainers hypothetically could compensate losers and still have some gains left over, then at least that shows we could still have neutralized the distributional effects of the policy and still shown a profit; that we refuse to do so is itself a distributional decision."<sup>633</sup> The welfare economists explained further on the distributional roles by remarking that "if everyone is as well off as he was before the policy was instituted, then no one has any grounds for complaint."<sup>634</sup>

### 6.3 Principles or Rules

During an environmental harm or damage, the question being asked have been - *who should be held responsible for the restoration of the created huge external effects on the degraded environment, human health and abused human rights and entitlements?* Trying to postulate a definite answer by the environmentalist thinkers have been problematic, however principles such as "polluter pays, beneficiary pays

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<sup>632</sup> Goodin Robert E. (1989), "Theories of Compensation", p63

<sup>633</sup> Goodin Robert E. (1989), "Theories of Compensation", p67

<sup>634</sup> Goodin Robert E. (1989), "Theories of Compensation", Ibid.

and ability to pay” have gained status as to enunciate some facts of truth on the posited question. The act of restoring a damaged environment could be capital intensive, thereby attracting great attention on who should bear the cost. *Will the cost of restoration be bear by the polluters (MNOCs), the beneficiaries (MNOCs, Nigerian elites and Western consumers) of the environmental harm, the consumers, the local communities or the taxpayers?* To provide an affirmative answer to the question asked requires that politics need to be step-aside and objective rule implored, since some vested interest of the groups involved are economically strategizing and ensuring that they are and would not be held responsible for the restoration cost, rehabilitation and compensatory obligation of the damaged environment.

### 6.3.1 Polluter Pays Principle

The polluter pays principle (PPP) happens to be among the ancient and famous environmentalist rules which demands that the monetary valuations (costs) of pollution ought to be bear by the person that precipitate the said or such pollution. The Greek philosopher Plato in one of his works cited a prototype of the PPP stating thus “If anyone intentionally spoils the water of another ... let him not only pay damages, but purify the stream or cistern which contains the water.”<sup>635</sup> PPP upholds some of the rules or directives that are applicable to the environment specifically and sustainable development broadly<sup>636</sup>, for it executes such functions like prevention and controlling of pollution and remediation, if pollution happens to occur. PPP is equally called “extended polluter responsibility” (EPR) with its objective of holding the polluter accountable for the external monetary valuations

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<sup>635</sup> The Dialogues of Plato: The Laws, vol.4, book 8, section 485(e), translated by Jowett B, cited in Barbara Luppi, et al. (2012), “The rise and fall of the polluter-pays principle in developing countries”, p135

<sup>636</sup> Sally-Ann Joseph (2013), “The Polluter Pays Principle and Land Remediation: A Comparison of the United Kingdom and Australian Approaches”



(costs) occurring as a result of pollution created. The Swedish government in 1975 first made mention of EPR. EPR has the objective of shifting the external costs of pollution from governments, taxpayers and society to the polluter generating the pollution.

Initially and in its earliest inception PPP is an economic policy - stressing that business organizations or persons who purchase goods and services for personal usage ought to bear the monetary valuation of the externalities they generate and PPP aspires to decide how the monetary valuations (costs) of pollution evasion and prohibition must be allotted.

Externalities as an economic term has to do with influence produced or created by an economic actor, which are perceived (positively or negatively) by others who are not involved in the activity or transaction, but the market does not involve these influence produced or created back to have an effect on the economic actor that generated them. Externalities could be positive/negative or cost/benefit. Thus, externalities ensue when a business organization's deed generates an unremunerated loss of welfare to others. It is equally called an external cost. Practical examples of externalities are the environmental harms and impact being generated by the MNOCs in the local communities of the Niger Delta. Externalities are generally alluded to as costs on society; as such costs connected with pollution are regarded to be externalities.

However PPP is an important means of internalizing of externalities. Internalization of externalities means that, the monetary valuations of pollution ought to be beard by the polluter. In the case of the Niger Delta, internalization of externalities demands that the costs of pollution and environmental harms ought to be internalized on the activities of the MNOCs who are generating the external costs. The externalities could be internalized in the forms of taxes, pollution permits, tolls

and government subsidies rather than putting the charges (monetary valuations of the high pollution) on the Niger Delta peoples' breathing air, livelihood and habitable environment. In that case, the Nigerian government are required to put a monetary taxation on pollution for the MNOCs. This will make the MNOCs to remunerate the overall social costs including environmental costs instead of the private cost.

The internalization of externalities is a sine qua non in a country such as Nigeria that possess an epitome of unregulated market and where economic actors are not compelled to take responsibilities for externalities, thereby leaving the burden of the external costs of the negative externalities for/on the local communities of the Niger Delta. PPP needs the Nigerian government intercession to promulgate and enforce an existing clearly defined pollution rights. In economic concept PPP proposes that the polluter (MNOCs) ought to bear the all-inclusive costs of environmental harms and impacts being generated by their deeds and exploratory activities. The bearing of the all-inclusive costs of environmental harms and impacts would generate an inducement to minimize the harms created; to the minimum-level where the marginal costs of pollution minimization is equivalent to the marginal costs of harms generated by such pollution.

In the modern society PPP has developed into environmental and legal concepts. In the environmental concept PPP concerns environmental costs and external costs that have to do with environmental harms. In the environmental domain, the PPP has the objective to amalgamate the utilization of the environment, as well as its waste assimilation capacity into the economic perspective via the application of economic measures like pollution charges and permits.<sup>637</sup> Hence PPP insinuates

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<sup>637</sup> Ian Mann (2009), "A Comparative Study of the Polluter Pays Principle and its International Normative Effect on Pollutive Processes".

and encourages the setting up of a procedure of fiscal charges through which polluters could fund public policy to keep the environment safe from harm or injury.<sup>638</sup> In essence PPP assists as an apparatus for pollution ending or subsiding and restraint.<sup>639</sup> PPP is admitted as an authorized standard for the assessment of environmental policy.<sup>640</sup> PPP as an environmental concept focused on how much that ought to be paid than who ought to pay.

Within the legal perspective PPP has developed gradually and assumed extra duty and definition, it has become prominent and generally believed or recognized to be valid or correct as a legal principle.<sup>641</sup> The vital aspect of the legal concept is obtained from the fundamental truth or proposition that serves as the foundation for a system of fairness and justice. Legally, PPP is enunciating that in the cause of pollution the business organizations or persons generating such pollution ought to pay for the result or effect of the pollution and for averting future occurrence. PPP is now a referral point for lawmakers and policymakers equally. It is the crucial fundamental ideology for a scope of legal tools at the nub of environmental process of making or enacting laws.

The same approach that PPP has gradually develop from the economic idea to the environmental concept and then to legal perspective, so it has advanced from an economic control cost to an environmental harm cost and to compensation cost. Having evolved into a concept of polluter liability, the PPP is incorporated in international law and it demands that the polluter ought to pay compensation for an environmental harm generated in the course of its activities.

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<sup>638</sup> Nicolas de Sadeleer, *The Polluter-pays Principle in EU Law – Bold Case Law and Poor Harmonisation*

<sup>639</sup> Kettlewell Ursula (1992), "The Answer to Global Pollution? A Critical Examination of the Problems and Potentials of the Polluter-Pays Principle"

<sup>640</sup> Sanford E. Gaines (1991), "The Polluter-Pays Principle: From Economic Equity to Environmental Ethos"

<sup>641</sup> OECD (1992), "The Polluter-Pays Principle: OECD Analyses and Recommendations"

Thus, in the modern era PPP is a famously environmentalist rule that has been promulgated, adopted and recommended by the Organisation for Economic Co-operation and Development (OECD) and European Union (EU) member states in 1972 as international guidelines for environmentalist policy principle. Moreover, modern era treaties have given the PPP some prominence.

The Helsinki treaty of 1992 and Charleville-Mézières treaty in 1994 synoptically postulate that the monetary valuation to avert, hold/keep in check and curtail pollution is the sole responsibility of the polluter.<sup>642</sup> While the Rio treaty of 1992 enunciates a comprehensive approach of PPP in its *Principle 16* declaring thus - state powers ought to support or actively encourage the incorporation of environmental monetary valuation and the utilization of economic measures, taking into cognizance the perspective that the polluter ought, in proposition, carry the monetary valuation of the pollution, with the proper care or concern for the public interest and in the absence of twisting international trade and investment.<sup>643</sup> The European Community in *article 174.2* of their Treaty notes that - community course or principle of action adopted on the environment (...) ought to be established on the precept that an action should not be taken if the consequences are uncertain and potentially dangerous and on the propositions that pre-emptive measures ought to be considered, that environmental harm should as a prime concern be corrected at the point of origin and that the polluter ought to pay.<sup>644</sup> This is termed a precautionary approach or measure in order to avert pollution or environmental harm.

The PPP states clearly and firmly that the person, corporation or business firm that causes an environmental harm ought to bear the economic, social and

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<sup>642</sup> O.Z. van Sandick and A.H.G. van Herwijnen (2001), "Polluter pays principle versus owner pays principle..."

<sup>643</sup> Workshop on EU Legislation (2012), Principles of EU Environmental Law "The Polluter Pays Principle", p5

<sup>644</sup> Vito De Lucia (2008), "Polluter pays principle"

environmental burden (cost) either in the restoration of the damaged environment or in the proximate potential compensation of the local community affected if the need arises. The application of this tenet is because an environmental harm is characterised by the concept of externalities of economic activities and the state of being legally responsible for the environmental harm persuades the person, corporation or business firm to internalize the overall social and environmental costs of its operations thereby optimizing down the environmental harm.<sup>645</sup> The PPP moves the financial cost onto the person, corporation or business firm causing the environmental harm. The OECD in their 1972 recommendation states “the polluter should bear the expenses of carrying out pollution prevention and control measures decided by public authorities to ensure the environment is in an acceptable state.”<sup>646</sup>

Proponents of the PPP believe firmly in this principle and uphold it based on the rationales that - the principle concern justice and that it is morally justifiable for the person, corporation or business firm causing environmental harm for or to other people to make amends. They are of the opinion that PPP economically promotes efficiency; in its legal dimension, PPP supports or actively encourages justice and advances the act or state of agreeing or conforming to international environmental policies. Adherents of PPP remarked that in law the rule is equally applicable - a defaulter ought to pay.<sup>647</sup> They further postulate some argumentations that - the polluter is the individual who created or initiated the pollution (*practical argumentation*), the polluter might have refrain from the pollution or might have keep away from the risk and for the polluter not to circumvent the risk is the legal or normative addressee and ought to be blamed (*normative argumentation*), at the

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<sup>645</sup> Barbara Luppi, et al. (2012), “The rise and fall of the polluter-pays principle in developing countries”

<sup>646</sup> OECD Recommendation on Guiding Principles concerning Environmental Policies, May 26, 1972, 11, ILM, 1172

<sup>647</sup> Pannell David (2004), “Thinking like an economist 4: Who should pay for the environment?”

same time the polluter is the individual who reap financial reward from the polluting act and ought to be able to consider the cost and benefit analysis (CBA) of his acts (*economic argumentation*).

The PPP is quite ad rem to the wetland region of the Niger Delta where the MNOCs have created and initiated externalities that are quite harmful to human health and environment. In the local communities of the Niger Delta, the market-driven strategy to ameliorate externalities is to internalize third party costs and benefits and demanding the MNOCs to restore environmental harms and impacts generated. The rationale for internalization of externalities on the activities of the MNOCs is to lessen the external costs of negative externalities on the local communities of the Niger Delta and enforcing the MNOCs who are generating the negative externalities to bear the costs for the negative effects. Thus, MNOCs being the profiteer of the financial reward of the crude oil exploratory activities necessitate that they should bear the responsibilities of the costs of restoration of the damaged Niger Delta ecosystems and compensate the local communities of the Niger Delta where the need arises.

In as much as the PPP seems to be an ideal environmental principle, it has its own limitations in practical applications.

- Its first limitation buttresses on questions of legal and political issues. On the legal aspect, questions of this nature could arise - *was pollution previously “illegal” when the pollution took place (what is known as ‘lex certa’ i.e. legal security) and can the polluter be held culpable? If these questions are not legally standing, the moral question would be - is it justifiable to mandate the polluter “legally” to be answerable retroactively?*
- In some nations of the world rules of prescription make it beyond the bounds of possibility to institute legal proceedings against the polluters many years

aftermath of the pollution. In an instance of a particular situation or circumstances where the polluter cannot be made to bear the costs, the government or damaged parties may try to force other parties pay or restore the degraded ecosystems.

- To measure the degree of pollution generated and being created might be problematic. For instance, in the local communities of the Niger Delta the MNOCs try as much as possible to conceal the degree of environmental harm or pollution they are generating in the area. Another example is pollution caused by oil theft and bunkering.
- The idea of foisting rules and taxation on foreign business organizations - (as is in the case of the MNOCs in the Niger Delta) - are a bit problematic. For example - most of the MNOCs involved in oil exploratory activities in the Niger Delta are subsidiaries of the parent oil companies' headquartered in their home countries. Thus on issues of externalities, there is lack of international consensus or legally binding laws to foist sanctions on the polluters.
- PPP practical application in a country like Nigeria is somehow difficult due to the fact that Nigeria is among the countries suffering from pollution haven hypothesis<sup>648</sup>, where there is lack of enforcement of environmental rules and regulations. This necessitates the MNOCs not to be taking responsibility of the external costs of their environmental harm in the Niger Delta.

### 6.3.2 Beneficiary Pays Principle

The Beneficiary pays principle (BPP) seems a little bit controversial particularly among environmentalist thinkers. Environmental thinkers are rationalizing if BPP

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<sup>648</sup> Brian Copeland (2013), The Pollution Haven Hypothesis, University of British Columbia (Unpublished Lecture), (See footnote reference 119, for some information on the pollution haven hypothesis).



could be a sustainable moral principle?<sup>649</sup> However, this research would not go into an in-depth analysis of BPP rather it will restrict its scope to BPP's meaning, its empirical implementation as it pertains to the Niger Delta environmental harm and limitations.

The BPP concept advocates that the beneficiaries of the causal factor of the environmental pollution ought to be held responsible for its external costs and should subsequently be obliged to pay compensation to the victims of the externalities.<sup>650</sup> Adherents of BPP believe that if a person, business organization or moral agent (beneficiaries) benefits from activities that injure others, the beneficiaries are morally bound to compensate the injured victims despite the possibility that the beneficiaries are not the causal factor of the injury. However, the compensation should not surpass the gain of the beneficiaries and he does the compensation if and only if there is no other person with stronger duties to compensate the injured (victims).<sup>651</sup> Furthermore, BPP is affirmed as an unintended acknowledgment of benefits emanating from injustice that might in certain conditions prompt remedial justification to the victims affected by such unjust activities.<sup>652</sup> In fact, BPP protagonists believe that there abound fundamental moral intuitions whereby for victims to bear the injury of which they are not the causal factor of the wrongful acts are wrong and of course that such injury ought to be

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<sup>649</sup> This is because some perceived BPP to be associated with corrective (rectificatory) justice while others classify BPP in the sphere of distributive justice. In addition to, BPP has some challenges in its practical application.

<sup>650</sup> Baatz Christian (2013), "Responsibility for the Past? Some Thoughts on Compensating Those Vulnerable to Climate Change in Developing Countries"

<sup>651</sup> Huseby Robert (2015), "Should the beneficiaries pay?"

<sup>652</sup> Butt Daniel (2014), "A Doctrine Quite New and Altogether Untenable': Defending the Beneficiary Pays Principle"

alleviated.<sup>653</sup> The necessity of BPP is to give reasons or cite evidence in support of remedial justification in normative world policy scenario.

The Niger Delta environmental harm of oil pollution is an empirical normative case of BPP that yearns for the costs of mitigating the effects of the environmental pollution and reparations for the historic injustice meted out. However, the question still remain - *who and who have benefited, still benefiting from the causal factors of the environmental pollution and ought to be involved in the compensatory obligations?* This is because BPP is arguing that those who have benefited and still benefiting from the outrageous injustice are obliged for the costs of remedial justification and compensating of the victims i.e. the local communities of the Niger Delta. In response to the posited question, suffice it to assert that the beneficiaries of the crude oil exploratory activities in the Niger Delta are multifaceted.<sup>654</sup> The multifaceted nature of the beneficiaries of the causal factor of the environmental effects of oil pollution makes BPP application implausible in the Niger Delta region.

Be it as it may, if BPP should be pondered as a corrective justice<sup>655</sup> it requires that prima facie the business organizations i.e. the MNOCs ought to be the first beneficiary of the environmental effects of the oil pollution in the Niger Delta and as such should be held responsible in the rectification of the environmental harm caused. This is because prior to 1988 - (emergent of Federal Environmental

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<sup>653</sup> Baatz Christian (2013), "Responsibility for the Past? Some Thoughts on Compensating Those Vulnerable to Climate Change in Developing Countries"

<sup>654</sup> They consist of business organizations (MNOCs & their allies), moral agents (Nigerian government and some developed countries) and persons (those that have benefited from the injuries), for example consumers of oil and gas (Petroleum) products in the Western world.

<sup>655</sup> See Footnote Reference 625 for explanations on the concept of corrective justice, which is basic to compensation.

