

**AN EVER PRESENT MENACE: OIL SPILLS AND THE ECOLOGICAL DEVASTATION OF THE
NIGER-DELTA REGION OF NIGERIA**

BY

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Abstract

For the past six decades Nigeria has been bedevilled by perennial incidents of oil spills which have resulted in ecological devastation that is long lasting. Those predominantly affected by the numerous oil spills are the people, communities and businesses of the Niger-Delta region of Nigeria where most of Nigeria's oil reserves sit. This work has undertaken an in-depth analysis of various oil spills in Nigeria over a protracted period of time and examined the role of the regulatory body and mechanisms put in place to oversee the oil industry. A comparative analysis of the mode of operation of oil companies conducting operations in some developed countries was carried out, and this work culminates in recommendations for cleaner and safer operations of the oil companies operating in Nigeria and correspondingly, greater protection for the environment and the people and communities of the Niger-Delta.

Keywords: Oil Spills, Nigeria, Niger-Delta, Pollution, Ecological Devastation, Petroleum Industry.

1. Introduction

Since the inception of the oil industry in Nigeria, pollution has been a source of environmental concern to a host of parties. The perennial decline in the quality of life and the loss of arable land and contamination of bodies of water as a result of the incessant oil spills that have become an offshoot of oil production in the country, are a festering sore and source of disgruntlement amongst those who live in the Niger-Delta region of Nigeria and indeed anyone who cares about the environment.¹

This work shall undertake a study of pollution in Nigeria by identifying and analysing a plethora of oil spills over the years and its effects on people living and working within close proximity of the operations of oil companies within the Niger-Delta region. The *modus operandi* of oil companies operating in the region will be under the spotlight and there will be

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¹ R Ratcliffe, "This place used to be green": the brutal impact of oil in the Niger Delta', (6 December 2019) <<https://www.theguardian.com/global-development/2019/dec/06/this-place-used-to-be-green-the-brutal-impact-of-oil-in-the-niger-delta>> accessed 25/01/2024.

a comparative analysis of how multinational oil companies conduct their operations in some developed countries with a view to determine a better course to be charted by Nigeria in a bid to ensure greater protection of the environment.

2. Ecological Devastation: The Nightmare of Incessant Oil Spills in the Niger-Delta

2.1 Oil Spills

Records show that there have been thousands of accidents and/or incidents resulting in the discharge of oil into the environment in Nigeria. These accidents/incidents have involved the release of millions of gallons of oil in several spill occurrences. There have been records compiled for the twelve-year period between 1976 and 1988 for oil spills which have been reported by the oil companies. Over this period, spills involving the release of about 2.1 million barrels (or 88.2 million gallons)² of crude oil in the Niger-Delta region of Nigeria were reported by the companies in about 2696 spill incidents. The highest quantities of oil spills recorded were between the 1978 to 1980 annual record period. It is however pertinent to note that based on the inaccuracy of data that is usually supplied and the infrequency with which it is supplied, it will be safe to conclude that the amount of oil that was spilled over this period was much higher.³

Other reports show that between 1970 and 1982 there were over one thousand five hundred incidents of oil spills documented in Nigeria.⁴ Also, oil spills involving only one oil company⁵ over the ten year period between 1982 and 1992 in 27 separate incidents resulted in the release of about 1.6 million gallons of oil into the environment and less than thirty percent of the oil spilt was recovered.⁶ Records show that ‘...of the number of spills recorded from Shell - a company which operates in more than 100 countries - 40% were in Nigeria.’⁷ Oil companies lay the blame for a substantial amount of the oil that is released on land at the doorsteps of local communities. They have alleged severally that many onshore spills are as a result of sabotage of oil pipelines. Nevertheless, there has over the years emerged a pattern

²M Leighton, N. Roht-Arriaza and L Zarsky, *Beyond Good Deeds: Case Studies and a New Policy Agenda for Corporate Accountability* (Berkeley: Natural Heritage Institute, 2002) <<http://www.nautilus.org/archives/cap/BeyondGoodDeedsCSRReportNautilusInstitute.pdf>> accessed 18/03/2023.

³ A Morocco-Clarke, *Improving Accountability and Environmental Protection Within the Nigerian Oil and Gas Industry* (Lagos, Munroe & Stine, 2021) 27-28.

⁴ Ted Studies, ‘Ogoni and Oil - Nigeria Petroleum Pollution in Ogoni Region’, Case No. 149 <<http://www.american.edu/TED/OGONI.HTM>> accessed 18/03/2023.

⁵ i.e. Shell Petroleum Development Company of Nigeria.

⁶Leighton, Roht-Arriaza and Zarsky (n 2).

⁷Ted Studies (n4).

where it seems that there is an ‘inability or unwillingness of oil companies to repair the leaks.’⁸

The situation in the Nigerian oil industry has become so globally notorious that the first British black female Member of Parliament (MP), Diane Abbott who represented the Hackney North and Stoke Newington area, stated on the 9th of April 2006 in *The Jamaica Observer* newspaper that –

...the discovery of oil has been an ecological disaster for the Niger Delta... where the oil is extracted. Shell and other Western Oil companies have, in collusion with successive military dictatorships, raped the region. Petrol contamination of the water table has made local water undrinkable. Farming and fishing grounds have been ruined and gas flaring in the Delta is cited as Africa's single biggest contribution to greenhouse gas emissions. It is symbolical of the brutally exploitative nature of the oil industry in Nigeria that the natural gas by-product (which other oil producers like Trinidad liquefies and markets) is simply burnt in giant flares which cause incalculable environmental damage.⁹

Over the years the pollution created by the oil industry in Nigeria has not diminished and the attitude of the oil industry has not improved. There is a paucity of accurate data regarding oil spill incidents and there is minimal compliance to laid down laws, with oil companies riding rough-shod over the spirit and intent of various Acts/Regulations and relying upon legal loopholes to avail themselves of responsibility for the sub-standard practices they choose to adopt.

