THE NEXUS BETWEEN CORPORATE SOCIAL RESPONSIBILITY, CORPORATE ENVIRONMENTAL RESPONSIBILITY AND SUSTAINABLE DEVELOPMENT GOALS OF OIL AND GAS COMPANIES: NEED FOR LEGAL FRAMEWORK*

Abstract
Corporate social responsibility is the notion that corporations have an obligation to constitute groups in society other than stockholders and beyond that prescribed by law or union contract. We adopted doctrinal method of data collection using secondary sources of data collection. The precis of this paper therefore is to x-ray how corporate social responsibility, social responsibility and sustainable development can result when government and corporate bodies like oil and gas companies discharge their responsibilities and duties to the people and their environment; resulting in better lives to the people and sustainability to the environment for the present and future generations. We recommended the need to have a legal and regulatory framework that could make corporate bodies like oil and gas companies and government to be conscious of the plights of people in and around their areas of operations.

Keywords: Nexus, corporate social responsibility, social responsibility, sustainable development, goals, regulations and oil and gas companies.

1. Introduction

Historically, when John D. Rockefeller was at the zenith of his power as the founder of standard oil company, he handed out dimes to rows of eager children who lined the street. Rockefeller did this on the advice of a public relations expert who believes the dime campaign would counteract his widespread reputation as a monopolist who had ruthlessly eliminated his competitors in the oil industry.[1]The dime campaign was not a complete success, however, because of standard oil was broken up under the Sherman Antitrust Act of 1890. Conceivably Rockefeller believed he was fulfilling some sort of social responsibility by passing out dimes to hungry children. Since Rockefeller's time, the concept of social responsibility has grown and matured to the point where many of the today's companies are intimately involved in social programs that have no direct connection with the bottom line. These progams include everything from support of the arts and urban renewal to environmental protection. But like all aspects of management, social responsibility needs to be carried out in an efficient and effective manner.[2]Social responsibility of business includes the reactive responsiveness to its obligatory operational activities like economic productive and legal requirement to its stockholders and also its stakeholders.[3] Business social responsibility is operationally defined as the managerial, intellectual, concern and practical involvement on social issues relating to business interdependence with the society of location.[4]

2. Definitions of Social Responsibility

It is the responsibility of a manager to see that a business carries out its legal, primary productive and economic activities to the satisfaction of the ultimate owners. It is also the responsibility for the business managers to assess the environmental demands on the business and then make adjustments needed for stability of the business organisations in carrying out their productive activities. The business social responsibility issues are environmental issues. Environment is something that is outside the control of business but the business requires the environment for successful productive and marketing activities. The environment of a business organisation includes suppliers of raw materials to the business, the customers who buy its products. The competitors of the business, the distributors who carry out the products of the business to distant markets, the local government and the community where the business is located, the state government and federal government, the press and newspaper companies, the legal system of the country, the policy, customers *et cetera*. These are all the environment of a business organisation. The business organisation is an open system that exchanges resources with all the above mentioned environmental elements.[5] Because of this direct or indirect interaction between business organisations and their complex environmental elements, they form diverse opinions and expectations of business organisations. On the basis of these external opinions and expectations of environmental clients outside the control of the business organisations, social demands are made on the business organisations. These demands mad£ by environmental clients who are outside the control of business managers are not obligatory for the business. These demands by the environmental

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[1] R Kreitner, *Management* (India: 7th edn., A.I.T.B.S. Publishers & Distributors (Regd), 1999) 131
[2] Ibid
[3] A G Bedeian Management (CBS International edition, 1987)
[4] C I Onwuchekwa, Introduction to Business Social Responsibility in Reading, 'in social Responsibility issues in Nigeria' (Enugu: Zik-Chuks Nigeria, 1999) 2
[5] Ibid at p. 3

elements are not also legally binding on the business managers. These demands are nothing but environmental surprises and turbulence which business organisations must first of ail analyse intellectually and then define the extent of their involvement. The environment of a business must be managed for stability so that a business must successfully carry out its productive activities.