Protection Agency in Nigeria) - MNOCs have already commenced crude oil exploration in the absence of environmental regulation to guide their corporate activities. Moreover, it was only in 1990s that most of the environmental quality laws and regulations on oil spills, gas flares and effluent discharges came into effect. The environmental quality laws and regulations effectuation were the consequence of the Ogoni-land crisis<sup>656</sup> which enforced the MNOCs and the Nigerian government to pay an exceptional attentiveness vis-à-vis acknowledgement of the needfulness of corporate social responsibility (CSR) in the Niger Delta. Now considering from the period of oil exploration's commencement until 1990s, tremendous harmful effects and social injustice of oil pollution have been experienced and suffered by the local communities of the Niger Delta at the hands of the MNOCs<sup>657</sup> while the MNOCs have benefited and are still benefiting from the causal factor of the harmful effects of oil pollution. Furthermore, many Niger Delta citizens have died in the cause of agitation against harmful effects of oil pollution in their land. Instead of the MNOCs engaging the Niger Delta Stakeholder<sup>658</sup> (s) in a stakeholder dialogue<sup>659</sup> (based on sincerity of purpose) rather

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<sup>656</sup> The Ogoni-land crisis erupted due to the negative and environmental harmful effects of oil pollution in Ogoni-land of the Niger Delta. It was carried out under the auspices of Movement for the Survival of the Ogoni-people (MOSOP). The crisis resulted to the unjust killing of Ken Saro-Wiwa and eight others by the Nigerian government in November 1995. MOSOP agitation accentuated the significant environmental harms and socio-economic effects of the MNOCs oil exploratory activities in the Niger Delta ecosystems and on the inhabitants of the local communities of the Niger Delta region.

<sup>657</sup> UNDP (2006), NIGER DELTA HUMAN DEVELOPMENT REPORT

<sup>658</sup> Freeman (1984) defines, "A stakeholder in an organization is any group or individual who can affect or is affected by the achievement of the organization's objectives", p46

<sup>659</sup> Stakeholder dialogue is a 'mediation approach' implored by an organization [corporation, firm, company] in its area of operation. The Environmental Council 'Better engagement...' (2007) defines stakeholder engagement "...as referring to processes that seek the views of individuals or groups on policies, plans or projects that may affect them directly or indirectly. By improving the information available to decision-makers, a good engagement process can help make a better decision", p6. The essence of stakeholder dialogue is to give a listening ear to different

some of their corporate acts do ignite civil conflicts, crime and political instability in the Niger Delta region. For instance one of such agitations resulted to the unjustifiable execution of Ken Saro-Wiwa and eight other Ogoni activists in 1995 by the Nigerian government headed by Sani Abacha. Thus, basing our claim on BPP and corrective justice the MNOCs have the compensatory obligations to mitigate the costs of harmful effects of oil pollution in the Niger Delta that is being caused by their crude oil exploratory activities and subsequently pay compensations. However, under the distributive justice<sup>660</sup> this line of thought would be implausible.

The Nigerian government as moral agent happens to be another beneficiary of the harmful effects of oil pollution in the Niger Delta. Prior to the advent of crude oil production in the Niger Delta, the Nigerian government foreign earnings were dependent on the agrarian sector. However, with the discovery of crude oil in the Niger Delta and its subsequent commercial production in 1958, there was a leap from the agrarian sector to crude oil sector thereby making the Niger Delta to be the economic nerve of the Nigerian economy. Empirical evidences show that the crude oil exploration and exportation has enhanced Nigerian economic performance, positively altered the status quo of the Nigerian economy and increased Nigerian economic growth. These indicate that the Nigerian government is benefiting from the harmful effects of crude oil pollution in the Niger Delta, because the crude oil exploitation and exportation is generating bulk revenue and foreign exchange earnings for the Nigerian government. While the Niger Delta

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stakeholders and addressing different problems related to them. Stakeholders are the key to effective dialogue. Stakeholder dialogue improves social responsibility and environmental performance.

<sup>660</sup> Distributive justice affirms that a person's share is determinant on the distributive benchmark allotted. It has to do with a pattern of social just distribution of goods in the society and a society where trivial inequalities in consequence does not emanate.

region suffers from the paradox of plenty<sup>661</sup> upon all these huge economic revenues that the Nigerian government generates from the region. Instead of reaping from the natural endowed non-renewable resources at their disposal the Niger Delta are suffering from environmental injustice, social injustice and sustainability deficiency. Moreover, the Nigerian government do misappropriate the royalties' income<sup>662</sup> that is being paid by the MNOCs which ought to be used to cushion the harmful effects of crude oil pollution in the Niger Delta. Hence, basing our claim on the BPP and of corrective justice practice; the Nigerian government are obliged to mitigate the costs of harmful effects of crude oil pollution in the Niger Delta and subsequently pay compensation for the environmental and social injuries caused by their act and lack of negligence as duty bearers.<sup>663</sup> For it is their obligation to protect the local communities of the Niger Delta from environmental injustice, social injustice and human rights abuse from the MNOCs. Albeit, harmful effects

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<sup>661</sup> The paradox of plenty otherwise known as the "curse of the resource rich syndrome" occurs when natural capitals such as - agriculture, forest and fishing are been destroyed for the utilization of non-renewable resources such as - crude oil and natural gas. It relates to nations or regions with profusion of natural resources for instance non-renewable resources but having less economic growth and worse developmental result than nations with fewer or no natural endowments. The British economist Richard M. Auty coined the term in 1993. In his concept he made emphasis on how nations with rich resources do experiences slow development, prone to corruption and hostilities. (See footnote references 74, 268, and 586 for some information on the paradox of plenty too).

<sup>662</sup> Royalties' income is the pecuniary tendency that accrues from natural resources such as crude oil, natural gas and minerals that are being paid to the property owner. Royalties' income is being measured in units of barrels or tons. The business organization or person who leases the property from the owner has the moral rectitude to provide the payment to the owner. In the case of Nigerian government versus the MNOCs, Soji Awogbade et al. recorded that "Royalties are payable to the government for oil produced from a concession. The rates are set based on the location of the field. Therefore, the deeper the concession area is, the lower the applicable rate. Payment can be in foreign currency or, subject to the direction of the Minister, wholly or partly in petroleum." Soji Awogbade et al. (2014), "Oil and gas regulation in Nigeria: overview", 2017 Thomson Reuters.

<sup>663</sup> Duty bearers are "...those actors who have a particular obligation or responsibility to respect, promote and realize human rights and to abstain from human rights violations." (Gender Equality, UN Coherence & You, United Nations Document), see section 5.3 for more information on duty bearers.

of oil spillage, gas flaring and environmental degradation are major phenomenon of crude oil exploratory activities in the world but the Niger Delta empirical scenario is pitiful because the Nigerian government is yet to enforce stringent environmental regulations that would curb the harmful effects of oil pollution in the region.

Since the advent of crude oil exploratory activities in the Niger Delta some Nigerian citizens and foreign nationals (persons) have been benefiting from the harmful effect of oil production. Crude oil exploration and exploitation in the Niger Delta have subdivided Nigerian citizens into two groups. Some Nigerian citizens are of the opinion that the crude oil is a blessing to the country, while some are of the conception that it is a curse to Nigerians. Those laying claim that the crude oil is a blessing are the people benefiting from the crude oil exploration. Their strategy is usually to amass the 'black gold' wealth, misappropriate and cart away the dividend of the crude oil exploration and production to buy or obtain material assets or object for oneself at the detriment of other citizens. The political elites are the minority group of persons perpetrating these injuries on the Niger Delta citizens. While the second group are the normal citizens who are of the claim that the crude oil exploration and production in the Niger Delta enriches only the political class and are not meant for the ordinary citizens. Therefore, these political elites are invariably contributing to the cause of the environmental pollution activities in the Niger Delta region, for there is a causal connection between the political elites and the victims of the harmful effect of oil pollution which is morally relevant.<sup>664</sup> It follows that in moral perspective a combination of causal responsibility (for example - the harmful effects of oil pollution) with moral responsibility (for instance - compensation) demands for justification.<sup>665</sup> Thus, the

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<sup>664</sup> Huseby Robert (2015), "Should the beneficiaries pay?"

<sup>665</sup> Baatz Christian (2013), "Responsibility for the Past? Some Thoughts on Compensating Those Vulnerable to Climate Change in Developing Countries"

political class' contribution to the causal factor of harmful effect of oil pollution in the Niger Delta demands that they ought to compensate victims of the externalities. They are morally obliged to compensate the victims because an empirical situation presently shows that the rectification and restoration of the Niger Delta harmful effects due to oil pollution is really problematic; for statistically an approximation of 1.5 million metric tonnes of oil spills have occurred in the past five decades of crude oil exploration and production necessitating the Niger Delta to be one of the environmental harmful regions due to oil pollution in the world.<sup>666</sup>

The multifaceted nature of the persons benefiting from crude oil exploration in the Niger Delta makes the practical application of the BPP to be problematic. The question is - *who has the primary moral responsibility (among the tripartite beneficiaries) to compensate the victims of the environmental harmful effects of oil pollution?* Positing an answer to this question happens to be a limitation for BPP.

Huseby (2015) in his work gives a definition of BPP in this model - *"If an agent A benefits from an action x that she did not perform, and an agent B is harmed by x, then, if B did not perform x, A, in virtue of benefiting from x, owes B compensation (which is not to exceed A's gain from x), insofar as no other agent has stronger duties to compensate B."*<sup>667</sup> Now a deductive illustration from Huseby's definition as it pertains to the Niger Delta case scenario is as follows: - if the Nigerian government and political elites (beneficiaries) benefit from harmful effects of oil pollution they did not generate and the local communities of the Niger Delta (victims) are injured by the harmful effects of oil pollution, then, if the victims did not produce or create the harmful effect, the beneficiaries by virtue of benefiting from the harmful effects of the oil pollution, is under obligatory compensation to

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<sup>666</sup> Akintodun Akintomide (2012), "Crude oil and progress of Nigeria" in THE NATION Nigeria

<sup>667</sup> Huseby Robert (2015), "Should the beneficiaries pay?", p210



the victims (which will not be greater than the beneficiaries gain from the harmful effect of the oil pollution) on the grounds that no other person has stronger duties to compensate the victims. However *prima facie*, the causal agent/account of the harmful effects of oil pollution ought to be determined and it happens to be the MNOCs.<sup>668</sup> Simultaneously the MNOCs are causal agents and beneficiaries. The problematic-nature of BPP application in this Niger Delta case scenario is each of the beneficiaries would try to apportion the obligatory compensation to another and thereby making the victims to suffer from a harmful effects and injustice they did not create. Another argument that might arise within the beneficiaries is that - since the MNOCs belong to the domain of causal account and beneficiary account concurrently, they must be having stronger duties to compensate the victims of the harmful effects of oil pollution. This is the exact practical situation in which the local communities of the Niger Delta find themselves presently.

Another limitation of BPP has to do with Caney's (2006) analysis. He noted that: in a situation whereby the Mr. A is the causality factor of the harmful effects and the activities of Mr. A is beneficial to Mr. A and to Mr. B. Now based on causality factor Mr. A is responsible for the harmful effects, while on beneficiary factor both Mr. A and Mr. B are involved and benefiting. How would we assign the duties of obligatory compensation for (to) the victims?<sup>669</sup> The analogy of Caney (2006) is quite *ad rem* in the Niger Delta case scenario. The MNOCs are the cause of the environmental harms via their crude oil exploratory activities in the local communities of the Niger Delta. However, both the MNOCs and Nigerian government benefit from the MNOCs' environmentally harmful activities. But it is uncertain how the costs of obligatory compensation for the victims ought to be

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<sup>668</sup> The MNOCs seem to have stronger duties to compensate the local communities of the Niger Delta following Huseby's illustrative definition.

<sup>669</sup> Caney S (2006), "Environmental degradation, reparations and the moral significance of history"

apportioned among the two beneficiaries. The MNOCs are arguing that it is not their moral obligation<sup>670</sup> to compensate the victims of the harmful effects of oil pollution instead it is the moral responsibility<sup>671</sup> of the Nigerian government. This MNOCs' claim is premised on the fact that apart from their statutory duties of paying taxes, rates and levies; that royalties' income are being paid by them to the Nigerian government. Examples of such taxes and royalties were explicitly noted by one of the MNOCs - Shell. In the '2015 Shell Sustainability Report' under 'Shell's Economic Contribution' it states: the sum of \$42 billion was remitted to the Nigerian government from Shell Petroleum Development Company (SPDC) Joint Venture (JV) partners from 2011-2015.<sup>672</sup> In furtherance to, in the year 2015 the sum of \$1.1 billion happens to be "Shell share of royalties and corporate taxes paid to the Nigerian government (SPDC \$0.6 billion; Shell Nigeria Exploration & Production Company (SNEPCo) \$0.5 billion)."<sup>673</sup> That being the situation, therefore; the MNOCs are of the opinion that the Nigerian government has the moral duty of obligatory compensation to the local communities of the Niger Delta.

However, I do not quite totally concur with the MNOCs' claim. This is predicated on my belief that the MNOCs have ethical responsibility<sup>674</sup> to the local communities of the Niger Delta that expects them to do the right thing and to inculcate ethical standards (ethics of business) in their business. Thus, the MNOCs

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<sup>670</sup> This is a moral or legal obligation; in fact a responsibility which someone is under an obligation and ought to execute, albeit he is not legally bound to accomplish it. These obligations are found in natural rights such as being charitable although which can never be enforced by law.

<sup>671</sup> This has to do with a moral obligation and responsibility that individual or groups have to take action in compliance with the moral principles that are sine qua non to their social communities and humankind.

<sup>672</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015, p25

<sup>673</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015, ibid

<sup>674</sup> This is the capability to identify, explain and take measures on multiple principles and values as stated in a standard within the bounds/confines of a specific field or context.

are obliged to have positive impacts on the local communities of the Niger Delta and her immediate environment.<sup>675</sup> Furthermore, the local communities of the Niger Delta expect the MNOCs to perform their crude oil exploratory business in a socially responsible<sup>676</sup> manner in order to maintain the equilibrium between their businesses and the Niger Delta ecosystems. It is not legal but compelling (under obligation) and it could be termed “duties required of corporations”. These socially responsible performances would make the MNOCs to have a peaceful co-existence with their immediate environment vis-à-vis giving thought to the interest of the local communities of the Niger Delta via provision of social amenities. This is because a firm whose business significantly impact on its environment positively is anticipated to have an outstandingly progress and socially acceptable policy on social responsibility.

### 6.3.3 Ability to Pay Principle

Ability to pay (APP) is associated in a historical perspective with the principle of taxation. It postulates that taxes ought to be paid based on the amount of the taxpayer’s earnings notwithstanding the utilities obtained. In fact, in the past two centuries the ability to pay principles has been tie-up ‘pari passu’ with the logic for direct taxation.<sup>677</sup> John Stuart Mill in his *Principles of Political Economy*<sup>678</sup> expostulate the principle and backed by an evaluation of taxpayer’s welfare within the concepts of utility.<sup>679</sup> Thus, APP states that a taxpayer’s earnings ought to display the proportion to be given for communal spending; with emphasis on

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<sup>675</sup> The environment is a constituent of the earth vis-à-vis its inhabitant.

<sup>676</sup> This is an ethical structure which stipulates that an entity such as an organization (be it business or ordinary) and individuals have the moral obligation and responsibility to behave for the well-being of humanity.

<sup>677</sup> Utz Stephen (2002), “Ability to Pay”

<sup>678</sup> During the era of John Stuart Mill, the field of political economy was still an aspect of moral philosophy.

<sup>679</sup> During the era of John Stuart Mill, the field of political economy was still an aspect of moral philosophy, Ibid.

income as the best means for such measurements.<sup>680</sup> Mill opines that taxation ought to be structured in a manner that it should foist an identical sacrifice on all persons and the sacrifice ought to be calculated in terms of means. However, Mill did not go further to illustrate how the sacrifice that is linked with taxation ought to be measured in general terms.<sup>681</sup>

Most literatures in the present-day have effectuated and associated this ATP with climate change without direct reference to taxations. Within this sphere, ATP asserts that the price of climate change mitigation and adaptation ought to be bankrolled by the affluent persons in commensuration to their richness and equally allotting substantial responsibilities to subsidize global warming to persons whose wealth has been produced or created unjustly in this generation or sometime.<sup>682</sup> ATP made two distinctions on how the costs ought to be apportioned - (first group): people whose richness is generated unjustly and (second group): people whose richness is not generated unjustly. It infers that substantial responsibility ought to be meted out to the first than to second.<sup>683</sup>

Although in the present-day, ATP has been greatly associated with climate change. But under causality, the harmful effects of oil pollution in the Niger Delta induced harms are contributing to global warming and climate change.<sup>684</sup> Shell

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<sup>680</sup> Grassi C. Maria (2015), "Status and impact of the ability to pay principle in the ECJ's case law concerning tax benefits based on personal and family circumstances",

<sup>681</sup> Utz Stephen (2002), "Ability to Pay"

<sup>682</sup> Knight C. (2011), "Climate change and the duties of the disadvantage: reply to Caney."

<sup>683</sup> Knight C. (2011), "Climate change and the duties of the disadvantage: reply to Caney." Ibid.

<sup>684</sup> The increases in fossil fuel exploitation and deforestation in the course of crude oil exploratory activities have been discharging high density of greenhouse gases (GHG) into the Niger Delta atmospheres. The constituents of the GHG that are mostly discharged into the Niger Delta atmospheres are carcinogen, carbon dioxide (CO<sub>2</sub>), nitrous oxides, chlorofluorocarbon, hydrocarbons such as methane, ozone and aldehydes. The released gases contribute immensely to high increase of heat (global warming) via acidic rains, gas flaring and oil spillages - all leading to loss

sustainability report of 2015 lays credence to this climate change causality theory stating thus: “The flaring of natural gas produced with oil wastes valuable resources and contributes to climate change. At Shell, we are working hard to minimise flaring associated with oil and gas production.”<sup>685</sup> This cause and effect relationship makes the harmful effects of oil pollution to have a point of convergence with climate change i.e. both are environmental injustices. There abound correlations between GHG discharge and climate change.<sup>686</sup> As climate change is an environmental injustice being meted out in a global realm<sup>687</sup> the harmful effects of oil pollution are environmental injustice being meted to the local communities of the Niger Delta.<sup>688</sup> Moreover, the Niger Delta environmental injustice has raised some ethical issues that call for mitigations, reparations and compensations.