A United States Non-Governmental Delegation stated in its Trip Report –

There is a long and terrible record of environmental destruction and human rights violations in the oil-producing regions of Nigeria. The gross level of environmental degradation caused by oil exploration and extraction in the Niger Delta has gone unchecked for the past 30 years. Evidence shows that the oil companies operating in Nigeria have not only disregarded their responsibility towards the environment but have acted in complicity with the military’s repression of Nigerian citizens. The profit-driven collusion between multinational oil companies and the past and present Nigerian governments has cost many lives and continues to threaten the stability of the region.¹⁰

⁸ibid.

⁹D Abbott, ‘Think Jamaica is Bad? Try Nigeria’ (09 April 2006) *The Jamaica Observer* <http://www.jamaicaobserver.com/columns/html/20060408T160000-0500_102286_OBS_THINK_JAMAICA_IS_BAD_TRY_NIGERIA_.asp> accessed 18/06/2023.

¹⁰Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta (A U.S. Non-Governmental Delegation Trip Report, 6-20 September 1999) 3. <http://www.essentialaction.org/shell/Final_Report.pdf> accessed 24/09/2023.

In a 2006 report made by the Nigerian Federal Ministry of Environment, the Nigeria Conservation Foundation, the World Wildlife Fund UK and International Union for the Conservation of Nature and Natural Resources (IUCN), a study¹¹ of the available figures albeit incomplete led the group of researchers to conclude that over the fifty year period spanning from 1956 to 2006, there has been at least a quantity of oil equivalent to between nine and thirteen million barrels (1.5 million tons) released into the Niger-Delta eco-system. This amount of oil released is the equivalent of fifty Exxon Valdez spills (or around one Exxon Valdez spill per year). ‘Oil companies operating in the Delta have not employed best available technology and practices that they use elsewhere in the world – a double standard. They can easily improve their environmental performance in the region.’¹²

2.2 Some Incidents/Accidents Which Resulted in the Discharge of Oil into the Nigerian Environment

(a) **The Ebubu Ochani Spill**– In the early 1980s, a spill of crude oil covering almost ten hectares of land was discovered in a thick seasonally flooded forest near the Ejamah village in Ebubu land. The crude oil was several metres deep and is concluded to have started during the Nigerian civil war that was fought between 1967 and 1970.¹³ There was a fire which started on the spill site which raged for several days. Shell owned the faulty equipment that was responsible for the spill but due to the war had stopped production and withdrawn from the area resulting in no action being taken.¹⁴ However, thirteen years after the end of the civil war and long after Shell had re-established itself in the region,¹⁵ nothing was done about the spill and the destruction it had wrought on the area and environment. This led the ruler of Ejamah-Ebubu in 1983 to make a compensation claim against Shell. Shell promised to clean up the oil and did not initiate a clean-up until 1990 (twenty years after the war had ended and at least twenty years (maybe more) after the initial spill occurred). A post impact study¹⁶ recommended that further clean-up be carried out. This was not done as Shell shelved the clean-up when it pulled out of Ogoni land.¹⁷

¹¹ Federal Ministry of Environment, ‘Niger Delta Natural Resource Damage Assessment and Restoration Project: Phase 1 – Scoping Report’, (31 May 2006) Federal Ministry of Environment, Abuja, Nigeria Conservation Foundation, Lagos, WWF UK, CEESP- IUCN Commission on Environmental, Economic, and Social Policy <<http://www.docstoc.com/docs/32388620/IMPACT>> accessed 18/11/2023.

¹² *ibid.*

¹³ A A Susu, *Oil Spills in the Marine Environment*, (CJC Press, 1998) 69.

¹⁴ Shell Petroleum Development Company, ‘Community Issues’, Nigeria Brief 1996.

¹⁵ i.e. the Niger-Delta Region.

¹⁶ Conducted by the Institute of Pollution Studies of the Rivers State University of Science and Technology.

¹⁷ Ebubu forms a part of Ogoni land.

(b) **The Funiwa V Oil Well Blow-Out**¹⁸ - On the 17th of January 1980, around five thousand kilometres off the Niger-Delta coast, an equipment failure in the Funiwa oil field caused the Funiwa V oil well to blow out. This field was a joint venture by three oil companies – the Nigerian National Petroleum Corporation, the Chevron Oil Company and Texaco Overseas (Nigeria) Petroleum Company. The blow-out lasted for almost thirteen days resulting in a fire which raged for over two days, causing a lot of damage. The blow-out resulted in a release of about four hundred thousand barrels of crude oil being released into the environment and it impacted on both land and sea. Around five villages were directly affected with the destruction of over 800 acres of mangrove forest and the contamination of rivers and creeks. Fish, crabs, molluscs, oysters and periwinkles in the water were either killed in the contaminated water or tainted by oil. Natives of the area had their livelihood taken away from them as many of them were fishermen and due to the contamination of the water, they had no drinking water as it could not be used for any purpose whatsoever.