Evidence from investigation reveals that many companies in Nigeria, both indigenous and foreign have neglected the environmental issues facing them and only struggled to maintain a very good relationship with government officials. It is even surprising that some giant oil companies, including those that are even owned by federal government have completely-neglected the effective management of their business environment. This is the major source of the crisis in the oil producing communities in Nigeria. We can confidently say that the crisis in the oil sector was created by incompetent management in the oil companies including foreign and indigenous. The oil companies observed enormous economic opportunities in the Nigerian economic environment but visualized their social responsibility from a classical model of pursuing economic efficiency and meeting official requirements of government for government protection. Even when the crisis started in all oil communities, there was no intellectual concern as to formulate policies for long-term survival based on information education to communities.[6]

3. What is the role of Business in Society?

Much of the disagreement over what social responsibility involves can be traced to a fundamental debate about the exact purpose of a business. Is a business an economic entity responsible only for making a profit for its stockholders? Or is it a socioeconomic entity obligated to make both economic and social contributions to society? Depending on one's perspective, social responsibility can be interpreted either way.[7]

The Classical Economic Model: The classical economic model can be traced to the eighteenth century, when businesses were owned largely by entrepreneurs or owner-managers. Competition was vigorous among small operations, and short-run profits were the sole concern of these early entrepreneurs. Of course, the key to attaining short-run profits was to provide society with needed goods and services. According to Adam Smith, father of the classical economic model, an 'invisible hand' promoted the public welfare. Smith believed the efforts of competing entrepreneurs had a natural tendency to promote the public interest when each tried to maximize short-run profits. In other words, Smith believed the public interest was served by individuals pursuing their own economic self-interests.[8]

The Socioeconomic Model: Reflecting society's broader expectations for business (for example, safe and meaningful jobs, clean air and water, charitable donations, safe products), 'many think the time has come to revamp what they believe to be an obsolete, classical economic model. Oligopolistic industries such as autos, rubber, and brewing, in which a handful of corporate giants dominate the market, are cited as evidence that the classical economic model is outdated. In its place its opponents propose a socioeconomic model, in which business is seen as one subsystem among many in a highly interdependent society.[9] Advocates of the socioeconomic model point out that many groups in society besides stockholders have a stake in corporate affairs. Creditors, current and retired employees, customers, suppliers, competitors, all levels of government, the community, and society in general have expectations, often conflicting, for management. Some companies go so far as to conduct a stakeholder audit.[10]

4. Corporate Environmental Responsibility and Corporate Social Responsibility of Oil and Gas Corporations

4.1. Corporate Environmental Responsibility

Corporate environmental responsibility of oil and gas corporations is their duty to prevent environmental pollution or degradation in the course of their operations. Where environmental pollution or degradation occurs as a result of an oil or gas corporation's operations, it has the corporate environmental responsibility to clean up or restore the environment to its original state.[11] Indeed, in most cases, oil and gas corporations come under corporate social responsibility only after failing to perform their corporate environmental responsibility. Put another way, if oil and gas corporations perform their corporate environmental responsibility, they will have less corporate social responsibility to perform. Perhaps more than any other corporation in corporate Nigeria, the oil corporation, the international oil corporation in particular, is under a duty of corporate environmental responsibility to abstain from polluting or degrading the environment and where it fails to do so, to restore the environment to health after polluting or degrading it. The story of the efforts of law to protect the environment from corporate pollution and degradation may be literally told using images of the howling wolves in the woods and the goose that lays the

[6] Ibid
[7] Kretiner at p. 134
[8] Ibid
[9] Ibid
[10] Ibid
[11] A K Usman, *Nigerian Oil and Gas Industry – Institutions, Issues, Law and Policies* (Lagos: Malthouse Press Limited, 2017)

golden eggs.[12] Moved by desire to make money and profit, oil and gas corporations, in particular international oil and gas corporations - the wolves howling in the woods, are out to mine oil from the environment - the goose that lays the golden egg.[13]