Knight (2011) analyses tried to classify some levels of polluters: polluters who do it due to necessity and polluters who do not. He deduces that it would be unjust to apportion the same costs to the two groups for each kilo of emission they emit. Instead he noted that in the first level i.e. ‘due to necessity polluters’ are victims of circumstances, whereas the second are indulgent consumers.<sup>689</sup> In consideration of Knight’s analysis as it concerns the oil pollution-induced harms in the Niger Delta,

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of biodiversity, environmental harmful effects and degradation. The increase in the high density of heat has climax to greenhouse effect which results to climate change. This climate change is having the following impacts in the Niger Delta region: coastal erosions and general floods, alteration in rainfall system and alteration in vegetation.

<sup>685</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015, p28

<sup>686</sup> The environmental harmful effects of oil pollution inherent in the Niger Delta are being associated with enormous quantity of gases being flared on regular basis - CO<sub>2</sub>, nitrous oxides, chlorofluorocarbon and hydrocarbons - emanating from the gas flaring contributes to climate change due to heavy quantity of GHG emissions from the flaring sites.

<sup>687</sup> Though, the perpetrators of the environmental harms are anonymous.

<sup>688</sup> While the perpetrators are well known

<sup>689</sup> Knight C. (2011), “Climate change and the duties of the disadvantage: reply to Caney.”

the questions would be - (1) *where could the harmful effects of oil pollution be classified?* (2) *Which group should be held morally responsible for the historic environmental injustice of the harmful effects of the oil pollution?*

Suffice it to note that positing some answers to the stated questions instantly showcases the possible limitations of ATP within the ambient of the Niger Delta case scenario. This is because, although the perpetrators of the environmental injustice in the Niger Delta-induced harms are established but following ATP and Knight (2011) analysis - that has to do with those who does it due to necessity (victims of circumstances) and those who do not (indulgent consumers) - principles for determining which group to assign the costs of oil pollution-induced harms for ATP seems challenging and problematic.

However, I would suggest that the description of allocating the costs of oil pollution-induced harms in the Niger Delta ought to be done according to Caney (2006) differentiation between “fundamental interests and luxuries...”<sup>690</sup> Moreover, apportioning the costs of harmful effects of oil pollution for ATP in the Niger Delta may necessitate the concept of distributive justice<sup>691</sup> that would consist of utilitarian justice, Rawlsian justice and luck egalitarian justice. Because a deduction from the teachings of John Stuart Mill exemplified that - environmental injustice is violating the rights of the local communities of the Niger Delta and if the local communities of the Niger Delta possess rights it entails that they possess a justifiable claim to be protected. Thus, Mill maintains that justice has set of rules

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<sup>690</sup> Cited in Knight C. (2011), “Climate change and the duties of the disadvantage: reply to Caney”, p6, which he noted that both are morally weighty.

<sup>691</sup> Distributive justice affirms that a person’s share is determinant on the distributive benchmark allotted. It has to do with a pattern of social just distribution of goods in the society and a society where trivial inequalities in consequence does not emanate.

and rights that are indispensable for local communities of the Niger Delta well-being.

#### 6.4 Corporate Identity (Principles)

The core thesis under here is to illustrate some of the MNOCs' organizational attributes as to highlight who they are, what they do, what they believe in and what they intend to achieve or complete successfully. However, prior to addressing the issue it would be ad rem to understand the conceptual notion of what corporate identity is all about. The corporate identity of business organizations focuses attention on the firms' culture (ethos), business strategies, performances, structures, historical development/reputation, business activities and market jurisdiction.<sup>692</sup> Corporate identity accentuates what an organization really is, its attributes, how it showcases the organizational corporate image which results to competitive advantage. It is quite a strategic issue in a business organization for it expresses the organizational corporate personality.<sup>693</sup> Having defined what corporate identity is; it would be essential to showcase the corporate identity of some of the business organizations operating in the Niger Delta - which are mainly the MNOCs.

##### 6.4.1 Royal Dutch Shell

Royal Dutch Shell (RDS) would be the first MNOC to be highlighted. RDS is "an integrated international energy company with expertise in the production, refining and marketing of oil and natural gas."<sup>694</sup>

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<sup>692</sup> Balmer John M.T. (2001), "Corporate identity, corporate branding and corporate marketing 'Seeing through the fog'"

<sup>693</sup> B. Olutayo Otubanjo T. C. Melewar (2007), "Understanding the meaning of corporate identity: a conceptual and seminological approach"

<sup>694</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015, p3



On the issue of RDS business operations in a more responsible manner, the Chief Executive Officer (CEO) - Ben van Beurden asserts that “I am determined that operating our business responsibly - with respect for people, their safety, communities and the environment - remains a priority. Sustainability, for me, is essential to our responsible operation and of being a valued and respected member of society.”<sup>695</sup> He noted that efforts are being intensified in improving their operations to be more safety oriented in many aspects of their business operations. However, he remarked with sadness that in 2015 seven people lost their lives in the course of their business operations in the Niger Delta of Nigeria. On the UN Global Compact initiative<sup>696</sup>, the CEO admits that Royal Dutch Shell happens to be a founding member and they are determined to be supporting the 10 focused principles of the initiative.<sup>697</sup>

Royal Dutch Shell lays emphasis on its determined effort in integrating and embedding sustainability into their business operations and projects, so as to; address the key sustainability challenges facing their business organization vis-à-vis exploring means of responding to them. As such, they earmarked the establishment of the corporate and social responsibility committee (CSRC) in 2015 that has the responsibility of reviewing and advising the management on policies and performances against the Shell General Business Principles, the Shell Code of Conduct and obligatory health, safety, security, environment and social performance (HSSE & SP).<sup>698</sup>

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<sup>695</sup> These are the words of the CEO of Royal Dutch Shell made in his Introductory speech for Shell Sustainability Report 2015, p1

<sup>696</sup> See 5.6 Multinational Corporations Responsibility

<sup>697</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015

<sup>698</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015

On the issue of climate change, Shell stated: “we believe there are clear, practical steps the world can take to tackle climate change while continue to provide energy to meet present and future needs.”<sup>699</sup> Shell’s statement on climate change is in consonance with the report of the Brundland Commission of 1987 - i.e. The World Commission on Environment and Development - captioned ‘Our Common Future’ which popularized the sustainability principles.<sup>700</sup> Thus, Shell extensively opted for innovations and approaches that would assist in the adaptation and mitigation of the climate change. They include - emissions reduction, natural gas as an alternative to coal, Government carbon-pricing mechanisms, carbon capture and storage, low-carbon energy (renewable energy and biofuels), combining renewable energy with hydrocarbon and the process of liquefied natural gas (LNG).<sup>701</sup>

The Royal Dutch Shell operational activity in Nigeria is under the name Shell Nigeria - otherwise known as Shell Companies in Nigeria (SCiN), which has been energetic in Nigeria as far back as 1937. Shell Nigeria operates under these four business organizations - Shell Petroleum Development Company of Nigeria (SPDC)<sup>702</sup> Shell Nigeria Exploration and Production Company (SNEPCo)<sup>703</sup> Shell

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<sup>699</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015, p13

<sup>700</sup> Kibert et al. (2012), Working toward sustainability, p4

<sup>701</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015

<sup>702</sup> “SPDC is the largest Shell company in Nigeria and produced the country’s first commercial oil exports in 1958. SPDC is the operator of a joint venture (the SPDC JV) between the government-owned Nigerian National Petroleum Corporation – NNPC (55% share), SPDC (30%), Total E&P Nigeria Ltd (10%) and the ENI subsidiary Agip Oil Company Limited (5%). It is focused on onshore and shallow water oil and gas production in the Niger Delta.”, Shell Nigeria, “Shell at a glance”

<sup>703</sup> “SNEPCO operates the Bonga field, Nigeria’s first deep-water oil discovery. The Bonga facility has the capacity to produce more than 200,000 barrels per day of oil and 150 MM standard cubic feet of gas per day.”, Shell Nigeria, “Shell at a glance”

Nigeria Gas (SNG)<sup>704</sup> and Liquefied Natural Gas (NLNG).<sup>705</sup> Shell Nigeria operational base happens to be located within the local communities of the Niger Delta region. Apart from onshore exploration and production, Shell Nigeria is involved in some offshore licenses such as the Shell-operated Bonga field<sup>706</sup> (*see figure 45*) in the Gulf of Guinea where it has 55% interest. Shell equally is having a 25.6% interest in the Nigeria Liquefied Natural Gas (NLNG).

Shell stipulates of its economic contribution to Nigeria as follows - that 93% of SCiN contracts are being awarded to Nigerian companies; that 94% of the SCiN employees are Nigerian; that in 2015 SPDC JV and SNEPCo made a total contribution of \$62.3 million to Niger Delta Development Commission, that SPDC JV and SNEPCo spent \$15.4 million on social investments projects in 2015. In furtherance to its activities in Nigeria, Shell stated that “crude oil theft is a major issue; with attacks not only on pipelines but increasingly on flowlines and well

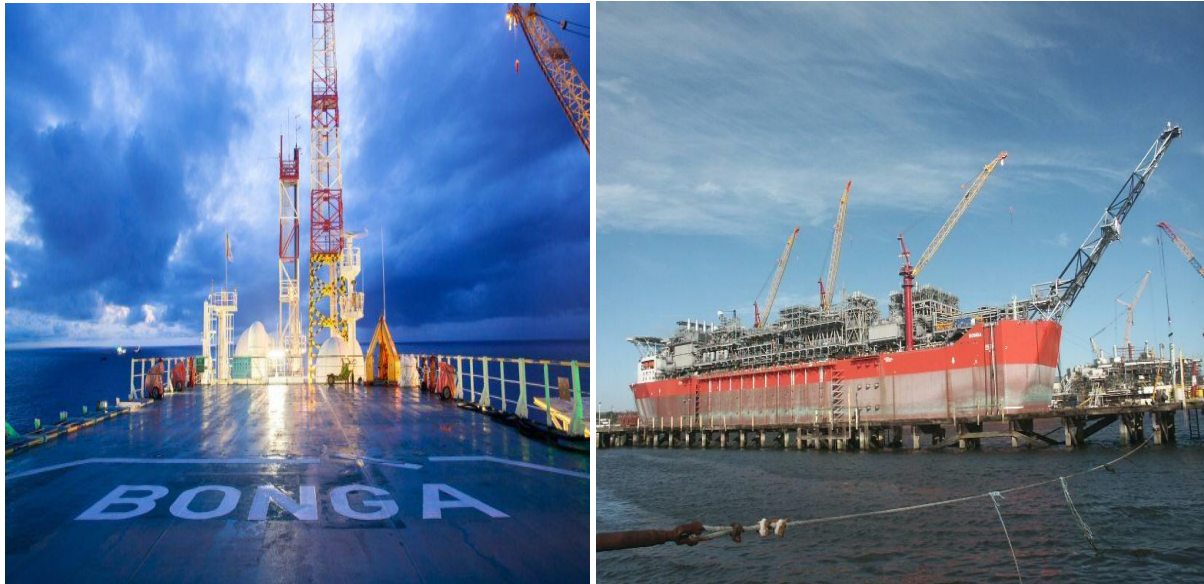
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<sup>704</sup> “Shell Nigeria Gas (SNG) is the only international oil and gas company to set up a gas distribution company in Nigeria to supply industry customers.”, Shell Nigeria, “Shell at a glance”

<sup>705</sup> “Nigeria LNG (NLNG) is a joint venture incorporated in 1989 to produce LNG and natural gas liquids for export. It was Nigeria’s first LNG project. Shell holds a 25.6% share, together with NNPC (49%), Total (15%) and ENI (10.4%).”, Shell Nigeria, “Shell at a glance”

<sup>706</sup> “Bonga is the first deep-water project for the Shell Nigeria Exploration and Production Company (SNEPCO) and for Nigeria. The discovery well is located in oil prospecting license (OPL) 212, which was awarded during Nigeria's first round of deep-water frontier acreage awards in 1993. SNEPCO operates the field on behalf of the Nigerian National Petroleum Corporation (NNPC) under a production sharing contract, in partnership with Esso (20%), Nigeria Agip (12.5%) and Elf Petroleum Nigeria Limited (12.5%). Crude oil production from the field started in November 2005 and the first shipment from the field was made in February 2006. Production was stopped temporarily due to a militant attack in June 2008 and was resumed later in the same month. Bonga lies 120km southwest of the Niger Delta, in a water depth of over 1,000m.”, **Offshore-technology (2017), Bonga Deepwater Project, Niger Delta, Nigeria**

heads... these acts have reinforced the need to maintain the highest standards of safety and security in Nigeria.”<sup>707</sup>



**Figure 45: This is showing the first Nigerian deep-water crude oil and gas exploration at Bonga Field and the North West Overview of the Bonga Field.**<sup>708</sup>

On the environmental and social impacts of oil and gas activities in the Niger Delta (*see figure 46*), Shell says that there is a reduction in the volume of gas flaring between 2002 and 2015 by the SPDC joint-ventures operations by 85%. It also noted that the intensity of gas flaring for every tonne of oil and gas produced has declined by around 70%.<sup>709</sup> According to Shell, the reason for the decrement is because of divestments and Shell focus and determination “to end routine gas flaring at oil production sites by 2030.”<sup>710</sup> Shell Nigeria remarked that its approach to commence two major gathering-gas projects in the Niger Delta are being

<sup>707</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015, p24

<sup>708</sup> “Shell Nigeria Exploration and Production Company Ltd (SNEPCo) is producing oil from the Bonga North West field, which lies at a depth of more than 1,000 metres (3,300 feet). SNEPCo is adding production to the existing Bonga facility with this new development, in which it holds a 55% interest.”

<sup>709</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015

<sup>710</sup> Udo Bassey (2015), “Shell, Total, others agree to end gas flaring by 2030” in THE PREMIUM TIMES.

hampered by lack of adequate joint-venture funding from their partner- the Nigerian government. However, that the installation of a gas-gathering plant at one of their stations called Oloma has reached an advanced stage of completion and ready for final commissioning.<sup>711</sup>



**Figure 46: The photo shows a gas flare in a local community in the Niger Delta. Credit: Ed Kashi / World Bank Group.<sup>712</sup>**

On the issue of oil spillage and response for its immediate clean-up exercise, Shell noted that “SPDC continues work to clean up areas near our facilities affected by spills irrespective of the cause of the spills. The number of operational spills fell from 37 in 2014 to 15 in 2015. The volume of oil spilled in operational incidents also dropped down, from 0.3 thousand tonnes of spills volume to 0.2 thousand tonnes.”<sup>713</sup> Shell reiterates its commitment to the UNEP recommendations towards

<sup>711</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015

<sup>712</sup> Tim Ward (2016), “5 Questions for the World Bank on Ending Routine Gas Flaring and Climate Change” in The Huffington Post.

<sup>713</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015, p24

the clean-up of Ogoni-land. It is established that SPDC is organising series of initiatives to curb and decrease the impact of crude oil bunkering and vandalism in Ogoni-land. Other SPDC creativity includes community-based pipeline inspection, education and alternate livelihood agenda. In order to illustrate a decrease on oil spills, Shell stated that “In total, 133 new sites requiring remediation were identified in 2015, of which 23 were in Ogoniland. Of the total of 305 sites identified for remediation and certification at the start of 2015, 184 have been remediated and certified, 55 of these sites were in Ogoniland (representing a net reduction of 29% in remediation sites in that area during 2015).”<sup>714</sup> At the same time, in 2015 Shell earmarked the sum of 55 million pounds for the settlement of the local community of Bodo due to two operational spills that occurred in 2008. Shell noted that there is an ongoing stakeholder dialogue with the Bodo local community in order to permit international contractors to commence with the oil removal and clean-up. This effort is predicated on the Memorandum of Understanding signed between the SPDC JV and the local community of Bodo.<sup>715</sup>

It is quite commendable to note that the NNPC highlights Shell statements on the decrement of gas flaring by asserting that “it has succeeded in reducing gas flaring in the country by 26 per cent in the last ten years.”<sup>716</sup> The decrease in gas flaring has altered the second position which Nigeria was before to the seventh position, and the rationale is due to the fact that the flaring intensity reduced by 36% in 2006 to 10% in 2016. This great reduction was achieved due to an aggressive policy of gas commercialization - that was driven by the NNPC and sponsored by the

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<sup>714</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015, Ibid.

<sup>715</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015.

<sup>716</sup> Oladeinde Olawoyin (2017), “NNPC reduces gas flaring by 26 per cent in ten years” in THE PREMIUM TIMES.