Recommendations were made by foreign experts, after assessing the damage and the impact of the spill, that the victims be paid compensation in the sum of approximately US\$60,000,000 (Sixty Million Dollars). Texaco (which was the operator of the Funiwa field) however insisted to the affected communities that it would be willing to pay only a tenth of the recommended compensation (i.e. US\$6,000,000). This caused an impasse between the communities and the oil company leading to the intervention of the Nigerian government.

Upon a further recommendation by an inquiry tribunal, Texaco was told to pay compensation to the communities in the sum of US\$12,000,000. The Nigerian Government however ordered that the payment of the compensation should be made by Texaco not directly to the affected communities, but to the Rivers State Government. Unsurprisingly, the money was not disbursed to the affected victims as the funds were diverted by the Rivers State Government. The people who were the victims of the spill subsequently brought a legal action against Texaco for compensation, stating that they had not been compensated for the damage suffered as a result of the spill. Many of these cases were withdrawn by the plaintiffs who were generally disillusioned and dissatisfied at the manner the whole matter was managed.¹⁹

(c) **The Idoho Spillage** – On the 12th of January 1998, a ruptured pipeline which ran between the Idoho production platform and the Qua Iboe terminal in Akwa Ibom State in Nigeria caused the discharge of forty thousand barrels of light crude oil into the marine environment. The faulty pipeline was owned by Mobil Producing Nigeria Unlimited, and the company asserted that the pipeline was installed in 1971 and had been ‘...certified on May 1, 1991 for

¹⁸ Also known as the Texaco Oil Well Blow-Out.

¹⁹ Morocco-Clarke (n3) at 29.

a period of twenty years (until 2011).²⁰ On the 21st of January 1998, Mobil Producing Nigeria Unlimited after having initiated a clean-up of the oil informed the public that over ninety percent of the oil had evaporated, while the rest was stated to have dispersed naturally. No concrete figures were given as to the amount of oil which was recovered as a result of the clean-up. Contrary to the claims of Mobil, the oil had been driven by wind and wave actions such that by the 2nd of February 1998, five other states²¹ in Nigeria had reported that the oil had spread to their waters, causing pollution. Mobil described the oil spill as a major disaster and claims for compensation were made by communities and individuals maintained that they suffered a loss of their means of livelihood as well as the destruction of equipment and pollution of water amongst other claims.

(d) **Other More Recent Spills** – (i) In October 2004, one of the pipelines belonging to Shell which was located near the Goa community in Ogoni land burst. It resulted in the release of several thousand barrels of oil into the environment, causing a fire outbreak which destroyed the canoes of people in the community as well as palm trees. Damage was also caused to the surrounding mangroves and the creek which supplied drinking water to the community as well as fishing ponds was severely polluted. The local residents were thereby deprived not only of their livelihood but of their source of water supply which is vital to the survival of any living species.²²

(ii) In June 2005, there was the spillage of oil which was from one of the facilities belonging to Shell in the Ogbia area of Bayelsa state. This spill resulted in the discharge of oil into the rivers in the area. Shell sent a team to investigate the matter but did not take any action for a while thereafter.²³

(iii) On the 14th of August 2006, one of the oil wells²⁴ belonging to Shell resulted in the discharge of oil into the environment, consequent upon which there was a fire outbreak. It took almost three months²⁵ for Shell to succeed in extinguishing the fire and Shell was quick to point a finger of blame suggesting that the fire was a result of sabotage and that it was not responsible for the fire breaking out.

(iv) In July 2021, the Nigerian Minister of Environment stated that according to data from the National Oil Spill Detection and Response Agency (NOSDRA), 4,919 oil spills had occurred in Nigeria over a period of 6 years (this is for the period between ‘2015 to March 2021’).²⁶ The minister further stated that the total number of oil spills on the environment was

²⁰ The Guardian Newspaper, ‘Idoho Oil Spill’ (16-20 January 1996).

²¹ These states were Cross Rivers, Bayelsa, Rivers, Delta and Lagos states.

²² Morocco-Clarke (n 3).

²³ *ibid.*

²⁴ The Yorla Well 13 in Ogoni land.

²⁵ Over eighty days.

²⁶ Premium Times, ‘Nigeria records 4,919 oil spills in 6 years, 4.5trn barrels stolen in 4 years — Minister’ (6 July 2021) *Premium Times – Agency Report* <<https://www.premiumtimesng.com/news/headlines/471901->

235,206 barrels of oil and specified that this was ‘...very colossal to the environment.’²⁷ In addition, the minister said, ‘Several statistics have emphasised Nigeria as the most notorious country in the world for oil spills, losing roughly 400,000 barrels per day.’²⁸

The figures given by the minister referred to above are very confusing. If several statistics have identified that Nigeria loses 400,000 barrels of oil a day, how can the total number of oil spills on the environment was 235,206 barrels of oil? Does the daily figure of Nigeria’s loss of oil stand at 400,000 **litres** or **gallons** of oil instead of **barrels**? Or does the 400,000 barrels daily loss of oil include oil lost to theft and other activities instead of only oil spills? The minister’s statement did not clarify these ambiguities.