Corporate Environmental Responsibility of Oil and Gas Corporations under Nigerian and International Law

Nigerian Legal Provisions

Almost every Nigerian petroleum law contains provisions prohibiting oil corporations from polluting or degrading the environment in the course of their operations. Where oil corporations had been alleged to violate their corporate environmental responsibility, some of the statutory provisions that impose corporate environmental responsibility on corporations have been judicially tested through environmental litigation to determine the liability of corporations for violation of their corporate environmental responsibility to aggrieved litigants. The Oil in Navigable Waters Act[14] which domesticated in Nigeria the Convention for the Foliation of the Sea by Oil 1954 prohibits the discharge of crude oil, fuel, lubricating oil, heavy diesel oil or any mixture containing not less than 100 parts of oil into prohibited sea areas by Nigerian ships. Any ship that discharges the prohibited oils into the protected waters, the owner or master of the ship shall be guilty of an offence.[15] Section 2 designates prohibited areas of the sea, and empowers the Minister of Transport to designate by order, other areas outside the prohibited areas for the purpose of protecting the coast and territorial waters of Nigeria from pollution by oil and to vary or exclude any excluded area. It is not clear what the expression *to vary or exclude any excluded area* means. Does it mean that the Minister of Transport can by Regulations made by him turn a water body; the Act prohibits pollution of by oil into one that may be so polluted? If that is the import of the provision, it is submitted that it has vested on the Minister wider powers than are usually vested on bodies charged with functions of making subsidiary legislation. Such a provision will place the Minister above the National Assembly thereby empowering him to usurp its functions. There is need for judicial pronouncement on the meaning of the expression under reference or its legislative amendment to remove its patent ambiguity. Section 3 of the Oil in Navigable Waters Act makes the owner or master of the vessel, the occupier of a place on land, or the person in charge of the apparatus used for transferring oil from or to a vessel guilty of an offence if any oil or mixture containing oil is discharged into the whole of the sea within the seaward limits of the territorial waters of Nigeria and all other waters including inland waters which are within those limits and are navigable by sea going ships.

Section 4 of the Act provides for special defences to a charge under the Act. These defences include where:

(a) Oil or mixture containing oil is discharged for the purpose of securing the safety of any vessel or cargo or for saving life;
(b) The oil escaped in consequence of damage to the vessel and as soon as the damage occurred, reasonable steps were taken to reduce the escape of oil;
(c) The escape or leakage is not due to any want of reasonable care by the person charged;
(d) With regard to discharge or escape from a place on land, the discharge or escape was caused by the act of a person who was in that place without the permission of the occupier;
(e) The oil was contained in an effluent produced by operations for the refining of oil;
(f) It was not reasonably practicable to dispose of the effluent otherwise than discharging it into the waters of Nigeria;
(g) All reasonable practicable steps have been taken for eliminating oil from the effluent; and
(h) The discharge is permitted by statute, for instance, section 368 and 382 of the Merchant Shipping Act.[16] Penalty for violating the above provisions of the Act ranges between twenty and two thousand naira fine.

These no doubts are ridiculous fines that cannot deter offenders. The Oil in Navigable Waters Act empowers the Minister of Transport to make regulations for Nigerian ships to be fitted with such pollution prevention equipment and to comply with requirement for preventing or reducing discharge of oil and mixtures containing oil into the