MNOCs operating in Nigeria and tied up on the Gas Master Plan.<sup>717</sup> Also technological innovations on the side of the MNOCs facilitated in the drastic decline in gas flaring. In furtherance to, NNPC noted that the Nigerian government designed a National Gas Policy which targets to end gas flaring in Nigeria by the year 2020 and of which the MNOCs have been notified to abide with.<sup>718</sup>

On the issue of corporate responsibility, Shell noted that SCiN is liaising with the government, communities and civil society to execute series of community based programmes that could impact positively on the lives and livelihoods of the local communities of the Niger Delta and Nigerians in general. Some of these programmes aim at community and business development, education and health related matters. For instance, Shell stated that in 2015 SPDC JV and SNEPCo provided the sum of \$10 million for scholarships and educational programmes for some Niger Delta States of Rivers, Bayelsa and Delta for their indigenes in pursuance of secondary educations, university undergraduate studies, postgraduate studies and for some vital courses such as engineering and geosciences in some international reputable universities. In the year 2010, Shell established “the cradle to career programme” with the aim of giving bursary to the children of the local communities of the Niger Delta, so as to enable them attend some of the elites leading secondary schools in Nigeria. Shell noted that in 2015, 60 students were enrolled and that since the commencement of the programmes 410 students have benefited from the programme.<sup>719</sup>

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<sup>717</sup> According to NNPC, “The Gas Master Plan was geared towards addressing four key critical issues of gas availability, infrastructure, commercialization framework and gas affordability,” cited in Oladeinde Olawoyin (2017).

<sup>718</sup> Oladeinde Olawoyin (2017), “NNPC reduces gas flaring by 26 per cent in ten years” in THE PREMIUM TIMES.

<sup>719</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015.



Furthermore, it is recorded that Shell has been giving assistance to local community health initiatives in the Niger Delta as far back as 1980s. Some of this assistance as earmarked by Shell includes - the Obio Cottage Hospital in Port Harcourt that was established by the SPDC JV. It happens to be one of the most visited health institutions in the area because of the community health-insurance programme that was initiated which happens to be first of its type in the Niger Delta. Shell stated that as of 2015 there have been 45,000 beneficiaries from the SPDC JV community health-insurance in the said Cottage Hospital and moreover that 550,000 host communities have received an advantage of the SPDC JV outreach initiatives between 2007 and 2015. In fact, that SPDC JV is giving assistance to 18 health centres in the Niger Delta; while SNEPCo takes care of two centres outside the Niger Delta.<sup>720</sup> It is relevant to note that SNEPCo cooperated with an international non-governmental organisation called 'Project Gaia Prospects' on a project-study to encourage the usage of clean cook stoves in Lagos. SPDC equally established a youth entrepreneurship initiative known as 'Shell LiveWIRE'<sup>721</sup> which has gone beyond the frontiers of the Niger Delta to Lagos.<sup>722</sup>

#### 6.4.2 Chevron

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<sup>720</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015, Ibid.

<sup>721</sup> "The purpose of LiveWIRE is to improve opportunities for young people to realise their potential through the creation and development of their own businesses. Such businesses will contribute towards a more buoyant economy and communities with more fulfilled young people. Shell LiveWIRE is a social investment programme that aims to help young Nigerians explore the option of starting their own business as a real and viable career option. It provides support, access to training, guidance, and business mentorship to young entrepreneurs and potential entrepreneurs between the ages of 18 and 35. The programme operates mainly in the Niger Delta region and aims to inspire, encourage and support young people aged 18-35 to start up their own businesses through the provision of finance and training for young entrepreneurs."

<sup>722</sup> Royal Dutch Shell plc (2015), Shell Sustainability Report 2015

Chevron oil and gas business organization is “one of the world’s leading integrated energy companies producing safe, reliable energy now and for the future.”<sup>723</sup> Chevron Energy Company initiated ‘the chevron way’<sup>724</sup> with a vision of being an oil and gas business organization that would be most appreciated for its people, partnership and performance.<sup>725</sup> The Chevron Board Chairman and Chief Executive Officer (CEO) - John S. Watson stated that Chevron Energy Company is being directed by ‘the chevron way’ with its core values predicated on “acting with integrity, protecting people and the environment, and engaging in partnership.”<sup>726</sup>

With regard to corporate responsibility, the CEO emphasize that Chevron performs their business in a socially responsible and ethical mode with esteem regards to the rule of law, advocacy of universal human rights, preserving the environment and well-being of the community housing their operations. He noted that Chevron fights vigorously to maintain the utmost ethical standards in all business relations or transactions.<sup>727</sup> Chevron maintains that her corporate responsibility centred on environmental, social and governance (ESG) matters that concerns her business operations and stakeholders that include - investors, customers, host governments, local communities and employees.<sup>728</sup>

Chevron’s watchword and core value is ‘integrity’ and striving to achieve “results through strong governance and ethics.”<sup>729</sup> Still based on the core value of ‘integrity’ and on the principle of respect for human rights, Chevron asserts that:

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<sup>723</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights

<sup>724</sup> This describes Chevron’s values, who they are, what they do, what they believe in and what they intend to achieve.

<sup>725</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights

<sup>726</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights, p1

<sup>727</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights

<sup>728</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights, p3

<sup>729</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights, p4

“although governments have the primary duty to protect and ensure fulfilment of human rights, chevron believes that we have a responsibility to respect human rights and that we can play a positive role in the communities where we operate.”<sup>730</sup>

On the issue of people’s protection and environmental safety, Chevron stated that: “fundamental to the chevron way is our commitment to protecting people and the environment, which includes developing energy safety and reliably to power human and economic progress worldwide.”<sup>731</sup> Thus, Chevron explicitly illustrated her ‘operational excellence objectives’ that has to do with - safety, health, environment, reliability and efficiency. Chevron is of the belief that environmental protection and safety is consistent with energy provision. Hence, Chevron voiced her opinion on climate change mitigation and GHG emissions by stating: “as the world works to address climate risks, we must create solutions that achieve environmental objectives without undermining growth of the global economy and our aspirations for a better quality of life for all.”<sup>732</sup> Chevron noted the interconnectivity between fossil fuel, GHG emissions and climate change - (as I noted in ‘6.3.3. Ability to pay principle - footnote 684’) - by admitting that “the use of fossil fuels to meet the world’s energy needs is a contributor to rising greenhouse gases (GHGs) in the earth’s atmosphere. GHGs contribute to an increase in global temperature.”<sup>733</sup> Chevron stipulates the fundamental sources of GHGs to include - the burning of fossil fuels for energy generation in the cause of their operation, natural gas flaring and venting that are associated with the crude oil extraction. Chevron thus, admits to reduce the intensity of GHGs emissions through

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<sup>730</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights, p6

<sup>731</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights, p8

<sup>732</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights, p16

<sup>733</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights, p17

gas flaring reduction and venting methods and stating that it is signatory to the World Bank-led Global Gas Flaring Reduction Partnership.<sup>734</sup>

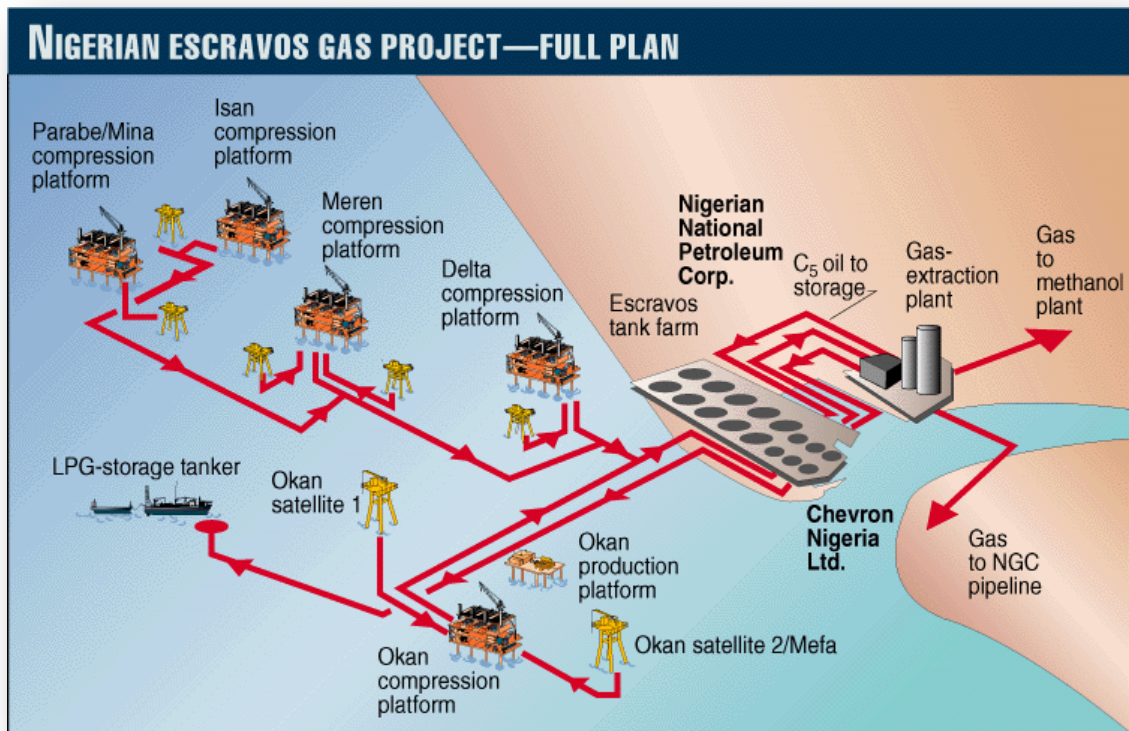
In Nigeria, Chevron Energy Company operates under the name Chevron Nigeria. On the practical application of natural gas flaring and venting, Chevron said that in 2015 it started the operation of the Escravos Gas Plant Phase 3B<sup>735</sup> (*see figure 47*) in the Niger Delta region of Nigeria. Chevron postulates that the gas-gathering project would facilitate gas flaring reduction from its six offshore production platforms in Niger Delta business unit.<sup>736</sup>

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<sup>734</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights

<sup>735</sup> “The Escravos Gas Project Phase 3B (EGP3B), is part of Chevron Nigeria Limited’s two phase Western Delta Gas Development Programme. The objective is the reliable and economic supply of gas to onshore processing facilities and the reduction of the amount of gas currently being flared as a by-product of crude oil production. The EGP3B project will gather Offshore Associated Gas (AG) from six production platforms, four in the North Offshore Area and two in the South offshore area. The gathered gas is intended to be routed to a new platform MEREN GGCP (Gas Gathering and Compression Platform) where it will be compressed and delivered to a subsea tie-in point on the EGP3A OKAN pipeline to the onshore facilities. The project includes installation of 115 km of large diameter, thin walled, concrete weight coated steel subsea pipelines and installation of 9 risers, including 3 large diameter launched risers on heavily congested shallow water brown-field platforms.”, **Subsea7 (2014), Escravos Gas Project Phase 3B (EGP3B)**.

<sup>736</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights



**Figure 47:** This is the master plan of phase 3B of Escravos gas plant located in the Niger Delta region of Delta State of Nigeria.<sup>737</sup>

On partnership initiatives, creating welfare and building local capacity in the course of their operations, Chevron said “through decades of experience, we have learned that our business success is deeply linked to society’s progress and prosperity.”<sup>738</sup> Therefore, Chevron illustrated some strategic health investment programme made against the spread of mother-to-child transmission of HIV/AIDS in the Nigerian State of Bayelsa. Chevron achieve this objective through a joint partnership with an International NGO, saying that 2015 was the third year of the commencement of the initiative which has yielded a magnificent outcome by assisting to educate

<sup>737</sup> Nwokoma Marizu (1998), “Nigeria’s Escravos gas project starts up” in Oil & Gas Journal.

<sup>738</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights, p20

approximately 300,000 persons about HIV prevention and carry out a HIV test on more than 53,000 pregnant women.<sup>739</sup>

In furtherance to Chevron's local community's commitment in the Niger Delta, Chevron remarked that in 2005 a joint venture partnership was entered into with the NNPC which "pioneered the global memorandum of understanding (GMoU) as a new approach to community engagement in the Niger Delta."<sup>740</sup> The GMoU focused on creating a stakeholder development agenda with the intent of handling conflicts and addressing community requirements and wants within the hub of Chevron's operations. According to Chevron, the GMoU has made more than 500,000 persons stronger and more confident, across 400 Niger Delta communities especially in controlling their life and claiming their rights.<sup>741</sup> Moreover, that in partnership with NGOs, local and state governments that an eight Regional Development Communities (RDC) were established in order to represent local communities' interest across five Niger Delta states. Chevron claimed that within the past 10 years, the Chevron joint venture with NNPC has completely used up \$100 million on approximately 600 developmental programmes and projects that has to do with health, education, economic development and local capacity building within Chevron's operational facilities in the Niger Delta.<sup>742</sup>

### 6.4.3 ExxonMobil

The energy company called ExxonMobil claims to be "the largest publicly traded international oil and gas company, uses technology and innovation to help meet the world's growing energy needs. We hold an industry-leading inventory of resources

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<sup>739</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights

<sup>740</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights, p23

<sup>741</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights

<sup>742</sup> Chevron (2015), 2015 Corporate Responsibility Report Highlights

and are one of the world's largest integrated refiners, marketers of petroleum products and chemical manufacturers.”<sup>743</sup> The then ExxonMobil Chairman and CEO - Rex W. Tillerson - (currently United States Secretary of State) - elucidates that the mission statement and core values of the energy company is “to power the world's progress by expanding energy supplies safely, securely and responsibly.... We uphold the highest standards of safety and environmental protection in supplying the world's energy.”<sup>744</sup> He mentioned three strategic core values of the energy company - (environmental performance, governance, community and social impact) - that is epitomised in the business organization's slogan - *Protect Tomorrow Today*<sup>745</sup> which is embedded on the concept of sustainability. As an integrated energy company, ExxonMobil business organization is into upstream<sup>746</sup>, downstream<sup>747</sup> and chemical sectors of oil and gas business. ExxonMobil believes that an improvement on the global standard of living demands meeting up with the world's energy consumptions and simultaneously dealing with the environmental impacts of the energy usage which comprises of climate change.<sup>748</sup>

Sustainability concept is well embedded in ExxonMobil's core mission of business activities. ExxonMobil is very much informed of sustainability issues and challenges, thus; their oil and gas business operations in any community worldwide “are founded on ...commitment to operating in an environmentally responsible and

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<sup>743</sup> Exxon Mobil Corporation (2003-2017), “About us”

<sup>744</sup> ExxonMobil (2015), Corporate Citizenship Report, p3

<sup>745</sup> ExxonMobil (2015), Corporate Citizenship Report

<sup>746</sup> The 2015 Chevron corporate responsibility reporting glossary defines upstream as - The industry term for operations related to exploring for, developing and producing crude oil and natural gas; for marketing natural gas; and for transporting crude oil, natural gas and petroleum products by pipeline and marine vessel.

<sup>747</sup> The 2015 Chevron corporate responsibility reporting glossary defines downstream as - The industry term for operations related to refining crude oil into finished petroleum products and for marketing crude oil and the many products derived from petroleum.

<sup>748</sup> ExxonMobil (2015), Corporate Citizenship Report



sustainable way.”<sup>749</sup> In the course of ExxonMobil vigorous effort to expand world’s energy supply there is an awareness that this issue of meeting up with the global energy use are characterized with ethical/energy challenges of business integrity, environmental impacts, socio-economic impacts, lower-carbon future, reduction of greenhouse gas emissions (GHG), climate change mitigation and trying to balance the vices and virtues of novel technological development and issues of unintended, eminent, existential or perceived consequences. Therefore, ExxonMobil has gone into intensive research-partnership with some world class research institutions and universities in order to decipher the ideal methods of worldwide energy production/supply in a more sustainable manner while decreasing the risks of climate change. On ExxonMobil collaboration with some leading citadels of learning, the dean of research at the Princeton University asserted that “Meeting the world’s energy needs in a sustainable way is a formidable challenge. Developing economically viable solutions requires the collaborative efforts of industry, government and academia. We are delighted that ExxonMobil is joining E-ffiliates, broadening the vibrant collaboration between Princeton and leading industry partners in the energy and environmental sectors.”<sup>750</sup>

ExxonMobil believes that corporate citizenship is the basic element of sustainable development. Hence, they stipulated the following areas of corporate citizenship - Corporate governance, Local development and supply chain management (*dwell within the domain of Economic sphere of sustainable development*), Managing climate change risks, Environmental performance (*dwell within the domain of Environmental sphere of sustainable development*), Community and social impact, Safety, health and the workplace (*dwell within the domain of Social sphere of sustainable development*) - which could help to achieve or provide an all-

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<sup>749</sup> ExxonMobil (2015), Corporate Citizenship Report, p13

<sup>750</sup> ExxonMobil (2015), Corporate Citizenship Report, p44

embracing society's sustainability objectives.<sup>751</sup> ExxonMobil have a belief in the concept of stakeholder engagement, knowing quite well that as a worldwide energy company their operational procedures could directly affect and be affected by people, communities and organizations within their facilities. Thus, they know the necessity for stakeholders' interactive forum and the need to improve community relations.<sup>752</sup>

On the issue of climate change, ExxonMobil admits the awareness of its existence, stating that it has been a participant in the conference of IPCC since its inception and noted that tackling the risks of climate change demands a thoughtful initiative and approach. In fact, it was recorded that: "ExxonMobil supports advancement of the scientific understanding of climate change and is committed to providing affordable energy to support human progress while advancing effective solutions to address the risks of climate change."<sup>753</sup> This is an aspect of climate engineering. The ExxonMobil admittance of climate change presence makes them to unveil some mitigation and management strategies that include - engaging on climate change policy, evolving future technology, diminishing the intensity of GHG emissions in their areas of operations and developing solutions that mitigate GHG emissions for their customers.<sup>754</sup> ExxonMobil presumes to be in consonance with the outcome of the United Nations Framework Convention on Climate Change held in Paris in December 2015 tagged the 21<sup>st</sup> Conference of the Parties (COP 21). ExxonMobil noted that tackling the risk of climate change ought to be holistic efforts that "require action from all parts of society, including governments, civil

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<sup>751</sup> ExxonMobil (2015), Corporate Citizenship Report, p8

<sup>752</sup> ExxonMobil (2015), Corporate Citizenship Report, p9

<sup>753</sup> ExxonMobil (2015), Corporate Citizenship Report, p30

<sup>754</sup> ExxonMobil (2015), Corporate Citizenship Report

society and the private sector.”<sup>755</sup> Being “a charter member of the Global Gas Flaring Reduction Partnership”<sup>756</sup> encapsulates the ExxonMobil belief that tackling and managing the business risks of climate change is a *sine qua non*.