Furthermore, it was shocking to discover that what was paramount to the minister, who was in charge of the environment in Nigeria, was the financial losses occasioned by the loss of oil in Nigeria and not the environment. In his words, ‘Now the environmental effect, which is the major concern of the ministry of environment, is in the loss of revenue.’²⁹ The major and foremost concern for the Ministry of Environment should be the protection and preservation of the environment, not the loss of revenue. The loss of revenue aspect of oil spills or loss of oil should be the concern of the Ministry of Finance and the Ministry of Petroleum Resources (alongside their respective appropriate departments and agencies) and most definitely not that of the Ministry of Environment.

(v) The report on the NOSDRA’s data for 2020, shows that Nigeria suffered 327 oil spill incidents. These incidents resulted in a loss of 17,169.872 barrels of crude oil. In 2023, NOSDRA data showed that 108 oil spill cases were reported between the 1st of November 2022 and February 2023.³⁰ Later in 2023, data released by NOSDRA showed that Nigeria recorded 168 incidents of oil spill and this resulted in the spillage of 5,520 barrels of crude oil into the environment between January and August 2023.³¹

It is concluded by industry watchers that on average, there are at least three **major** oil spills recorded in the Niger-Delta region of Nigeria each month. There have even been allegations that one of Shell’s leaking pipelines continued to leak for several months without any repairs

[nigeria-records-4919-oil-spills-in-6-years-4-5trn-barrels-stolen-in-4-years-minister.html?tztc=1](#)> accessed 04/11/2023. Also, Punch, ‘Nigeria records 4,919 oil spills in six years, loses 4.5trn barrels to theft in four years — Minister’ (6 July 2021)*Punch – Agency Report* <<https://punchng.com/nigeria-records-4919-oil-spills-in-six-years-loses-4-5trn-barrels-to-theft-in-four-years-minister/>> accessed 04/11/2023.

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ *ibid.*

³⁰ T Adedokun, ‘Nigeria records 108 oil spills in three months – Report’ (16 February 2023) *International Centre for Investigative Reporting* <<https://www.icirnigeria.org/nigeria-records-108-oil-spills-in-three-months-report/>> accessed 04/11/2023.

³¹ I Amos, ‘Nigeria records 168 oil spill incidents in 8 months’ (3 September 2023) *Sweet Crude Reports* <<https://sweetcrudereports.com/nigeria-records-168-oil-spill-incidents-in-8-months/>> accessed 04/11/2023.

being carried out by Shell, resulting in the discharge of over eight hundred thousand barrels of oil into the Niger-Delta.³²

Apart from accidents which result in the spillage of oil into the environment, oil companies are notoriously known to intentionally cause the discharge of oil onto land or marine waterways. This could be as a result of the disposal of drilling mud or produced water from facilities or even platforms. The Nigerian government has come under heavy criticism for, ‘...allowing the oil companies to dump wastes in a manner that would be illegal in the United States. For example, U.S. environmental regulations completely prohibit the discharge of produced water or drilling mud from onshore facilities into surface-water bodies; produced water has to be re-injected for recovery or injected into disposal wells, while drilling muds are to be landfilled. However, in Nigeria, oil companies often dispose of wastes from oil drilling directly into fresh-water bodies, or do not follow proper pollution-reducing techniques.’³³

Although there are no accurate records of all oil spills in Nigeria, in May 2006, the Nigerian Federal Ministry of Environment, the Nigeria Conservation Foundation, the World Wildlife Fund UK and International Union for the Conservation of Nature and Natural Resources (IUCN) convened a Resource Damage Assessment and Restoration scoping visit to the Niger Delta and held a workshop³⁴ and studied ‘all available figures for oil spills (bearing in mind that they were not complete’³⁵ The table below which was derived and retrieved from that scoping report, gives an insight into the problem regarding the release of oil into the Niger Delta as a result of oil exploration and production.

2.3 Aftermath of Oil Spills in Nigeria

It is unequivocal that Nigeria has an oil spill problem. These spills are typically as a result of operational or equipment failure, sabotage, oil theft, outdated/corroded pipelines or human error. What needs to be determined is the procedure put in place and adopted when an oil spill incident occurs. In Nigeria, the Federal Ministry of Environment is the body empowered with the protection of the environment. Under the Federal Ministry of Environment, the NOSDRA was set up by statute.³⁶ Section 1(1) of the NOSDRA Act states that the NOSDRA was

³²A Quarto, Third World Traveller – ‘In a Land of oil and Agony’ (Summer 2000) *Earth Island Institute* <http://www.thirdworldtraveler.com/Africa/Nigeria_Land_Oil_Agony.html> accessed 18/03/2023.

³³Ted Studies, ‘Ogoni and Oil - Nigeria Petroleum Pollution in Ogoni Region’, Case No. 149 <<http://www.american.edu/TED/OGONI.HTM>> accessed 18/03/2023.

³⁴ Federal Ministry of Environment, ‘Niger Delta Natural Resource Damage Assessment and Restoration Project: Phase 1 – Scoping Report’ (31 May 2006) Federal Ministry of Environment, Abuja, Nigeria Conservation Foundation, Lagos, WWF UK, CEESP- IUCN Commission on Environmental, Economic, and Social Policy, 3. <<http://www.docstoc.com/docs/32388620/IMPACT>> accessed 18/03/2023.