[12] A man and his wife owned a very special goose. Every day the goose would lay a golden egg, which made the couple very rich. 'Just think,' said the man's wife, 'If we could have all the golden eggs that are inside the goose, we could be richer much fasters.'
'You're right,' said her husband, 'We wouldn't have to wait for the goose to lay her egg every day.' So, the couple killed the goose and cut her open, only to find that she was just like every other goose. She had no golden eggs inside of her at all, and they had no more golden eggs.
[13] Ibid
[14] CAP 387 Laws of the Federation of Nigeria 1990
[15] See section of the Oil in Navigable Waters Act
[16] CAP 337 Laws of the Federation of Nigeria 1990

sea.[17] The Oil Terminal Dues Act[18] essentially deals with discharge of oil at oil terminals in the process of loading oil into an oil pipe or some other oil carrier or offloading the oil from such carrier. The objective of this law is to ensure that oil is not discharge into the environment in the course of loading or offloading an oil-bearing vessel. To this end, section 6 (2) of the Oil Terminal Dues Act provides that where oil or a mixture containing oil is discharged into any part of Nigeria's territorial waters from a pipeline or any apparatus used for loading and offloading of oil from a vessel, or as a result of operation for evacuating oils, the owner of the pipeline or apparatus or the operator in charge of the evacuation, as the case may be, shall be guilty of an offence under section 5 of the Oil in Navigable Waters Act. Pursuant to the 1969 Petroleum Act, *DPR* in 1981 issued the *Interim Guidelines and Standards on Monitoring, Handling, Treatment and Disposal of Effluent Oil Spills, Chemicals, Drilling Mud and Drilling Cuttings.* There are Guidelines allowable limits of waste discharges into fresh water, coastal water and offshore areas of operation. Each operator must possess a minimum stockpile of oil spill control equipment, and have an oil spill contingency plan for the prevention and control of oil spills. The Oil Pipelines Regulations imposed an obligation on oil corporations laying oil pipelines for the transportation of petroleum to use pipelines of a particular design and thickness to prevent leakage or rupture of pipelines leading to pollution of the environment by oil.[19] The Oil Pipelines Regulations imposed further obligations on oil corporations to test an oil pipeline before transporting oil in it.[20] This is to ensure the pipeline holds when subjected to the pressure of transporting oil by it.

The 2012 Petroleum Bill demands more corporate environmental responsibility from oil corporations than previous laws. It is understandable. This law made at a time environmental carnage oil operations has become more visible. This has led to environmental consciousness that is intolerant of such carnage. The Bill requires licensees and lessees to submit within three months of being granted a licence or lease an environmental management plan to the Upstream Petroleum Inspectorate for approval.[21] The environmental management plan shall contain the licensee's or lessee's environmental policy objectives and targets and commitment to comply with relevant laws, regulations guidelines and standards.[22]It shall also contain an assessment of the impact of the licensee's or lessee's operations on the environment and people. It shall contain an environmental awareness plan describing the manner the licensee or lessee intends to inform his employees of environmental risks of their operations and how such employees will avert those risks.[23] No chemicals shall be utilized for upstream operations unless the Inspectorate has granted a permit for it.[24] The Bill provides that failure to submit an environmental management plan will lead to the licence or lease being not granted.[25] Where a licensee or lessee submits an environmental management plan but does not implement it, his licence or lease may be revoked.[26] The Bill further provides that every licensee or lessee engaged in upstream and downstream oil operations shall manage environmental impacts in accordance with its environmental management plan or programme approved by the Inspectorate or Agency, and as far as it is reasonably practicable, rehabilitate the environment affected by exploration and production operations by restoring the environment to its natural or pre-exploration and production state, or to a state that is in conformity with generally accepted principles of sustainable development.[27]

The licensee or lessee however shall not be liable for or be under an obligation to rehabilitate the environment where the Act adversely affecting the environment has occurred as a result of a sabotage of petroleum facilities, which also include tampering with the integrity of any petroleum pipeline and storage systems.[28] The implication of this provision is that the environment on such occasion is without remedy. The Act provides that a licensee or lessee with an oil prospecting licence or oil mining lease shall in addition to any liability for compensation for damage done to the environment, be liable to pay fair and adequate compensation for the disturbance of the surface of the land.[29] By this provision, an oil prospecting licensee or an oil mining lessee, by merely disturbing the surface of the land without more, can be liable to the land owner in compensation. This means at all events a licensee or lessee is liable since he cannot conceivably carry oil prospecting or mining without disturbing the surface of the earth. What in such situation will be the quantum of compensation? It should be the quantum of the disturbance. Before the Bill, the 1969 Petroleum Act provides that the holder of an oil exploration licence, oil prospecting licence or oil mining