On the issue of environmental management, ExxonMobil reiterates its corporate environmental policy of *Protect Tomorrow Today* which underpins the triple spheres of sustainability that eventually leads to a higher-ranking environmental performance. ExxonMobil claimed to be making some efforts in finding ways of decreasing the intensity of air emissions associated with their business operations and products so as to maintain shareholder value and adherence to regulatory compliance.<sup>757</sup> ExxonMobil have high regards for environmental compliance and to that effect claims to “...complies with applicable host-country environmental laws and regulations and applies responsible standards where laws and regulations do not exist. Wherever reasonable, we strive to go beyond compliance to demonstrate leadership in environmental management.”<sup>758</sup> They emphasized that the concepts of nature conservation, protecting the biodiversity and ecosystems services are of immense important for (to) ExxonMobil.

ExxonMobil acknowledges prospective risks that are associated with oil spills, therefore; it accentuates its utmost concern and commitment in checkmating the issue of oil spills whether in the upstream, downstream or chemical sector of its business operations. They stated that “we implement preventive measures to avoid spills and continually seek to improve our risk management, operations integrity and containment capabilities.”<sup>759</sup> Due to these deployed strategies of spills

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<sup>755</sup> ExxonMobil (2015), Corporate Citizenship Report, p31

<sup>756</sup> ExxonMobil (2015), Corporate Citizenship Report, p36

<sup>757</sup> ExxonMobil (2015), Corporate Citizenship Report

<sup>758</sup> ExxonMobil (2015), Corporate Citizenship Report, p53

<sup>759</sup> ExxonMobil (2015), Corporate Citizenship Report, p51

prevention, they assert to have recorded lower rate of oil spills in 2015 with comparison to the previous years. ExxonMobil attests to doing surveillance system of its oil pipelines facilities for safety reasons so as to monitor and avert pipeline corrosiveness and third-party vandalism. ExxonMobil stated that: “We patrol our pipelines routes and monitor pipeline operations using state-of-the-art systems, alarms and other monitoring technologies.”<sup>760</sup>

One of the core values of ExxonMobil is making sure that the local communities within its operational hubs experiences community and social impacts of its business activities. ExxonMobil seeks being instrumental in the social and economic development towards an improved or more advanced conditions of the local communities housing their business operations. In order to perpetuate its *social license to operate*, ExxonMobil “believe that maintaining a fundamental respect for human rights, responsibly managing our impacts on communities and making valued social investments are integral to the success and sustainability of our business.”<sup>761</sup> ExxonMobil is of the belief that for it to have sustainable business operations in any of the local communities housing its business activities the following socioeconomic variables must be put into practice and preserved, they include - respect for human rights, adequate management of stakeholders and community engagements, relating with the local communities in a collaborative and transparent manner, respectfully protecting the cultures and customs of indigenous people, taking into consideration on how cultural heritage and diversity - cultural, spiritual or sacred sites, biodiversity conservation and artefacts - ought to be preserved and sustained, employing the practice and policy of respecting property rights as it concerns host-country regulatory requirements that regulates land

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<sup>760</sup> ExxonMobil (2015), Corporate Citizenship Report, Ibid

<sup>761</sup> ExxonMobil (2015), Corporate Citizenship Report, p60

acquisition, usage and resettlement.<sup>762</sup> The rationale for the enlisted socioeconomic variables is predicated on the ExxonMobil premise that “There is no ‘one-size-fits-all’ solution to community engagement. Every community has its own unique needs and challenges, and we work to maintain an ongoing dialogue with our neighbours, partners and local leaders. By developing strong relationships, we can better understand the needs of our communities and help ensure the work we do is creating a lasting benefit.”<sup>763</sup>

In order to maintain being a good corporate citizen, ExxonMobil engages in some strategic community investments and fights vigorously to improve the quality of livelihood within the local communities’ housing their business operations. ExxonMobil declared that “we strategically invest in long-term social programs that directly impact our business and align with a host country’s economic and social goals. In 2015, we contributed \$268 million to communities around the world.”<sup>764</sup> The stated sum of \$268 million were invested within the geographical regions housing ExxonMobil’s global business activities on the following initiatives - education and teachers’ development programmes in some North American countries, combating malaria, HIV/AIDS and other infectious ailments in some sub-Saharan African countries and improving the economic opportunities and empowerment for some sub-Saharan African women.<sup>765</sup>

In furtherance to, ExxonMobil believes in creating a long-term economic impact and benefits within their global oil and gas business operations. Such initiatives engage ExxonMobil to boost local content management and establishment of local economic growth and development that would permit local participation of hired

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<sup>762</sup> ExxonMobil (2015), Corporate Citizenship Report

<sup>763</sup> ExxonMobil (2015), Corporate Citizenship Report, p62

<sup>764</sup> ExxonMobil (2015), Corporate Citizenship Report, p64

<sup>765</sup> ExxonMobil (2015), Corporate Citizenship Report

personnel, management trainee staff into the daily business activities. This sort of strategic initiative does create an added shared value to ExxonMobil, host-country and local communities - which results to sustainable economic. ExxonMobil's operational hub in Nigeria lays credence to this concept of long-term economic impact. However, prior to further expatiating on the issue it would be relevant to have some details on ExxonMobil existence in Nigeria.

The Niger Delta region is precisely the hub of ExxonMobil business activities, involving exploration and production of crude oil and natural gas. ExxonMobil does the stated business operations under the following - **1.)** Mobil Oil Nigeria plc (MON): its presence in Nigeria dates back to 1907. MON is playing greater role in the downstream sector of ExxonMobil. It is involved in logistics and marketing of crude oil, natural gas, kerosene, lube blending manufacturing and other petroleum associated products. **2.)** Mobil Producing Nigeria Unlimited (MPN): it is into the upstream sector of exploration and production of crude oil and natural gas in Nigeria. MPN is one of the highest energy company producers in Nigeria. It started business activities in 1955 under the name Mobil Exploration Nigeria Incorporated (MENI). MPN was awarded an Oil Prospecting License (OPL) offshore in 1961 in the present Akwa Ibom State and is into joint venture partnership with the NNPC. **3.)** Esso Exploration and Production Nigeria Limited (EEPNL) is the third and were incorporated in 1993. EEPNL got a production sharing contract award from NNPC the same year. In 1999 it made its Erha major deep-water oil and gas discovery. It is good to note that the ExxonMobil affiliates in Nigeria are equally involved in the Bonga oil development field.

ExxonMobil claimed to have adequately exhibited its development initiative of long-term economic concept by its subsidiaries in Nigeria. Thus, it was recorded that "more than 130 Nigerians were trained in various fields such as project

engineering, scaffolding and fabrication, and 52 percent of trainees are now working fulltime on ExxonMobil projects.”<sup>766</sup> ExxonMobil cited some other examples - “In Nigeria, 94 percent of our personnel are Nigerian; 21 percent of local staff is in supervisory or managerial positions.”<sup>767</sup> In the ExxonMobil-Erha North Phase 2 project (*figure 48*)<sup>768</sup> that was executed in Nigeria, its subsidiary called EEPNL practically exhibited the local content policy and promotion of local supplier development by hiring some Nigerian suppliers and contractors<sup>769</sup> for the said project. On the ExxonMobil benevolence of local contractor development in Nigeria, the lead country manager states “The Erha North project demonstrates ExxonMobil’s disciplined management approach and expertise, and leveraged strong performance from Nigerian contractors, which accounted for more than \$2 billion of project investment for goods and services, including subsea equipment, facilities and offshore installation. These contracts will bring direct and indirect

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<sup>766</sup> ExxonMobil (2015), Corporate Citizenship Report, p77

<sup>767</sup> ExxonMobil (2015), Corporate Citizenship Report, p75

<sup>768</sup> “The Erha North Phase 2 project is a deep-water subsea development located 60 mi (97 km) offshore Nigeria in 3,300 ft. (1,006 m) of water and four mi (six km) north of the Erha field, which has been producing since 2006. The Erha North Phase 2 project includes seven wells from three drill centres tied back to the existing Erha North FPSO, reducing additional infrastructure requirements. The project is estimated to develop an additional 165 MMbbl from the currently producing Erha North field. Peak production from the expansion is currently estimated at 65,000 b/d and will increase total Erha North field production to approximately 90,000 b/d. Operator Esso Exploration and Production Nigeria Limited holds a 56.25% interest in Erha North Phase 2, while Shell Nigeria Exploration and Production Company hold the remaining 43.75% share.”, **Offshore magazine (2015), ExxonMobil starts oil production at Erha North Phase 2 project.**

<sup>769</sup> A Nigerian local contractor called Sea Trucks Group confirmed the implementation of ExxonMobil’s local contractor development in Nigeria by stating thus: “In 2014-2015 Sea Trucks Group successfully completed its part of the Erha North Phase 2 Project for ExxonMobil. This scope consisted of the installation of 4 piles and associated manifolds using the Jascon 31 located in OML 133 field in Nigerian waters (in water depth ranging from 1000 to 1200 m). Subsequently a further 10 months accommodation & support for FPSO upgrade works was performed from the Jascon 25.”, **Sea Trucks Group (2016), STG ERHA NORTH PH2.**



benefits to the Nigerian economy through project spending and employment, consistent with project objectives.”<sup>770</sup>



**Figure 48: This is the Exxon Mobil- Erha North Phase 2 offshore production project in Nigeria.**<sup>771</sup> “The Erha North Phase 2 development is an extension of the existing Erha subsea system and infrastructure, currently producing to the existing Erha FPSO located in OML 133 in Nigerian waters. All new subsea wells will be clustered into four new drill centres connected to existing subsea facilities and to the existing floating production, storage and offloading (FPSO) vessel.”<sup>772</sup>

On the core mission of corporate governance, ExxonMobil emphasizes its adherence to ethics and integrity as a vital treasure of its corporate norms, stating thus “For ExxonMobil, upholding the highest ethical standards of business conduct is critical to maintaining our global licence to operate... we operate at the highest level of operational integrity by setting the ethical conduct expectations of our corporation and majority-owned subsidiaries.”<sup>773</sup> The following key elements are explicitly embedded in ExxonMobil’s Standards of Business Conduct - (labour, the environment, anti-corruption, internal audits, systems and practices for reporting violations and transparency) - notwithstanding that “ExxonMobil is not a formal

<sup>770</sup> ExxonMobil (2015), Corporate Citizenship Report, p77

<sup>771</sup> Offshore magazine (2015), ExxonMobil starts oil production at Erha North Phase 2 project

<sup>772</sup> subsea7 (2014), Erha North Phase 2

<sup>773</sup> ExxonMobil (2015), Corporate Citizenship Report, p82

signatory of the United Nations Global Compact<sup>774</sup>; its values represent key elements of our Standards.”<sup>775</sup>

#### 6.4.4 Reactions and Responses on the MNOCs vis-à-vis Host Communities

On the first impression the corporate identity of the three oil majors and most powerful MNOCs involved in crude oil and gas exploratory activities in the Niger Delta have been enunciated. In their respective public relation reports, the three MNOCs exhibited self-appreciation, self-respect, sounding quite affirmative and friendly in the course of carrying out their respective business activities. However, none of the MNOCs ever mentioned about their past performances in the Niger Delta that necessitates the local communities and some civil rights organizations/activists to demonstrate, protest against and criticize their business activities respectively. For there still abound some animosities against some of the oil majors by their host communities. These are some empirical evidences substantiating the host communities’ grievances against some of the MNOCs.

On Tuesday, November 22, 2016, King Emere Godwin Bebe Okpabi the traditional ruler of an oil-rich Ogale community in the Niger Delta - (host community of Shell) - appeared in a London court against Shell business activities in both Ogale and Bille communities of the Niger Delta.<sup>776</sup> He was led by his counsel Leigh Day. However on November 21, 2016, he had an interview with *Agence France-Presse*

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<sup>774</sup> See 5.5 Multinational Corporations Responsibility

<sup>775</sup> ExxonMobil (2015), Corporate Citizenship Report, Ibid

<sup>776</sup> The King came to the London court in demand for Shell to clean-up oil spillages that have destroyed and damaged their communities for decades. The rationale for the choice of a London court was premised on his optimism that he would get justice. Because according to him, English justice system happens to be his hope to obtain justice and end the plight of his people’s live. For getting justice in the Nigerian judiciary system is not feasible due to the fact that “Shell is Nigeria and Nigeria is Shell. You can never, never defeat Shell in a Nigerian court. The truth is that the Nigerian legal system is corrupt,” he postulated. See Guardian Newspapers (2016), “Polluted water in hand, Nigerian king takes Shell to court in London”, 22 November 2016.

where he appeared with some polluted water samplings in order to quantify SPDC environmental disasters caused to the two oil-rich communities of the Niger Delta (*see figure 49*).



**Figure 49: “Bottled water samples stand on a table as Nigerian tribal king Emere Godwin Bebe Okpabi speaks during an interview in central London on November 21, 2016.”<sup>777</sup>**

On the harmful effects of oil pollutions in each of the respective oil-rich communities, the king told *Agence France-Presse* that “My people are drinking this water ... There are strange diseases in my community - skin diseases, people are dying sudden deaths, some people are impotent, low sperm count ... I can afford to buy water. But can I afford to buy for everybody? No.”<sup>778</sup> Hence he was in the English court to press for the following demands - to pressurize Shell into implementation of the 2011 UNEP landmark report on Ogoni-land which

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<sup>777</sup> The photo was taken by an international news agency called Agence France-Presse (AFP) and cited in the Vanguard Newspapers “Nigerian king takes Shell to court in London”, November 22, 2016.

<sup>778</sup> Guardian Newspapers (2016), “Polluted water in hand, Nigerian king takes Shell to court in London”, 22 November 2016.

emphasised of “dangerously high levels of hydrocarbons in the water, bitumen-coated mangroves and poor air quality.”<sup>779</sup> Secondly, he wants the London court to oblige Shell to “go and clean-up Ogale, go and provide water for them; go and do medical history for them, and where medical attention is needed provide for them”<sup>780</sup> he postulated. According to him, what the two oil-rich communities want is compensation because “We are dying”<sup>781</sup> and no amount of money would be sufficient and commensurate to the environmental damage done. Albeit he believed in the Nigerian president sincerity of purpose in wanting to handle the harmful effects; but with an adherence to UNEP statements that cleaning-up and restoration could be between 25 - 30 years frightens the king because he noted that “If we wait for the system to roll on its own, I hate to say this, but it may be too late for the people of Ogale.”<sup>782</sup>

Shell reacted on the Tuesday, November 22, 2016 case in the London court. Shell objected to the hearing of the case in a London court insisting that it should be heard in Nigeria, because the environmental damage involved its Nigerian subsidiary called SPDC that is into a joint-venture partnership with NNPC. According to Shell, the environmental damages in both Ogale and Bille oil-rich communities are due to economic sabotage: vandalism of oil infrastructures, crude oil theft, illegal bunkering and artisanal refineries. Shell noted that since 1993 they pulled out of the Ogoni-land; there have never been any crude oil production activities in its environs including the aforementioned communities. But the king and his lawyers responded to Shell’s arguments, positing that the communities are

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<sup>779</sup> Vanguard Newspapers “Nigerian king takes Shell to court in London”, November 22, 2016.

<sup>780</sup> Guardian Newspapers (2016), “Polluted water in hand, Nigerian king takes Shell to court in London”, 22 November 2016. Ibid.

<sup>781</sup> Vanguard Newspapers “Nigerian king takes Shell to court in London”, November 22, 2016.

<sup>782</sup> Guardian Newspapers (2016), “Polluted water in hand, Nigerian king takes Shell to court in London”, 22 November 2016. Ibid.

heavily impacted with harmful effects due to Shell's crude oil pipelines that cut across every nook and cranny of the communities' environment which happens to be ageing, some are leaking and there is no maintenance culture on the side of Shell.<sup>783</sup>

There was a protest against Chevron Nigeria on Monday, August 15, 2016 by some unemployed youths of their host communities. The demonstrators barricaded the gates leading to the Chevron's administrative and logistics offices in an oil-rich local community of Warri and an entrance to Chevron's Escravos oil storage tank farm in the Niger Delta. Their grievance is premised on the fact that the oil storage tank farm altered the host communities' housing settlement. The protesters complained that most of the host communities' houses were removed in order to create way for crude oil exploratory activities by Chevron. Hence, they were demanding for compensations, jobs and housing from the oil major; grumbling that "Chevron is not bringing anything to the table to benefit their host community."<sup>784</sup> In the words of the demonstrators' leader to the press-men "No work is going on there as we speak, and Chevron Escravos remains shut."<sup>785</sup> According to the press, Chevron was not on hand to respond to the local grievances driving the protest, but noted that Chevron "confirmed last week the tank farm protest without saying whether oil production had been affected."<sup>786</sup>

SweetcrudeReports of 25 October 2013 reported the taking over of ExxonMobil facilities in Ibeno and Eket areas simultaneously by mass demonstrators from the Eket federal constituency in the Niger Delta - the host communities of the oil major. The mass protest against ExxonMobil by its host communities was due to

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<sup>783</sup> Vanguard Newspapers "Nigerian king takes Shell to court in London", November 22, 2016.