³⁵ibid.

³⁶ By the National Oil Spill Detection and Response Agency (Establishment) Act 2006 (hereinafter referred to as the NOSDRA Act).

established with the responsibility for preparedness, detection and response to all oil spillages in Nigeria. Amongst its objectives, Section 5 of the NOSDRA Act states that the NOSDRA shall –

- (a) establish a viable national operational organization that ensures a safe, timely, effective and appropriate response to major or disastrous oil pollution;
- (b) identify high-risk areas as well as priority areas for protection and clean up;
- (c) establish the mechanism to monitor and assist or where expedient direct the response, including the capability to mobilize the necessary resources to save lives, protect threatened environment, and clean up to the best practical extent of the impacted site.

According to the NOSDRA, it has the mandate ‘...to coordinate the implementation of the National Oil Spill Contingency Plan (NOSCP) which also incorporates the National Oil Spill Contingency System (NOSCS) for Nigeria, in compliance with the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 1990), to which the country is a signatory. National Oil Spill Contingency System (NOSCS) is a harmonisation of all relevant regulations, organisations, personnel, procedures, facilities, equipment, logistical support to respond to a spill, reduce the negative impact and manage all related issues.’³⁷

Correspondingly, Section 6(1) of the NOSDRA Act specifies the functions of the agency as [to] –

- (a) be responsible for surveillance and ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector;
- (b) Receive reports of oil spillages and co-ordinate oil spill response activities throughout Nigeria;
- (c) Co-ordinate the implementation of the Plan as may be formulated, from time to time, by the Federal Government;
- (d) Co-ordinate the implementation of the Plan for the removal of hazardous substances as may be issued by the Federal Government;
- (e) Perform such other functions as may be required to achieve the aims and objectives of the Agency under this Act or any plan as may be formulated by the Federal Government pursuant to this Act.

Consequently, by virtue of Section 6(2), the NOSDRA Act mandates any person or body responsible for causing an oil spill to report the oil spill to the NOSDRA in writing not later than 24 hours after the occurrence of the oil spill and sets a penalty of Five Hundred Thousand Naira for each day of failure to report the occurrence. Section 6(3) goes further to

³⁷National Oil Spill Detection and Response Agency, ‘About NOSDRA’ <<https://nosdra.gov.ng/about-us-2/>> accessed 06/11/2023. These powers and mandates are as set out under the NOSDRA Act.

provide that the failure to clean up the site impacted by the oil spill, to all practical extent including remediation, shall attract an additional fine of One Million Naira.

Since 2006, the NOSRA has overseen the activities of the oil and gas industry in Nigeria but has not proven to be an effective regulator of oil companies operating in the country as its ability to effectively enforce regulations and ensure due compliance by the industry players is predominantly crippled by inadequate funding and the lack of political will on the part of the Nigerian government. The United Nations Environment Programme (UNEP) in its 2011 report on the Environmental Assessment of Ogoniland,³⁸ stated –

..., in the five years since its establishment, very few resources have been allocated to NOSDRA, such that the agency has no proactive capacity for oil-spill detection and has to rely on reports from oil companies or civil society concerning the incidence of a spill. It also has very little reactive capacity – even to send staff to a spill location once an incident is reported. In the Niger Delta, helicopters or boats are needed to reach many of the spill locations and NOSDRA has no access to such forms of transport other than through the oil companies themselves. Consequently, in planning their inspection visits, the regulatory authority is wholly reliant on the oil company. Such an arrangement is inherently inappropriate.³⁹

UNEP further stated in its report, ‘While a National Oil Spill Contingency Plan exists in Ogoniland and NOSDRA has a clear legislative role, the situation on-the-ground indicates that spills are not being dealt with in an adequate or timely manner.’⁴⁰ The UNEP report shows the inherent problem with the NOSDRA i.e. ‘There cannot be effective regulation of the industry if such a regulatory agency is dependent on the very companies it is supposed to oversee for carrying out its duties.’⁴¹

Over 10 years after the UNEP report revealing the incapacity of NOSDRA to effectively carry out its duties as watchdog and regulator over the petroleum industry in Nigeria, NOSDRA continues to receive damning indictments on the way it operates. In 2021, it was reported that documents from the NOSDRA revealed that approximately 172 thousand barrels of oil was spilt into the environment and only 2% of all oil spilled was cleaned up

³⁸United Nations Environment Programme, ‘Environmental Assessment of Ogoniland’ (2011) 140 <http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf> accessed 21/03/2023.

³⁹ibid at 139.

⁴⁰ ibid at 206.