[17] See section 5 (1) of the Oil in Navigable Waters Act
[18] CAP 126 Laws of the Federation of Nigeria 1990
[19] See Reg. 3 and 5 of the Oil Pipeline Regulations, 1995 made pursuant to the Oil Pipeline Act 1956
[20] Ibid, Reg. 6
[21] Ibid, section 200(1)
[22] Ibid
[23] Ibid, Section 200(3)
[24] Ibid, Section 200(5)
[25] Section 195(1) of the Petroleum Industry Bill
[26] Ibid, section 219(2)
[27] Ibid, section 293 (1)
[28] Ibid, section 296 (1)
[29] See paragraph 37 of the first schedule to the 1969 Petroleum Act

lease shall, in addition to any liability for compensation to which he may be subject under any other provision of the Act, be liable to pay fair and adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased lands.[30] The Petroleum Industry Bill provides that for the avoidance of doubt, the Upstream Petroleum Inspectorate and the Downstream Petroleum Regulatory Agency, shall in consultation with the ministry of environment, make regulations and issue directives specifically relating to the environmental aspect of the petroleum industry.[31] Every oil and gas company is required to comply with environmental, health and safety laws, regulations, guidelines or directives as may be issued by the federal ministry of environment, the Minister of Petroleum, the Upstream Petroleum Inspectorate or the Downstream Petroleum Regulatory Agency.[21] Such companies are required to conduct their operations in accordance -with internationally acceptable principles of sustainable development and inter-generational equity, to take a precautionary approach to the environment in their operations and encourage the use of environmentally friendly technologies for oil and gas exploration and exploitation.[32]

The Act further provides that every licensee or lessee engaged in upstream and downstream oil operations shall manage environmental impact in accordance with its environmental management plan *or* programme approved by the Inspectorate or Agency, and *as* far as it is reasonably practicable, rehabilitate the environment affected by exploration and production operations by restoring the environment affected by exploration and production operations by restoring the environment to its natural or pre-exploration and production state, or to a state that is in conformity with generally accepted principles of sustainable development.[33] The licensee or lessee however shall not be liable for or be under an obligation to rehabilitate the environment where the act adversely affecting the environment has occurred as a result of a sabotage of petroleum facilities, which also include tampering with the integrity of any petroleum pipeline and storage systems.[34] The implication of this provision is that the environment on such occasion is without remedy. Where there is a dispute as to the cause of an act that has resulted in harm to the environment, the licensee, lessee or any affected person shall refer the matter to the Agency for a determination and the determination of the Agency shall be final.[35] The Act here only provides for reference of the dispute to the Agency omitting the Inspectorate when in fact it is upstream that such disputes are likely to arise. This omission needs to be taken care of. The Act provides that where an act that damages the environment is found to have occurred as a result sabotage, the cost of restoration and remediation shall be borne by the local government and state government within which the act occurred.[36]It is submitted that rather than the cost of environmental restoration and remediation being borne by the local government and state government, it should be borne by the host community as provided under section 118 (5) of the Bill which provides that where an act of vandalism, sabotage or other civil unrest occurs that causes damage to any petroleum facilities within a host community, the cost of repair of such facility shall be paid from the petroleum host community fund entitlements unless it is established that no member of the community is responsible.