<sup>784</sup> Agency Reports (2016), "Niger Delta: Demonstrations Against Chevron Nigeria Escalate" in The Trent

<sup>785</sup> Agency Reports (2016), "Niger Delta: Demonstrations Against Chevron Nigeria Escalate" in The Trent

<sup>786</sup> Agency Reports (2016), "Niger Delta: Demonstrations Against Chevron Nigeria Escalate" in The Trent

corporate negligence and insensitivity over the plight of the host communities. It was reported that there have been numerous cases of oil spills from the oil major's facilities and ExxonMobil neglected the communities in terms of remediation and cleaning-up of the impacted areas. The present sparked off mass protest was due to three major oil spills that occurred in the Eket federal constituency on the following dates: - 13 August 2012, 24 August 2012 and 09 November 2012.<sup>787</sup> While a report stated that the mass demonstration embarked upon by the federal constituency was because of the sum of 26.5 billion Naira oil spills compensation fund ExxonMobil paid through the state government for the four oil producing local government areas of Akwa Ibom state. Another report has it that, the violence emanated because of the refusal of the oil giant to pay compensatory obligations for the 2012 oil spills that devastated the aquatic environment of the oil producing areas. In the cause of the demonstration, some eminent youth leaders of the federal constituency complained of their unfortunate predicaments stating: "ExxonMobil lacked employment opportunities for the people of the community, operate on a deplorable condition of social infrastructure in the host communities, as well as hazards resulting from the exploitation by the oil firm."<sup>788</sup> In fact, the protesters demanded for an instant removal of the ExxonMobil chief executive - (Mr. Mark Ward) - because of his sustained act of rebuffing overtures from the host communities.

The crude oil spill occurrence of December 19, 2012 from the ExxonMobil facility within the Qua Ibo oil field caused another protest by the Ibeno community against the oil giant. According to the residents of Ibeno "We started seeing fresh oil deposits since December 16, and we reported to Mobil and they came to inspect and collected samples of the oil.... But up till now, they have not responded to clean it up, the tide has been flushing the oil to other places and this is worsening

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<sup>787</sup> SweetcrudeReport (2013), "ExxonMobil shut down following mass protest by host communities"

<sup>788</sup> SweetcrudeReport (2013), "ExxonMobil shut down following mass protest by host communities"



the situation.”<sup>789</sup> However, the management of ExxonMobil subsidiary MPN on December 21 acknowledged receipt of the reported oil spills from the residents of Ibeno community positing thus: “Mobil Producing Nigeria Unlimited (MPN), operator of the Nigerian National Petroleum Corporation/MPN Joint Venture, confirms that on December 19, community representatives notified the company of slight oiling on short sections of the shoreline of Ibeno, Akwa Ibom....MPN immediately deployed a team to inspect the site and samples of the oiling were taken for analysis to help determine the source. Sections of shoreline with any oiling will be cleaned immediately. MPN restates its commitment to maintaining high safety, health and environmental standards in our operations and is committed to the well-being of our neighbouring communities.”<sup>790</sup> Meanwhile, it was noted that ExxonMobil suspended the cleaning-up of the impacted areas of the November 09, 2012 oil spills occurrence.

On January 14, 2013 Premium Times reported that “Two months after oil spills from a field in Akwa Ibom operated by global oil giant, Mobil, the company is yet to complete a clean-up of the area of the spill thus endangering lives of residents.”<sup>791</sup> Moreover, it is worthy to take notice that the suspended clean-up exercise of the November 09, 2012 is yet to resume whereas an agreement was reached that the oil major will revert back for full clean-up of the impacted areas on January 07, 2013; coupled with the clean-up exercise of the December 19, 2012 which is still yet to be addressed to by the oil major. These two environmental disasters warranted the Ibeno community leader - Ukott Esenem to complain of corporate neglect and complicity by the ExxonMobil subsidiary, postulating “...that the abandoned clean-up exercise is posing “serious” threat to public

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<sup>789</sup> The Premium Times (2012), “Mobil yet to commence clean-up of Qua-Iboe oil spill”, December 28, 2012

<sup>790</sup> The Premium Times (2012), “Mobil yet to commence clean-up of Qua-Iboe oil spill”, December 28, 2012

<sup>791</sup> The Premium Times (2013), “Mobil still yet to clean-up after Akwa Ibom oil spill”, January 14, 2013



safety....Everyone knows that crude oil is toxic to aquatic life that our fishermen depend on, and leaving the oil un-cleaned for about a month is very hazardous, and the tide has been spreading the oil along the coastlines....And the same oil firm claims to care about health, safety and environmental component of their operations; it is hypocritical and nothing has happened since one month now....The oil has been leaking from the pipelines because they are trying to repair it and they are using toxic chemical dispersants to dissolve and sink the oil to the sea bed.”<sup>792</sup>

The corporate negligence by the oil major demanded the attention of NOSDRA for intervention. NOSDRA compelled the ExxonMobil subsidiary to commenced clean-up exercises of the impacted areas within its facility. The Ibeno community leader implored NOSDRA to sanction the oil major and to enforce it “to be alive to its responsibilities in operating in an environmentally sustainable manner.”<sup>793</sup>

Meanwhile, Premium Times reported that the management of the oil firm declined to comment on why the delays in the remediation exercises; remarking that they failed to reply to email enquiries and refused picking phone calls placed unto them.

Another agitation that culminated in total cessation and suspension of operational activities on ExxonMobil facilities at Qua Ibo Terminal (QIT) by the people of Ibeno was reported once again by Premium Times of July 7, 2014. The youths of Ibeno are demonstrating against ExxonMobil’s failure to adequately clean-up and remediate the impacted environments and to adhered to its pledge of compensatory obligation for the past oil spills. The report posited that “Some youth from ExxonMobil host communities of Ibeno, Akwa Ibom State, have shut down the operations of the multinational firm over recurrent oil spills and strings of

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<sup>792</sup> The Premium Times (2013), “Mobil still yet to clean-up after Akwa Ibom oil spill”, January 14, 2013

<sup>793</sup> The Premium Times (2013), “Mobil still yet to clean-up after Akwa Ibom oil spill”, January 14, 2013

unfulfilled promises made to the communities.”<sup>794</sup> It was learnt that the youth of the communities barricaded the entrance gate of the Qua Ibo Terminal belonging to the oil major and sworn that they would only leave the venue on the grounds that the oil giant carries out a holistic clean-up, remediation of the impacted environment of oil spills and furthermore, fulfill all their past pledges of compensation funds. David Okon, the secretary of the Youth President Forum and youth president of an oil-rich community of Iwuokpom that is hosting ExxonMobil jetty noted that the causative factor of the current violence was due to an oil spill that occurred when thunder struck a tank farm within the Qua Ibo Terminal and a section of the tank farm laden with crude oil cut fire. Because of the accidental discharge of the tank farm, great quantity of crude oil spilt through Mkpanak community into 26 other communities within the vicinity covering almost 35 kilometers. In his words, he posited that “Our grievance is that since last year, there was an oil spill at the QIT that flowed from Inuaeyet Ikot village to Okposo, about 35 kilometers along the coastline towards Mbo local government area. Since then, Mobil has refused to clean up our environment. They issued an acknowledgement letter to indicate that their tank busted. ... Mobil knows the impact of oil spill and the damage it has done to aquatic life and the water table and the entire environment. ...When a major spill occurred last December, they promised to provide relief materials to our people and pay compensation. Up till now, they have not done anything in that regard. Last week, two of the tanks got burnt and crude flowed into our communities.”<sup>795</sup>

Mr. Okon indicated that walking along the coastlines is a total environmental disaster because dead fishes littered every nook and cranny of the coast and moreover, it is becoming quite problematic for their people to do fishing. Indicating

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<sup>794</sup> Ibanga Isine (2014). “Oil Spill: Akwa Ibom community locks down ExxonMobil”

<sup>795</sup> Ibanga Isine (2014). “Oil Spill: Akwa Ibom community locks down ExxonMobil”

that their people are suffering from poverty, hunger and are very annoyed due to the corporate neglect of the oil major to their plight and as such they want to draw the attention of the global world to know how the oil major have been tormenting the host communities. During the demonstration one of the community leaders Williams Mkpá stated that the communities have so many issues to iron out with the oil giant on incessant oil spills, insisting that the traditional economy of his communities' livelihood have been impaired and destroyed by this corporate neglect and insensitivity of the ExxonMobil. Mr. Mkpá noted that "When similar incidents happen, the community usually agitates for clean-up and adequate compensation. ... But in its usual way, ExxonMobil has refused to respond to those requests because they don't have the interest of the people at heart. In the past 44 years of their operations, the company only compensated us in 1998 when they declared 55-barrel spill and paid 350million Naira to our communities. ... Since then, there has been spillages year-after-year. Sometimes, we experience five to six spills per year and they are always very heavy, leading to the devastation of aquatic life which is our main source of livelihood."<sup>796</sup> The harmful effect of gas flaring was equally stated by Mr. Okon. He said that it has been affecting the health of the community and its neighbours. He earmarked that the community is having over 40 flare sites in not more than 200 nautical miles of the shoreline bordering the community. Ironically, being aware of the environmental hazards of gas flaring, the ExxonMobil built an estate for its staff in faraway 20 kilometres in Eket. He even posited that upon the intervention of the then Governor Godswill Akpabio, still yet the oil giant failed to respect and complies with the consensus reached by the government since 2012. Mr. Okon also claimed that the host communities have none of their indigenes on the top management staff of ExxonMobil.

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<sup>796</sup> Ibanga Isine (2014). "Oil Spill: Akwa Ibom community locks down ExxonMobil"

In its own reaction, ExxonMobil “confirms a liquid release from its Qua Iboe terminal facility on Sunday June 29, following serious weather conditions and lightning strikes over the area....We have activated our emergency response systems and contained the release. All relevant regulatory authorities and community leaders have been notified. We continue to work with the community to allow progress to the remediation efforts. MPN remains committed to environmentally safe operations.”<sup>797</sup>

However, if we are to compare notes on the content of what the respective oil majors claimed on their corporate responsibility profiles vis-à-vis the empirical situation being stated by the three oil giants’ host communities; deductively there abound some contradictions. The respective host communities are agitating, protesting, demonstrating and demanding for environmental restoration, remediation and seeking for compensations due to the environmental harmful effects of crude oil pollutions accruing from the exploratory activities of the oil majors. Be it as it may, the MNOCs ought to take responsibility for their past unethical practices and to implore the principle of good field oil practices in its subsequent corporate business performances within their respective host communities in the Niger Delta.

### **6.5 Nigerian State Failure**

The analysis on the state failure<sup>798</sup> would be examined within the confines of the petroleum - (oil and gas) - sector. The Nigerian state economy is to a greater degree contingent on or determined by petroleum as a source of financial resources. The Nigerian oil endowment gives and increases opportunities for the nation and

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<sup>797</sup> Ibanga Isine (2014). “Oil Spill: Akwa Ibom community locks down ExxonMobil”

<sup>798</sup> The Nigerian state is the state being referred to.

humanity transformation.<sup>799</sup> However, the Nigerian state appears to be cursed by its petroleum endowment since 1956 Shell-BP struck the first oil in the local community of Oloibiri in the present Niger Delta state of Bayelsa and the emergence of commercial petroleum production from the oil-producing Niger Delta areas in 1958.<sup>800</sup> The endowed non-renewable resources have resulted to negative consequences of corruption, environmental pollution and incessant hostilities within the oil-producing Niger Delta. Thus, proceeds from the non-renewable resources of petroleum is having an adverse effect not only on the resource-rich region, but on the Nigerian state, humanity and politics - resulting to “a volatile and high-stakes complexion, in which oil wealth is an object of intense competition for power between various factions of the dominant elite, leading to political instability and a crisis of development.”<sup>801</sup> *Why state failure in the Nigerian state upon the endowed natural capital and non-renewable resources abundance? What are the causal factors for these resource curse phenomenon<sup>802</sup> within the Nigerian state? A simple answer to the posited questions is because of “years of grand corruption”<sup>803</sup> warranting the proceeds accrued from the oil revenue to be siphoned off by the Nigerian political elites with the connivance of public officials.*

Prima facie, there exists a mutual relationship or interconnectivity between oil and the Nigeria state; for the regulation of the petroleum sector in Nigeria is state-

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<sup>799</sup> Collier, Paul (2011, cop. 2010), *The plundered planet. How to reconcile prosperity with nature*. London: Penguin.

<sup>800</sup> Basedau Mathias and Mähler Annegret (2011), “New Oil Finds in the Region: New Risks for the Region?” In: Michael Roll, Sebastian Sperling (eds.) *Fuelling the World - Failing the Region? Oil Governance and Development in Africa’s Gulf of Guinea*.

<sup>801</sup> Obi Cyril (2011) “Democratising the Petro-State in West Africa: Understanding the challenges” In: Michael Roll, Sebastian Sperling (eds.) *Fuelling the World - Failing the Region? Oil Governance and Development in Africa’s Gulf of Guinea*, p111.

<sup>802</sup> See footnote references 74, 268, 586 & 661 on the meaning of resource curse phenomenon.

<sup>803</sup> Collier, Paul (2011, cop. 2010), *The plundered planet. How to reconcile prosperity with nature*, p. 130

centric. Obi Cyril in his work summed it thus: “control of oil is centralized in the Nigerian federal government, which also controls the collection and allocation of oil resources, renting the larger proportion and then distributing the rest to the other tiers of government.”<sup>804</sup> The causal factor of the state-centric nature of the Nigerian oil is established in the “army arrangement”<sup>805 806</sup> as Steven Pierce noted. This army arrangement happens to be one of the factors that necessitate corruption, state failure and resource curse in the present Nigerian state. Of course, this army arrangement was being induced by oil politics which resultantly led to a civil war that started in 1967 in the Nigerian state; whereby the resource-rich region of the

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<sup>804</sup> Obi Cyril (2011) “Democratising the Petro-State in West Africa: Understanding the challenges” In: Michael Roll, Sebastian Sperling (eds.) *Fuelling the World - Failing the Region? Oil Governance and Development in Africa’s Gulf of Guinea.*, p107

<sup>805</sup> Pierce Steven (2016), *Moral Economies of Corruption: State Formation and Political Culture in Nigeria*, p105.

<sup>806</sup> In Nigeria the protagonist of the phraseology “army arrangement” was a famous Nigerian Afro-beat musician and radical personality called Fela Anikulapo Kuti, who composed a song with the title “**Army Arrangement**”.

**Still** on Fela’s phraseology, an independent non-profit media outfit called Integrated Regional Information Networks (IRIN) in its publication of 1999 titled “***Army arrangement means Obasanjo victory***”, noted that Fela’s song “portrayed the controversial 1979 elections as a pre-ordained result, in which the military effectively chose their successor.” IRIN explained further that within the Nigerian circle Fela’s expression “is shorthand to describe a political process in which key former military officers have rallied around the presidential candidacy of Obasanjo. Their generous campaign donations and political clout are expected to ensure the retired general victory in the 27 February election.” In furtherance to Fela’s terminology, a Nigerian human rights lawyer called Festus Okoye told IRIN that “Money plays a very pervasive role in Nigerian politics. The military’s grip is based on money, and people’s greed. The military fears that if they don’t get someone they trust [in power] they will be held accountable for their past human rights abuses.”

**However**, Steven Pierce borrowed the expression in his strive to express the level of “social decay and chaos” in Nigeria and interpreted it as “a window onto the transformation of Nigerian political life in the years after the civil war. Two intertwined transformations in Nigeria’s economy and politics drove a change in the corruption-complex.”

Niger Delta wanted to withdraw formally from membership of the Nigerian federal union.<sup>807</sup>

The aftermath of the Nigerian state independence in 1960 witnessed the first Nigerian coup d'état and counter-coup of 1966 which happens to be the causality of oil politics, that thrown up Gowon from the Northern Nigeria as the military head of state. The military dictatorship of Gowon witnessed the 1970 commencement of the oil boom era and simultaneously re-enacted the northern region hegemony in the Nigerian state. For the northern region utilized the opportunity of the military regime to appropriate the oil resources in the Niger Delta into the greater centralization and coffers of the Nigerian federal government. Backed by military decrees, the petroleum sector became absolutely controlled by the Nigerian federal government.<sup>808</sup> The oil boom era of the 1970s witnessed the petro-military alliance where “sovereignty was shared between the military central state, its branches in the state governments, and the MNOCs, particularly the Shell Petroleum Development Company (SPDC) which involves NNPC, Shell; EPNL and Agip.”<sup>809</sup>

Since the 1970s to the present day situation the non-renewable resources of petroleum has been playing pivotal economic and political roles in the Nigerian state, whereby “the local politicians get a constitutionally guaranteed share of the oil money”<sup>810</sup> thus necessitating that the “control of vast oil revenues by the states and the dominant class has had far reaching implications for state and class

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<sup>807</sup> Collier, Paul (2011, cop. 2010), *The plundered planet. How to reconcile prosperity with nature.*

<sup>808</sup> Ikelegbe Augustine (2005), “The Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria”

<sup>809</sup> Eberlein, Ruben (2006), “On the road to the state's perdition? Authority and sovereignty in the Niger Delta, Nigeria”

<sup>810</sup> Collier, Paul (2011, cop. 2010), *The plundered planet. How to reconcile prosperity with nature.*, p140



formation, politics and development.”<sup>811</sup> The 1970s eras of the oil boom, oil politics and military arrangement heralded the first disappearance of a notable amount of oil money - (2.8billion Naira) - from the safety-deposit box of NNPC.<sup>812</sup> With the military regime controlling the petroleum resources, there came up a decree on “derivation formula”<sup>813</sup> which ascertains the sharing of revenue that ought to be accrued to the regions that are endowed with petroleum resources. Consequently, there was a decrement in the derivation formula sharing method from the initial 50% share when the Nigerian state was dependent on agrarian economy to 1.5% in the 1984 and subsequently an increment in 1999 to the currently 13% share, which even fails to reflect the offshore derived revenues.<sup>814</sup> This decrement in the derivation formula sharing method has been a bone of contention in the Nigerian state, whereby the oil-producing Niger Delta states have been agitating for an increment on the derivation formula vis-à-vis the enactment of

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<sup>811</sup> Obi Cyril (2011), “Democratising the Petro-State in West Africa: Understanding the challenges” In: Michael Roll, Sebastian Sperling (eds.) *Fuelling the World - Failing the Region? Oil Governance and Development in Africa’s Gulf of Guinea*, p107

<sup>812</sup> Pierce Steven (2016), *Moral Economies of Corruption: State Formation and Political Culture in Nigeria*.