⁴¹A Morocco-Clarke and F Abubakar Sodangi, ‘Not Far Enough?: An Assessment of the Regulation of the Nigerian Oil Industry’ (2023) *African Journal of Law and Human Rights*, Vol 7, No 1. 117 at 124. <<https://journals.ezenwaohaetorc.org/index.php/AJLHR/article/view/2528/2602>> accessed 22/10/2023.

over the five year period ranging from January 2016 to June 2021.⁴² The reason for this abysmal record was given as the dependence of NOSDRA on oil companies to carry out its functions and duties.⁴³ Talking about the inability of NOSDRA to properly regulate the oil industry, Nnimmo Bassey, an environmentalist and founder of Health of Mother Earth Foundation (HOMEF) said, ‘Poor funding appears to have forced them to depend on the polluters and possibly distorts their assessment of situations.’⁴⁴ It was further stated that, ‘The country’s regulatory agencies rely on oil companies to report themselves. Government agencies responsible for monitoring and regulating the industry only investigative when an incident is reported, and investigating teams rely almost exclusively on the firms themselves to reach incident sites.’⁴⁵

From the foregoing, it is clear that though Nigeria reaps huge financial benefits from its petroleum industry, it has failed to invest suitably in the proper and effective regulatory mechanisms for the said industry. By its actions and stance, Nigeria appears to consider the protection of the environment of little import and the ecological devastation the petroleum industry has continually wrought for over six decades does not merit the ramping up of protectionary measures nor does it warrant the much-needed investment in saving the environment.⁴⁶

3. The Other Side of the Pond: How Operations and Oil Spills are Handled in the Global North

First, it must be stated that oil companies in the UK have been instrumental in the adoption of certain safety and development policies within the oil industry. Though there have been some lapses within the industry, the oil companies have shown a commendable degree of corporate social responsibility regarding environmental concerns, issues and targets. This can be seen from the reports about Royal Dutch Shell’s operation in the UK when laying pipelines from Stanlow in Cheshire to Moss Moran in Scotland. According to Shell, ‘A painstakingly detailed Environmental Impact Assessment covered every metre of the route, and each hedge, wall and fence was catalogued and ultimately replaced or rebuilt exactly as it had been before Shell arrived. Elaborate measures were taken to avoid lasting disfiguration and the route was

⁴² C Mba, ‘Only 2% of Oil Spillages cleaned up in 5 years due to NOSDRA’s dependent relationship on Oil Companies in Nigeria’ (2 July 2021) *Dataphyte* <<https://www.dataphyte.com/latest-reports/development/only-2-of-oil-spillages-cleaned-up-in-5-years-due-to-nosdras-dependent-relationship-on-oil-companies-in-nigeria/>> Accessed 23/10/2023.

⁴³ *ibid.*

⁴⁴ Mongabay, ‘Latest Nigeria oil spill highlights ‘wretched’ state of the industry’ (24 February 2022) *Mongabay* <<https://news.mongabay.com/2022/02/latest-nigeria-oil-spill-highlights-wretched-state-of-the-industry/>> accessed 23/10/2023.

⁴⁵ *ibid.*

⁴⁶ Morocco-Clarke and Sodangi (n 41)

diverted in several places to accommodate environmental concerns....⁴⁷ By Shell's very own words, it ensured that the area within which it was laying pipelines was not disfigured as the company put in 'elaborate' measures to ensure the aesthetics of the area. Shell also stated that it had to take into consideration environmental concerns and altered its plans to accommodate and address those concerns.

The United Kingdom has put well tested systems in place to deal with oil spills and other pollutants which pose a danger to the environment, property and marine bodies and life. The procedure adopted involves Maritime Rescue Co-ordination Centres which act as co-ordinators during spill incidents by circulating –

...all pollution or situation reports to the Marine Management Organisation (MMO) for English waters. Marine Scotland, Natural Resources Wales and the Northern Ireland Environment Agency are responsible for their waters. Copies are also sent to national and regional statutory nature conservation agencies, and local councils that may be affected by the oil spill. In the event of a major spill, these organisations set-up an environment group to give advice on the suitable response to changing circumstances. MMO aims to approve or refuse oil spill treatment product use within 1 hour of being asked to authorise dispersant use. MMO can also give advice on the type of product most suitable for dealing with a particular incident. MMO aims to ensure that damage caused by the oil or oil spill treatment product is minimised.⁴⁸

In order to ensure that all bases are covered, MMO sets up consultation with regards to the impact of the spill on fisheries and aquatic plants and animals. The consultation is usually carried out with the Centre for Environment, Fisheries and Aquaculture Science (Cefas), Food Standards Agency (FSA), Natural England and Joint Nature Conservation Committee.⁴⁹

Furthermore, the United States of America takes a hardline stance on issues of oil pollution by petroleum exploration and production companies operating within its territory. A clear example of this was the Deepwater Horizon disaster in 2010 which occurred in the Gulf

⁴⁷A. Rowell, *Shell-Shocked: The Environmental and Social Costs of Living with Shell in Nigeria* (Greenpeace International: Amsterdam, 1994) <<http://archive.greenpeace.org/comms/ken/enviro.html>> accessed 02/10/2023; Also, Shell, *Shell and the Environment* (SIPC: London, 1992) 5. This attention and dedication by Shell when laying the Stanlow to Moss Moran pipeline should be juxtaposed against the position adopted in the Niger Delta of Nigeria, where Andrew Rowell observed when comparing the UK pipeline operation with that adopted in Nigeria, that – 'This is a far cry from Shell's practices in Nigeria. The Ogoni have never seen, let alone been consulted over, an environmental impact assessment.' ('Shell-Shocked: The Environmental and Social Costs of Living with Shell in Nigeria', *ibid*). Further, A. Morocco-Clarke, 'In the midst of so much injustice, can there be a seat for energy justice at the Nigerian table?' (2023) *Journal of World Energy Law and Business*, 7. <<https://doi.org/10.1093/jwelb/jwad003>> accessed 19/10/2023.