The earliest Nigerian law that aims at checking the menace of gas flaring was the Petroleum Drilling and Production Regulations *1969* made pursuant to the Petroleum Act of the same year. Recognizing the harmful effects of gas flaring, this law provides for gas utilization in Reg. 43. The regulation provides that: 'Not later than five years after the commencement of production from the 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. The Associated Gas Reinjection Act seeks to prohibit gas flaring by prohibiting gas flaring in certain case, and limiting it in others.[37]The Act which provides in section 3(1) that: 'subject to subsection 2 of this section no company engaged in the production of oil and gas shall after 1st January 1984 flare gas produced in association with oil without permission in writing of the Minister.[38] Subsection 2 of the section provides that:

> Where the Minister is satisfied after 1stJanuary 1984 that utilization or reinfection 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 (b) permitting the company to continue to flare gas in the particular field if the company pays such sum as the Minister may from

[30] Section 289 (3) of the PIB
[31] Ibid, section 290
[32] Ibid, section 291 and 292
[33] Ibid, section 293(1)
[34] Ibid, section 293(2)
[35] Ibid, section 293(3)
[36] Ibid, section 293(4)
[37] See section 3 and 4 of the Associated Gas Re-injection Act
[38] The Minister referred to here is the Minister of Petroleum

> time to prescribe for every 28.317 standard cubic meter of gas flared; provided any payment due under this paragraph shall be made in the same manner and be subject to the same procedure as ... payment of royalties to the Federal government by companies engaged in the production of oil.

Section 4 imposes a concession forfeiture penalty on a licensee or lessee who breaches section 3 of the Act. In addition to forfeiture the Minister of Petroleum may order withholding of any entitlement of the offending licensee or lessee with a view of using the withheld entitlement to rehabilitate the environment affected by gas flaring. Pursuant to the powers conferred on him by the Gas Re-injection Act, the Minister of Petroleum in 1984 made Regulations which provides that the issuance of a certificate by the Minister under section 3 (2) of the Associated Gas Re-injection Act for the continued flaring of gas in a particular field or fields shall be subject to one or more of the following conditions:

(a) where more than 70% of the produced gas is effectively utilized or conserved;
(b) where the produced gas contains more than 15% impurities which render it unsuitable for industrial purposes;
(c) where on-going utilization programme is interrupted by equipment failure provided that such failures are not considered too frequent by the Minister and that the period of any one interruption is not more than 3 months;
(d) where the Minister orders the production of oil' from a field that does not satisfy any of the conditions specified in the Regulations.

The above Regulations apply to Ministerial Certificates permitting gas flaring regardless whether payment is made under section 3 (2) the Gas Reinjection Act. The Petroleum Industry Bill contains elaborate provisions on gas flaring. It provides that natural gas shall not be flared or vented after a date (the flare-out elate) to be prescribed by the Minister in Regulations.[39] After the flare-out date, the Act goes on to provide that Gas shall not be flared in any oil and gas production operation, bloc or Held, onshore or offshore, or gas facility such as processing or treatment plant except where a permit is granted.[40] The Act requires gas operators with flared gas resources to within six months of the commencement of the Act categorize all their flared gas resources (daily flared quantity reserve, location, and composition) and submit this data to the Upstream Petroleum Inspectorate along with gas utilization plan for the gas they intend to utilize before the flare-out date.[41] Against the sweeping prohibition of gas flaring after the flare-out date, the Act institutes a permit regime for gas flaring in permitted cases. It provides that the Minister may grant a permit of not more than one hundred days, or such longer period as may be approved by the Minister to flare or vent gas in cases of start-up, equipment failure, shut-down, safety flaring or due to inability of gas customer to off take gas.[42] All these escape routes in the Act are its weaknesses and which called for further amendments.