<sup>813</sup> Z. ADANGOR in his work “The Principle of Derivation and the Search for Distributive Justice in the Niger Delta Region of Nigeria: The Journey So Far” commented on the issue of the derivation formula by stating thus: “Derivation is a factor of fiscal federalism which ensures that each unit of government contributes to the national coffers and receives equitably in return through revenue allocation. Each unit is, therefore, encouraged to work hard in baking a larger national cake from which it receives in proportion to its contribution. Derivation is, therefore, basically a reward for noble efforts of revenue generation. However, that is not all; derivation can also be seen as compensation for the loss in revenue or other economic activities through the utilisation of the land of any unit of governments [or communities] for national resource generation. Still derivation can be utilised for upgrading and reclaiming land degraded in the process of mineral exploitation and exploration. Derivation can also be put in place as payment usually + in rent for the use of land and/or payment for exploring mineral from the land...” pp125-126

<sup>814</sup> Obi Cyril (2011), “Democratising the Petro-State in West Africa: Understanding the challenges” In: Michael Roll, Sebastian Sperling (eds.) *Fuelling the World - Failing the Region? Oil Governance and Development in Africa’s Gulf of Guinea*.

the Petroleum Industry Bill (PIB)<sup>815</sup> in the Nigerian parliament. In fact, the advent of the Movement for the Survival of the Ogoni People (MOSOP) and coming into existence of some militant groups under the umbrella of MEND were the resultant effects of animosity and grievances of the Niger Delta oil-rich states on the Nigerian state about the derivation formula.

The “politics of patronage”<sup>816</sup> happens to be another colossal causal factor that has contributed and is still contributing to state failure within the Nigerian state. The politics of patronage bestowed or favouritism shown on the basis of family relationship, as in business and politics necessitating the act of using ones political power or influence to get good jobs or unfair advantages for members of own family happens to be the order of the day. It was noted that in the Nigerian politics “the power of office and handing out offices has been at the centre of Nigerian party politics, making the intersection between clientage and social ties like ethnicity of more enduring importance than ideology or policy.”<sup>817</sup> Of course this idea happens to be true, because in the Nigerian state any government in power or office are being marked by corruption and nepotism. In fact, the Nigerian state have been having and experiencing the politics of patronage and right from the military dictatorships era to the civilian regime they have been found guilty of nepotism and corruption.

Another contributor and complexity to the Nigerian state failure is the Nigerian state-owned oil company called the NNPC.<sup>818</sup> This is an institution that is into joint

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<sup>815</sup> The Nigerian National Petroleum Corporation defines the PIB as “An Act to establish the legal and regulatory framework, institutions and regulatory authorities for the Nigerian petroleum industry, to establish guidelines for the operation of the upstream and downstream sectors, and for purposes connected with the same.”

<sup>816</sup> Pierce Steven (2016), *Moral Economies of Corruption: State Formation and Political Culture in Nigeria*, p106

<sup>817</sup> Pierce Steven (2016), *Moral Economies of Corruption: State Formation and Political Culture in Nigeria*, *ibid.*

<sup>818</sup> See footnote reference no. 49 for detailed information on the Nigerian National Petroleum Corporation (NNPC).

venture with the oil majors operating in the Nigerian state. NNPC is having the highest percentage shareholders' agreement in its joint ventures with the oil giants. In the words of Tom Burgis "...NNPC presides over the sector that generates about 80 per cent of government income and 98 per cent of export revenues. Its story symbolises Nigeria's failure to capitalise on its prodigious natural wealth by fostering a state-owned energy champion. ... Its share of the crude and funding obligations is proportional to those holdings."<sup>819</sup> Suffice it to note that in any resource-rich economy, its fortunes are being determined by how the external resources of organizations affect the behaviour of the organization that gears towards the nation's economic performance. The procurement of external resources is an important tenet of both the strategic and tactical management of any company in a resource-rich country. Of which, if we are to do some comparative analysis of some developing oil-producing countries vis-à-vis their respective national oil companies these facts would be inferred. For instance - Angola's national oil corporation called Sonangol founded in 1975 is having highly efficient operations and of which the Angolan government under President Jose Eduardo dos Santos and his Popular Movement for the Liberation of Angola have profited and are still profiting from the shrewd management of the national oil company.

Stratfor Worldview<sup>820</sup> - stated that "Angola's National Oil Company Continues to Be the Government's Backbone."<sup>821</sup> The digital publication noted that the Angolan state-owned oil company created "a system capable of securing Western oil and natural gas companies' participation. Sonangol worked to establish key links and ensure Western oil companies that Angola was still open to and safe for their

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<sup>819</sup> Tom Burgis (2010), NNPC: Where power depends on patronage. The Financial Times

<sup>820</sup> Stratfor Worldview is a world's leading digital publication for objective geopolitical intelligence and analyses that reveal the underlying significance and future implications of emerging world events.

<sup>821</sup> Stratfor Worldview (2014), "Angola's National Oil Company Continues to Be the Government's Backbone", p1

investments.”<sup>822</sup> Stratfor Worldview asserted that “Sonangol has been described as a parallel, shadow or informal government that complements and often replaces the functions of more formalized but failing Angolan government institutions. At times, Sonangol has directly managed arms deals or supported Luanda's education platforms.”<sup>823</sup> Furthermore, it was recorded that the Sonangol Oil Corporation “acts as the government's arm in the oil and natural gas sector.”<sup>824</sup> It is quite plausible to learn that the Angolan state-owned oil company performs directly “functions that in most countries would be carried out by an energy department or petroleum ministry. This includes formulating the country's energy policy, issuing and negotiating concessions with international companies and regulating the sector.”<sup>825</sup> In fact, it was earmarked that: “this highly centralized structure avoided the rampant corruption and lengthy delays that plagued other decentralized management structures of sub-Saharan African countries, such as the larger bureaucracies of Nigeria, although similar corruption also exists in Angola.”<sup>826</sup>

Unfortunately in the Nigerian state situation, the NNPC does not provide to the Nigerian state or government with an operation par excellence as it is in the aforementioned Angola; because the national oil company is prone to endemic corruption. Whereas, the NNPC is financed almost entirely by the primary natural resources from the oil-producing Niger Delta and its’ income derived from an investment or product goes to the Nigerian government. However, for the NNPC to keep an adequate account of its cash flow to and from the Nigerian government has been contentious and marked by tardiness and filled with wrangles. No wonder

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<sup>822</sup> Stratfor Worldview (2014), “Angola's National Oil Company Continues to Be the Government's Backbone”, Ibid.

<sup>823</sup> Stratfor Worldview (2014), “Angola's National Oil Company Continues to Be the Government's Backbone”; Ibid.

<sup>824</sup> Stratfor Worldview (2014), “Angola's National Oil Company Continues to Be the Government's Backbone”, Ibid.

<sup>825</sup> Stratfor Worldview (2014), “Angola's National Oil Company Continues to Be the Government's Backbone”, Ibid.

<sup>826</sup> Stratfor Worldview (2014), “Angola's National Oil Company Continues to Be the Government's Backbone”, Ibid.

some industrial audit consultants remarked that it is quite problematic to carry out an audit in the NNPC.<sup>827</sup> To showcase the high rate of Nigerian state failure in its national oil company was epitomized by the NNPC audit of 2014 where the auditing firm of PricewaterhouseCoopers claimed that \$20 billion oil money got missing from the coffers of the NNPC.<sup>828</sup> The affirmation by the auditing firm laid credence to the former Nigerian Central Bank Governor's claims before the Nigerian parliament that the NNPC failed to account for \$20 billion out of the \$67 billion of the oil revenue from January 2012 to July 2013.<sup>829</sup> Even of recent a Nigerian financial action task force called the Economic and Financial Crimes Commission (EFCC) announced the sudden discovery and recovery of the following sum of money - \$9,772,800 (Nine Million, Seven Hundred and Seventy Two Thousand, Eight Hundred United States Dollars) and another sum of £74,000 (Seventy Four Thousand Pound Sterling) from the residence of Andrew Yakubu, who was the former Group Managing Director of the Nigerian Oil Company - NNPC between 2012 and 2014.<sup>830</sup>

Be it as it may, some financial experts' proffered some solutions that would make the Nigerian Oil Company - (NNPC) - to operate par excellence and to be at par with other state-owned oil companies by suggesting that NNPC ought to be reorganized, restructured and that moreover the "most important thing to do is corporate governance arrangements that very clearly shield the company from day-to-day political interference."<sup>831</sup> Albeit, this expertise suggestion was countered by

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<sup>827</sup> Tom Burgis (2010), NNPC: Where power depends on patronage.

<sup>828</sup> Udo Bassey (2015), "Missing \$20 bn: Sanusi faults Alison-Madueke, says audit report proves at least \$18.5bn lost", The Premium Times

<sup>829</sup> British Broadcasting Corporation (2014), "Nigeria orders probe into 'missing \$20bn' of oil money", 12 March 2014

<sup>830</sup> The Premium Times (2017), "How EFCC recovered \$9.8 million from Yakubu, Ex-NNPC GMD"

<sup>831</sup> Tom Burgis (2010), NNPC: Where power depends on patronage.

a former member of the Nigerian parliament and an energy lawyer who posited that NNPC is “designed for patronage. Until that has changed, NNPC will remain what it is.”<sup>832</sup> The words of the former parliamentarian give a synopsis of the causes of the Nigerian state failure vis-à-vis the politics of oil in the Nigerian state.

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<sup>832</sup> Tom Burgis (2010), NNPC: Where power depends on patronage.

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## Chapter 7

# Action Plan & General Conclusion

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### 7.1 Introduction

There abound explicit empirical evidences that the crude oil exploratory activities in the resource-rich Niger Delta are having some colossal impacts in the region. Of which the associated negative effects of the oil pollutions with regards to environmental victimization, human health and livelihood, violence and socio-economic costs in the oil-rich region are dreadful (*as shown in chapters 1, 3 & 4*). Moreover, the Nigerian government seems to be weak to implement the Human Rights Council Agenda item 3<sup>833</sup> as to enforce the MNOCs to act in accordance with the principle of ‘good field oil practices’ in the oil-rich region of the Niger Delta, as it is being practiced in some developed oil-producing countries like Norway, United States and Canada. With regards to the harmful effects due to oil pollutions in the resource-rich region of the Niger Delta, some cognate literature reviews and empirical-situational facts are affirming collusion between the Nigerian government and the MNOCs of having some vested interest in maintaining the environmental harms’ status quo. In fact, evidences abound that the MNOCs are exerting political pressure and economic influence on the Nigerian government, culminating in the impression that the ‘regulated is now the regulator’ (*as shown in chapters 5 & 6*). In this present situation, the question begging for an answer is: *which policy action ought to be adopted as to remedy the environmental harms and injustice, to take adequate account of the reparation of environmental damage and human rights, to achieve environmental sustainability and poverty*

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<sup>833</sup> The UNITED NATIONS HUMAN RIGHTS COUNCIL in its Twenty-sixth session stipulated Agenda item 3 which focuses on “**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.**” Of which this Agenda item 3 is quite ad rem to the resource-rich Nigerian Niger Delta situation. See the Human Rights Council resolution 5/1 of 18 June 2007

*reduction in the oil-producing Niger Delta?* The rationale for positing this question is because in order to achieve environmental restoration outcomes, sustainability and Agenda item 3 of the Human Rights Council in the resource-rich Niger Delta vis-à-vis tackling the issues of the tripartite variables that have been the bone of contention - the implementation of the research's suggested **Policy Action** and **Action Plan** might improve the overall situation and break out of the deadlock or 'muddling through' situations. This suggested **Policy Action** and **Action Plan** are policy proposal resulting from an ethical research cum analysis, justification of some crucial claims and a critical diagnosis of the overall Nigeria Delta oil-rich situations (*as elucidated in chapter 4*).

The political process of the suggested **Policy Action** and **Action Plan** should start with a great roundtable reconciliatory-conference, being organized by the World Bank and with the title - **Beginning Again**<sup>834</sup>: **A Future for the Niger Delta**. The result of the reconciliatory-conference should be anchored on a - ***Declaration/Convention that defines common moral ground (commonly shared principles)***. Parallels are reconciliatory processes after regime shifts and cases of mass violence.

## 7.2 Policy Action

In proffering an answer to the posited question, an establishment of a commission for a policy change is being suggested. This suggestive approach is mandatory and being predicated on the assumption that it might articulate and pave the way forward for a holistic ethics of restoration in the Niger Delta oil-rich region, since

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<sup>834</sup> The idea of "Beginning Again" is premised on Christian ethics, which demands that persons should try to make fresh starts, reconciliations and acceptance of guilt as a prerequisite for "Beginning Again", with the assumption that - we all have failed, let us try to live together as human beings and improve situations. A declaration of peace as "conditio sine qua non" ought to be the ultimate aim.

previous environmental sustainability policies and developmental initiatives have been unsystematic and have failed to conserve the means of the Niger Delta local communities' sustainable livelihoods. The suggestive approach for policy change would be a joint implementation constitution of an epistemic/political community [*which is more inclusive*] comprising of the following: - **A**) Nigerian government, States, Locals - **B**) MNOCs: experts on oil production - **C**) Scientific board [*which is strictly scientific, including humanities*] - **D**) UN-representatives (World Bank, UNEP), Organization of American States (OAS) and people involved in the Sustainable Development Goals (SDGs) process. This suggested approach would not just be more of the same previous initiatives but rather, it will be a total overhauling that requires beginning again with a new viewpoint and line of action. It should not be based on incrementalism, instead a fresh start with too much history in the background.

The research herein reiterates that the initiative of beginning again and making a fresh start could be promoted perhaps by the World Bank and the initiative could be arranged in the form of a reconciliatory-conference with all the varied stakeholders involved in oil and gas exploratory activities in the oil-rich Niger Delta, in analogy to the reconciliatory-conferences held in Ruanda and South Africa. The agenda of the conference which would serve as the guiding principle is - **Peace is mandatory, Restoration is the goal and Justice is the key**. The decisions that would be arrived at in this reconciliatory-conference must surely have a tremendous impact on the oil-producing Niger Delta present generations and its generations unborn. And for this initiative to be effective each respective stakeholder must go 'out of their box', otherwise it will not work. The modus operandi could be similar to a round-table principle as it is suggested by Habermasian discourse ethics in cases of long-lasting conflicts. The outcome of this reconciliatory-conference will be a declaration/convention based on commonly

shared principles establishing ‘moral ground’ that would facilitate the goals of having a holistic ethics of restoration vis-à-vis curbing the tripartite variables in the oil-producing Niger Delta region. The scientific board as part of the overall epistemic/political community for the oil-producing Niger Delta region should do the needful as an addendum to its scientific methodological approach of investigative studies. The board ought to perform the duties in order to making sure that the resource-rich environments are holistically restored because the United Nations Conference on Environment and Development declared that “Peace, development and environmental protection are interdependent and indivisible.”<sup>835</sup>

Albeit, there are some analytic approaches - (epistemic community, neorealist, dependency theory-based and poststructuralist<sup>836</sup>) - to the study of policy change, however; this centralized commission for the oil-producing Niger Delta states would be imploring the “epistemic community”<sup>837</sup> approach. The rationale for

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<sup>835</sup> United Nations General Assembly (1992), A/CONF. 151/26 (Vol.1), Principle 25

<sup>836</sup> Haas Peter M. (1992), “Introduction: Epistemic Communities and International Policy Coordination”, p6

<sup>837</sup> Knorr-Cetina was the protagonist of the term epistemic community, which was heralded in the sociology of knowledge. However, the term became famous following the 1992 publication of the epistemic communities’ volume.