⁴⁸Gov.UK/ Marine Management Organisation, 'Guidance: How we respond to marine pollution incidents' (05 August 2014, Updated 31 July 2018) <<https://www.gov.uk/guidance/how-we-respond-to-marine-pollution-incident>> accessed 18/11/2023.

⁴⁹*ibid*.

of Mexico and has been reported to be the largest marine drilling spill in history⁵⁰ and resulted from an oil well head blowout on a platform on the 20th of April 2010, causing an explosion and consequentially the release of an estimated 4.9 million barrels of oil into the marine environment.⁵¹ British Petroleum (BP), which owned the oil rig that had exploded, immediately started to frantically work to stop the flow of oil and continued to do so until the leak was eventually stopped on the 15th of July 2010. The oil spill had continued for 87 days.⁵²

The US government clamped down heavily on BP and ordered it within two months to set up a 20 Billion Dollars fund to compensate the victims of the spill.⁵³ BP was indicted for its failure to adhere to safety regulations, protocols and policies. It was also made to carry out clean up operations and was mandated to fully restore the impacted area. The oil spill had a devastating effect on the flora and fauna of that environment, with a study showing that up to eight hundred thousand birds were killed and one thousand seven hundred turtles died, among other losses.⁵⁴

As at 2011, it was estimated that the Deepwater Horizon disaster was going to cost BP up to 60 Billion Dollars,⁵⁵ and by 2018, the estimated costs were projected to balloon to 65 Billion Dollars.⁵⁶ However, as at 2020, the disaster is estimated to have cost BP over 71 Billion Dollars.⁵⁷ In addition to the civil liability incurred by BP, criminal charges were brought against it and also some officers for the events and occurrence of the Gulf of Mexico oil spill. BP reached an agreement with the US Department of Justice in 2012 and pled guilty to 14 criminal counts, which included felony counts of manslaughter resulting from a number of deaths which occurred as a result of the explosion leading to the subsequent disastrous oil spill.⁵⁸ The Deepwater Horizon disaster brought BP to its knees and there were speculations

⁵⁰ United States Environmental Protection Agency, 'Deepwater Horizon – BP Gulf of Mexico Oil Spill' (2010, updated 14 August 2023) <<https://www.epa.gov/enforcement/deepwater-horizon-bp-gulf-mexico-oil-spill>> accessed 07/01/2024.

⁵¹ R Pallardy, 'Deepwater Horizon oil spill environmental disaster, Gulf of Mexico' (2010) *Britannica*, <<https://www.britannica.com/event/Deepwater-Horizon-oil-spill#ref294125>> accessed 07/01/2024.

⁵² United States Environmental Protection Agency, 'Deepwater Horizon – BP Gulf of Mexico Oil Spill' (2010, updated 14 August 2023) <<https://www.epa.gov/enforcement/deepwater-horizon-bp-gulf-mexico-oil-spill>> accessed 07/01/2024.

⁵³ BBC News, 'BP to Fund \$20bn Gulf of Mexico Oil Spill Payout' (17 June 2011) <<http://www.bbc.co.uk/news/10335114>> accessed 18/11/2023.

⁵⁴ Pallardy (n 51).

⁵⁵ R Mason, 'BP's Gulf of Mexico Oil Spill Bill Could Hit \$60bn, Moody's Warns' (20 April 2011) *The Telegraph*, <<http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/8462057/BPs-Gulf-of-Mexico-oil-spill-bill-could-hit-60bn-Moodys-warns.html>> accessed 18/11/2023.

⁵⁶ A Vaughan, 'BP's Deepwater Horizon bill tops \$65bn' (16 January 2018) <<https://www.theguardian.com/business/2018/jan/16/bps-deepwater-horizon-bill-tops-65bn>> accessed 07/01/2024.

⁵⁷ M Schleifstein, 'BP and its partners have spent \$71 billion over 10 years on Deepwater Horizon Disaster' (18 April 2020) <https://www.nola.com/news/business/bp-and-its-partners-have-spent-71-billion-over-10-years-on-deepwater-horizon-disaster/article_ca773cc0-80f4-11ea-8f8e-ffa77e5297bd.html> accessed 07/01/2024.

⁵⁸ Pallardy (n 51).

that the company would not survive the fallout of the disaster as it tottered on the brink of collapse.⁵⁹

Africa Focus, commenting on the volume of oil spilled six weeks after the Deepwater Horizon disaster took place, stated that as at that time, the amount of oil spilled in the Gulf of Mexico amounted to a little more than three times the volume of oil spilled in the 1989 Exxon Valdez oil spill incident. It further estimated that with regards to oil spills in Nigeria, there was ‘more than 50 Exxon Valdez spills into the Niger Delta by Shell, Chevron, and other companies over 5 decades.’⁶⁰

As devastating as the Deepwater Horizon disaster was in the Gulf of Mexico, it is dwarfed significantly by the volume of oil spilled within the Niger-Delta region of Nigeria and the consequential effect of the attendant pollution on the environment, the communities and the lives of people living within close proximity of oil exploration and production operations. Despite the magnitude of the oil spills in the Niger-Delta, the amount of fines, penalties and/or compensation levied on the oil companies have been a mere pittance compared to the sums expended by BP in the Deepwater Horizon disaster.