While Haas Peter M. in his work “Introduction: Epistemic Communities and International Policy Coordination”, p3, defines the concept of “**epistemic community**” as “a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area.” Haas went further to explain that “Although an epistemic community may consist of professionals from a variety of disciplines and backgrounds, they have (1) a shared set of normative and principled beliefs, which provide a value-based rationale for the social action of community members; (2) shared causal beliefs, which are derived from their analysis of practices leading or contributing to a central set of problems in their domain and which then serve as the basis for elucidating the multiple linkages between possible policy actions and desired outcomes; (3) shared notions of validity - that is, intersubjective, internally defined criteria for weighing and validating knowledge in the domain of their expertise; and (4) a common policy enterprise-that is, a set of common practices associated with a set of problems to which their professional competence is directed, presumably out of the conviction that human welfare will be enhanced as a consequence.”

adopting the epistemic community approach is because the approach would provide a methodical insight into the human interpretations and suggestions required in the oil-producing region. Moreover, the epistemic community approach happens to be an agent through “which policy relevant information is developed and transmitted.”<sup>838</sup> Furthermore, the epistemic community’s systematic approach has to do with five distinctive attributes - “(i) Level of analysis and area of study - (Transnational; state administrators and international institutions) (ii) Factors that influence policy change - (Knowledge; causal and principled beliefs) (iii) Mechanism and effects of change - (Diffusion of information and learning shifts in the patterns of decision making) (iv) Primary actors - (Epistemic communities; individual states.)”<sup>839</sup> All these five characteristics possessed by the epistemic community approach are quite ad rem to finding solutions to a holistic ethics of restoration vis-à-vis curbing the three variables that have marred the oil-rich region of the Niger Delta, because; the epistemic community is “important actors responsible for developing and circulating causal ideas and some associated normative beliefs, and thus helping to create state interests and preferences, as well as helping to identify legitimate participants in the policy process and influencing the form of negotiated outcomes by shaping how conflicts of interest will be resolved.”<sup>840</sup>

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Haas Peter M. in another of his publication “Policy Knowledge: Epistemic Communities” commented on the importance of the aforementioned four factors, on the basis that they earmarked the uniqueness of the epistemic community from other approaches for the study of policy change; by stating that “This combination of factors - especially the socialized truth tests and common causal beliefs - distinguish epistemic communities from other types of policy networks and groups active in politics and policy-making.”, p11580

<sup>838</sup> Haas Peter M. (2001), Policy Knowledge: Epistemic Communities, p11581

<sup>839</sup> Haas Peter M. (1992), “Introduction: Epistemic Communities and International Policy Coordination”, p6

<sup>840</sup> Haas Peter M. (2001), Policy Knowledge: Epistemic Communities, p11579



Some other responsibilities that ought to be reviewed by the constituted epistemic/political community shall be: **A)** Coming up with the most appropriate means of admonishing the Nigerian government on the need to roll-out some stringent environmental guidelines and best strategic approach to strengthening and enforcement of the regulations that would guide against environmental pollution (oil spills and gas flaring) vis-à-vis empowering its regulatory agencies to punish any MNOCs that circumvent the principle of ‘good field oil practices’ in the oil-producing Niger Delta region. The punishment would be an act of deterrence to stopping of environmental harms and punishment for unethical behaviours. **B)** Being quite aware of the tremendous impact of the oil spills and gas flaring, its toxicity and the damages to the ecosystem services, aquatic life and the water table of the oil-producing Niger Delta environment, the constituted epistemic/political community should equally implore the MNOCs on both sources of environmental harms and the needfulness to abide with the principle of domestic environmental standards which are globally mandatory and if need be they are required to act beyond compliance more especially in such country like Nigeria that is usually having some lousy environmental policies, guidelines and regulation on environmental standards and instead the MNOCs ought to express corporate governance in environmental management.<sup>841</sup> **C)** To propose to the Nigerian government on the significance of equipping its regulatory agencies - (Ministry of Petroleum Resources<sup>842</sup> Department of Petroleum Resources<sup>843</sup> Nigerian Content

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<sup>841</sup> ExxonMobil (2015), Corporate Citizenship Report

<sup>842</sup> This is a Nigerian government ministry that supervises the petroleum industry (Awogbade et al. (2014), Oil and gas regulation in Nigeria: overview).

<sup>843</sup> See footnote no. 467 for some details on the Department of Petroleum Resources.

Development Monitoring Board<sup>844</sup> NOSDRA<sup>845</sup> and National Environmental Standards and Regulations Enforcement Agency<sup>846</sup>) - with high-tech equipment for determining the exact quantity of oil spills and never to leave the issue only on the discretion of the MNOCs alone. This would avert some of the oil spills discrepancies that are being involved between the quantity of oil spills stated by the MNOCs and that of the host communities. **D)** Advising the MNOCs to develop alternative measures of controlling oil spills and coordinating clean-up exercise on land, polluted waters, shorelines and ecosystems. Then those having obsolete and leaking pipelines should endeavour to rehabilitate them. Letting the MNOCs know that it is necessary for them to take responsibility for the previous and current oil spills occurring in their respective operational host communities.

The epistemic community approach to the study of policy change has been tested and put into practice by some international organizations such as the UN. It was recorded that due to the global politicization of the environmental catastrophe “IPCC was set up in 1988 by the World Meteorological Organization (WMO) and United Nations Environment Programme (UNEP) to provide policymakers with regular assessments of the scientific basis of climate change, its impacts and future risks, and options for adaptation and mitigation.”<sup>847</sup> Furthermore, based on the premise that “humanity was putting such strain on our environment that the Earth’s

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<sup>844</sup> This is a Nigerian government parastatal with the responsibilities of regulating and monitoring “compliance with the minimum Nigerian content that the oil companies must have under the law” (Awogbade et al. (2014), Oil and gas regulation in Nigeria: overview, p17).

<sup>845</sup> See footnote reference number 468 for some details on National Oil Spill Detection and Response Agency.

<sup>846</sup> See footnote reference number 469 for some details on National Environmental Standards and Regulations Enforcement Agency.

<sup>847</sup> IPCC Secretariat (2013), IPCC Factsheet: What is the IPCC?, p1

ecosystems might be unable to sustain future generations”<sup>848</sup> the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) was established in Panama City, on 21 April 2012 by 94 governments with the mission statement to “strengthen the science-policy interface for biodiversity and ecosystem services for the conservation and sustainable use of biodiversity, long-term human well-being and sustainable development.”<sup>849</sup> Both IPCC and IPBES are under the auspices of UN and they are new epistemic communities with eminent experts serving as their officials and consultants respectively.<sup>850</sup>

The World Bank group equally engages the expertise of the epistemic community in the course of its introduced environmental reforms after 1987 via “the recruitment of ecological epistemic community members and their assignment to key posts to evaluate the environmental consequences of development projects.”<sup>851</sup>

### 7.3 Action Plan

The constitution of an epistemic community for the Niger Delta oil-rich region should be in this consortium framework - 10 natural scientists comprising of: ecology, conservation biology and restoration, geography, and biochemistry etc. - 10 local experts/scientists from the Nigerian universities. -10 eminent experts consisting of cultural anthropologist, lawyers, economists and ethicists etc. - Then participation of local stakeholders ought to be included.

The synthesis of the action plan shall be in a tripartite scheme with shared responsibility, but different tasks: **A) Funding, B) Governance and C) Concepts.**

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<sup>848</sup> IPBES News (2016), Co - Chairs Announced for Landmark Global Biodiversity & Ecosystems Assessment: First Since 2005, p1

<sup>849</sup> International Union for Conservation of Nature (2017), About IPBES, p1

<sup>850</sup> Haas Peter M. (2001), Policy Knowledge: Epistemic Communities, p11584

<sup>851</sup> Haas Peter M. (2001), Policy Knowledge: Epistemic Communities, p11584

Meanwhile, the debate within the whole epistemic/political community ought to be on a blueprint for action, anticipating zones of conflicts (on compensation: for the impacted host communities ought to be compensated, including the fishermen and farmers whose livelihoods have been devastated)<sup>852</sup> and trade-offs and these would be done through “articulating the cause-and-effect relationships of complex problems, helping states identify their interests, framing the issues for collective debate, proposing specific policies, and identifying salient points for negotiation.”<sup>853</sup>

- a) The MNOCs and the Nigerian government are to provide the initial funding under the principle of PPP<sup>854</sup> and BPP<sup>855</sup> and then other donors (if process would work well, more donors might contribute) and development aid agencies.
- b) There should be a new legislation by the Nigerian government on governance. They are expected to implement all the agreement that would be reached and to provide more responsive system of governance that will be required in the oil-producing Niger Delta region. The Nigerian government should to come up with new legislation on governance in the Niger Delta oil-rich region based on the affirmation that before “states can agree on whether and how to deal collectively with a specific problem, they must reach some consensus<sup>856</sup> about the nature and scope of the problem and also about the manner in which the problem relates to other concerns in the same and

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<sup>852</sup> Compensation is not easy under real world conditions, even if principles are sound. One has to listen to many losses and damage narratives.

<sup>853</sup> Haas Peter M. (1992), “Introduction: Epistemic Communities and International Policy Coordination”, p2

<sup>854</sup> See section 6.2.1 of the dissertation - Polluter pays principle.

<sup>855</sup> See section 6.2.2 of the dissertation - Beneficiary pays principle.

<sup>856</sup> Consensus at the beginning of the process is quite ad rem. Thus, the Nigerian government must be committed.

additional issues-areas.”<sup>857</sup> Of course, for an effective implementation of the reconciliatory-conference which anchors on declaration/convention that defines common moral ground that would be arrived at by the constituted epistemic/political community; it demands that the Nigerian government ought to set aside political intrigues, avoid non-partisan exercise and shifting away from the present policy of complicity with the MNOCs and ensue a political will and stringent policy as to regulate the MNOCs crude oil exploratory operations in the oil-producing Niger Delta region based on the premise that for “governments to defer to new knowledge, the presumptive knowledge claim must be regarded as authoritative. Authoritative knowledge comes from groups that command legitimacy and authority in society. Epistemic communities’ reputation for authority rests on their expertise as well as their reputation for impartiality.”<sup>858</sup>

- c) Here comes the restoration concept by the scientific board. The scientific board shall combine experts in ecology, biochemistry, conservation biology, hydrology, restoration experts, agriculture, coastal zone management, aquacultures, forestry, humanities, including development economics, ethics, cultural studies and gender studies.<sup>859</sup> The appointment of board members should be done by a scientific review process coordinated by UNEP and IUCN. On moral principles, the scientific board are expected to investigate, critically analyse and consider the “overlapping topics of debate ... identify national interests and behaved independently of pressures from the social groups they nominally represent.”<sup>860</sup> **1)** The first task of the scientific board

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<sup>857</sup> Haas Peter M. (1992), “Introduction: Epistemic Communities and International Policy Coordination”, p29

<sup>858</sup> Haas Peter M. (2001), Policy Knowledge: Epistemic Communities, p11581

<sup>859</sup> The concept of amalgamation of this kind of multidisciplinary experts in the present-day streamlined corporate composition was the resultant effect of the ca.1880s second industrial revolution in France.

<sup>860</sup> Haas Peter M. (1992), “Introduction: Epistemic Communities and International Policy Coordination”, p1

will be to generating truth of the matter through the application of varied scientific methodology by digging into the remote causality of the tripartite major variables of (a) issues of responsibility (b) issues of environmental and social injustice and (c) questions of sustainability that have marred the Niger Delta oil-rich since the discovery of oil deposits and its subsequent exploratory activities in 1956 vis-à-vis coming up with potential and pragmatic solutions to the deep-rooted resource-rich region oil catastrophe. In fact, the scientific board should propose environmental standards (air pollution, water quality) and debate the standards with the Nigerian government and MNOCs. 2) The scientific board will actually deploy the core principles of the epistemic community approach by proffering the requisite knowledge from multidisciplinary approaches in order to provide a comprehensive assessment and consultation on how the MNOCs and the Nigerian government should adequately restore the degraded Niger Delta oil-rich environments vis-à-vis instituting a very careful investigation and consider on how victims of the environmental harms due to oil pollutions should be compensated.<sup>861</sup> These acts of restoration and compensatory justice will curb the tripartite variables that have been the bone of contention. Therefore, measures ought to be taken for appropriate restoration of the environmental degraded areas in accordance with Articles 21.2<sup>862</sup> of the

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<sup>861</sup> This act of compensation ought to be explicit, on the assumption that compensation can be under compensation, appropriate compensation and over compensation. Naturally and as human beings, the demands for over compensation are very likely to be the case but would be bad for the overall process. Whereas, compensation of part damages faces the problem of interest, because a damage in 1970 that is being compensated in 2017 might attract some interest rate making the entire process a big deal. Thus, details of the compensation ought not to be murky but rather explicitly spelt out.

<sup>862</sup> Article 21.2 of the African Charter on Human and Peoples' Rights postulates that, "In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation."

African Charter on Human and People's Rights which Nigerian government is a signatory. 3) Another agenda the scientific board should critically scrutinize and ponder if they could be repealed are some existential controversial Nigerian laws that were decreed by the Nigerian military regime under the 'army arrangement' that are still subsistence and effective till date. Some of these decrees include - the Petroleum Act of 1969<sup>863</sup> Land Use Act of 1978<sup>864</sup> and Derivation Principle of Revenue Allocation.<sup>865</sup> The revaluation of the aforementioned contentious laws would be a bold initiative towards having peace and a future for the oil-producing Niger Delta region.

In order to avert unbiased presentation of facts and not to be compromised the scientific board "pockets of independent research are most likely to emerge when the conduct of research is seen to be far from the direct interest and influence of the sponsoring sources of the research."<sup>866</sup> Therefore, the MNOCs and the Nigerian government may not be entitled to have representatives in the scientific board owing to the assumption that keeping a "distance from research sponsors improves the actual and perceived impartiality of epistemic community members as it is less likely to be shaped by needs of the state or sponsoring agency, and will be less politically tainted."<sup>867</sup>

### 7.3.1 Outline of a Real Action Plan

This research recommends that - for the tripartite-scheme policy to be effective and realizable the real **Action Plan** - (*as shown in 7.3*) - ought to be structure by the epistemic/political community - (*as indicated in 7.2*) - as follows: **A**) Specific goals

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<sup>863</sup> See footnote reference number 295.

<sup>864</sup> See footnote reference number 296.

<sup>865</sup> See footnote reference no. 814 for some details on derivation formula.

<sup>866</sup> Haas Peter M. (2001), Policy Knowledge: Epistemic Communities, p11581

<sup>867</sup> Haas Peter M. (2001), Policy Knowledge: Epistemic Communities, *ibid*.



within defined time frames **B)** Clearly defined commitments for specific agents for easy monitoring **C)** Participatory consulting **D)** Funding schemes **E)** Monitoring systems **F)** Compensatory schemes with proper monitoring.

This outlined real action plan will now pinpoint the bearing for the implementation of the **Action Plan** - (*as shown in 7.3*) on the ground. In this case, the whole process should start immediately and be scheduled as follows: **A)** Reconciliatory-conference in 2020 **B)** Action plan in 2025 **C)** Then the implementation till 2040 and beyond.

#### 7.4 General Conclusion

This research observed that it is quite obvious that the joint venture partnership between the Nigerian government and the MNOCs in the course of oil exploratory and production activities have not developed the oil-producing Niger Delta region. Instead it has bred ruins, underdevelopment and unsustainability, environmental and social injustices. However, be it as it may the constituted epistemic/political community - (*as shown in 7.2*) - should define a common agenda based on the topical issues - (*as shown in 7.3 & 7.3.1*) - and then consent to what is obligatory and indispensable for development to forge ahead. For instance, the MNOCs ought to abide by their mission statements and ethical components of its reports, the Nigerian government as duty bearers should do the needful expected of them by providing the necessary infrastructures and security, making sure that the UNEP report and African Commission on Human and Peoples' Rights recommendations in Ogoni-land are implemented in the entire nook and cranny of the oil-producing Niger Delta region. The Nigerian government should see to it that victims of the environmental harm are duly compensated. While the Niger Delta oil-rich host communities should strive to promote peace and human security in their resource-rich region.

The MNOCs and the Nigerian government are required to play active role in capacity-building and development activities that focuses (more) on strong sustainability based decision making process. Efforts should be made for a general agreement on the obligation for more desirable, satisfactory and effective governance and the sustainable utilization of the Niger Delta oil-rich natural resources through the collaboration of capabilities by the MNOCs, Nigerian government, NGOs and resource-rich hosts' communities. This is because the Niger Delta oil-rich region has rights and entitlements under the capability approach and third generation of human rights. As such the perspective of ecological restoration, restitution, reparation and principle of compensation which would serve a good life and livelihoods for the resource-rich region requires prompt implementation as outlined in section 7.3.1. Of course avoidance of environmental injustice, human rights abuse and entronement of environmental and social justices in the oil-producing Niger Delta region ought to be paramount to the MNOCs and Nigerian government.

The constituted epistemic/political community ought to advice the MNOCs and the Nigerian government on how they should inclusively adopt the principles of accountability and transparency and devise a system for disseminating valuable information on the oil-rich region's needs and challenges. It is also advisable that the oil-producing Niger Delta local communities should take active participation in all the developmental initiatives. This ingenuity would reinforce partnership framework, mutual trust and understanding amid the stakeholders. Moreover, the MNOCs, Nigerian government and oil-rich Niger Delta host communities should consent to joint preservation of the rule of law. These stated facts would enthrone peace, sustainability, environmental and social justices in the resource-rich Niger

Delta vis-à-vis integrating and embedding the triple bottom-line (3BL)<sup>868</sup> into the MNOCs activities, thereby making them to be responsible corporate citizens.

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<sup>868</sup> John Elkington, the founder of a British consultancy **SustainAbility** coined this phraseology - triple bottom-line (3BL) in 1994. 3BL is a framework for measuring business performance. Pragmatically the concern of the triple bottom-line is that in a corporations reporting framework, it should take into account not only the financial outcome but also the environmental and social performances. The triple bottom-line has its focus not only on the economic prosperity, but also on environmental quality and social justice, which very often business tends to forget in its operational procedures. The idea of a triple bottom line proposes that for a corporation to operate in a society is not all about satisfying the stockholders via improved profits (the economic bottom line), rather taking into cognizance the social and environmental performances.

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## Appendix

### LEBENS LAUF

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The MNOCs and the Nigerian government ought to note that: “Sustainability should be the watchword and basic human rights and social welfare as well as ecological issues must be given priority.” -

Nicolaides and Van der Bank (2013).

GLOBALIZATION, NEPAD, FUNDAMENTAL HUMAN RIGHTS, SOUTH AFRICAN AND CONTINENTAL DEVELOPMENT, p70