4. Conclusion

From the inception of this work, it has been shown that Nigeria has an oil pollution problem which appears to be exacerbated by the nonchalant attitudes of oil companies carrying out operations in the country. This nonchalance appears calculated by these multinational oil companies which appear to adopt a stance that due care and diligence should not be taken in developing countries like Nigeria, especially in light of the weak political will, greed, systemic corruption and cronyism firmly entrenched in the country.⁶¹ On the other hand, it has been shown that these same multinational oil companies exert due diligence when carrying out operations in countries situated in the Global North and are held to account when things go wrong leading to the release of oil into the environment of developed countries.

It therefore stands to reason that oil companies operating in Nigeria can be held to a much higher standard and can afford cleaning up any mess caused by oil spills arising from

⁵⁸ BBC News, ‘BP to Fund \$20bn Gulf of Mexico Oil Spill Payout’ (17 June 2011) <<http://www.bbc.co.uk/news/10335114>> accessed 18/11/2023.

⁵⁹ CNN, ‘Tony Hayward: BP not prepared for fallout, was on financial brink’ (10 November 2010) <<https://edition.cnn.com/2010/US/11/09/gulf.oil.disaster/index.html>> accessed 07/01/2024. Also, D.M. Uhlmann, ‘BP paid a steep price for the Gulf oil spill but for the US a decade later, it’s business as usual’ (23 April 2020) *The Conversation* <<https://theconversation.com/bp-paid-a-steep-price-for-the-gulf-oil-spill-but-for-the-us-a-decade-later-its-business-as-usual-136905>> accessed 07/01/2024.

⁶⁰ Africa Focus, ‘USA/Nigeria: By Way of Comparison’ (05 June 2010) <<http://www.africafocus.org/docs10/oil1006.php>> accessed 07/01/2024.

⁶¹ A Morocco-Clarke, ‘Traversing the Environmental Regulation of the Nigerian Petroleum Industry and Environment from FEPA to the Petroleum Industry Act’ (2023) *Iconic Research and Engineering Journals*, Vol.7 (6), 264-265.

their operations and facilities. They can also be made to ensure that there is adequate restoration and remediation of any devastated or affected areas. Furthermore, they can be held to account in ensuring that appropriate compensation is paid for losses or disruptions to the lives and livelihood of affected individuals, communities and entities. It is clear that with regards to the oil industry, most of the failings recorded in Nigeria is as a result of inadequate and ineffective regulation of the industry, greed and corruption.

If Nigeria is to turn a corner and make the protection of the environment a priority, the government and regulators have to ensure that it holds operators within the oil industry accountable for any shortcomings and holds them to the higher international standards of operation adopted in the Global North. The Nigerian government must also ensure that it appropriately equips the relevant agencies which oversee and regulate the industry. The following recommendations will set Nigeria on a path to ensuring accountability within the petroleum industry and work towards eliminating the ecological devastation arising from oil spills.

5. Rejigging the Status Quo in Nigeria: A Way Forward

From the foregoing, it is clear that Nigeria is almost crippled by weak political will and weak institutions. Whilst there is a plethora of legislations, regulations, policies and guidelines, inadequate enforcement and poor compliance records show that Nigeria is big on talking the talk, but this is often not followed by walking the walk. Thus, though the words and intent through regulatory mechanisms like laws, regulations etc. are put in place, the requisite actions which will give the legislature bark precise bite, are often inadequate, ineffective and sometimes outright non-existent.

The story that shapes the trajectory of the Nigerian oil industry for over six decades has been one of political greed, recklessness, wanton disregard and a nonchalance to the protection and nurturing of the environment. With regards to the NOSDRA Act and the regulatory agency which is supposed to ensure that Nigerian land, water and the environment are protected from oil spills, the analysis above shows that the NOSDRA is not given the necessary tools and funding to carry out the duty mandated to it under the law.

If the environment is to be adequately protected in Nigeria and any accidental oil spills properly taken care of, the Nigerian State has to adopt a hard stance like is done in the Global North and ensure that there is proper remediation of all polluted lands and waters which might be affected by the oil spill. Also, adequate compensation must be paid to all affected persons, businesses, communities and bodies affected by the oil spill. The first order of business in ensuring that the Nigerian environment and those living and operating within

close proximity of oil exploration and production activities is for the Nigerian Government to stand firm with regards to its political will to ensure that its lands are not further devastated and its citizens correspondingly further inconvenienced and impoverished. This could be achieved through the following –

- (1) The enforcement of the strict letter of the law by the appropriate regulatory authorities;
- (2) The adoption of a stance which does not allow anyone or any entity to circumvent the law, regulations and policies;
- (3) Ensuring that the requisite regulatory bodies are adequately equipped, funded and have the necessary back-up to effectively carry out their statutory duties;
- (4) The rigorous and dedicated prosecution of any individual or entity found to sabotage or destroy oil pipelines, equipment, well heads, etc which results or could result in the discharge of oil into the environment;
- (5) The adoption of international best practices by oil companies operating in Nigeria to ensure that standard and quality of their operations carried out within the country are on par with those of oil companies operating in the Global North; and
- (6) The Nigerian courts being proactive in dispensing swift justice in cases involving oil spills and pollution, particularly when lawsuits are instituted by individuals and communities whose lives and livelihood have been devastated by the pollution and devastation of their immediate environment. The courts being institutions that dispense justice should not be swayed by the financial interests and pecuniary gains derived from the oil industry nor put these ahead of the protection of the environment and the interests of citizens and communities.