International Legal Provisions

Internationally, corporate environmental responsibility has been evolving perhaps at a much faster pace than municipally. As far back as 1972, the United Nations Declaration on the environment recognized the role of business in sustainable development. The 1987 Brundtland Commission Report explicitly recognized the impact of international trade on the environment. In 1992 at the UN Conference on the Environment and Development, the UN Centre on Transnational Corporations again pushed for the responsibilities of transnational corporations to be supportive of sustainable development. The first instance of corporate environmental responsibility directly tackled by an international conference was during the 1992 Rio De Janeiro Conference on the Environment. Declarations made at the Conference provide for *the polluter pays principle* popularly referred to as *Agenda 21*. Article 21 dubbed *Agenda 21* of the Declaration contains the Polluter pays principle. When the polluter pays either by cleaning up or rehabilitating the polluted environment or compensating victims of his environmental pollution or degradation, it performs its corporate environmental responsibility. Agenda 21 provided a framework for corporate environmental responsibility by acknowledging the importance for governments to encourage and promote corporate environmental management. Under the legal framework of Agenda 21 and the Framework Convention on Climate Change, corporations are required to consider sustainability issues and to integrate sustainability considerations and concerns in their operations. Also at the 2002 Earth Summit on Sustainable Development in Johannesburg, South Africa, corporations were required to 'promote corporate responsibility and accountability and the exchange of best practices in the context of sustainable development.'[43] Over the years, several international initiatives on corporate

[39] See Section 275 of the PIB (now Petroleum Act, 2021)
[40] Ibid
[41] Ibid, section 276(1)
[42] Ibid, 277(2)
[43] See Art. 4 of the 2002 Earth Summit Declaration

environmental responsibility have led to the evolution of what may be termed pseudo-legal principles on corporate environmental responsibility. These principles include:

i. Transparency and disclosure: Businesses should provide timely and accurate disclosure of their environmental impacts following the principle of materiality. This information has to be measured, verified, and then made public and easily accessible by all stakeholders.
ii. Environmental performance: Businesses have to play an active role in environmental protection and in the sustainable use of natural resources. Their policies and practices have to aim at preventing pollution, implementing climate change mitigation and adaption, using resources sustainably and investing in environmentally friendly technology. The precautionary and polluter-pays principle need to underpin decisions made in this regard,

For these pseudo-legal principles to become full-fledge legal principles, there is need for a UN convention to declare them as such vide, for instance, a Convention on Corporate environmental Responsibility and Accountability. Such a convention will ensure that the activities of large corporations aligned with their environmental responsibility and accountability. This will scale up the practice of corporate environmental responsibility and will level the playing field for corporate operations, in the sense that bad practices would not be used as a competitive advantage by irresponsible businesses. A UN Convention on Corporate environmental Responsibility and Accountability ensure the participation of governments, companies and civil society. Such a convention should build on existing corporate environmental responsibility frameworks, initiatives and policies developed at national and international levels. Enforcement of the corporate environmental responsibility of oil and gas corporations in Nigeria is done mainly through the agency of the court.

Environmental Protection Clauses in Oil and Gas Contracts

To ensure that corporations perform their corporate environmental responsibility, it is critical that environmental protection clauses should be inserted into oil exploration and production contracts between national oil companies such as NNPC with international oil corporations such as Shell, while some national oil companies insert these clauses in their exploration and production contracts, others do not.

Compliance with Domestic and International Standards

Usually, oil and gas exploration and production contracts contain a clause that the oil or gas corporation will in its operations comply with domestic and international environmental law or standards. Reference to domestic environmental protection law is desirable from a public policy perspective. In most cases, domestic standards have been developed with local environmental conditions in mind. In many developing nations however, environmental law is not well developed; where it is developed, the Will and machinery to enforce it is lacking. In such nations, reference to domestic environmental protection law in oil contracts is not enough. Reference must be made to international industry standards which are higher and may cover specific issues notdealt with by domestic law. Be this as it may, international industry standards, oilfield practices, good production practices, generally accepted standards often used in such clauses are vague, ambiguous and indeterminable terms that may not avail the nation inserting such terms much in the event of the IOC not giving effect to its obligation.

Environmental Impact Assessment Clauses

Environmental Impact Assessments (EIA) and corresponding management plans have become a staple requirement for investment projects in many sectors. Unfortunately, environmental governance in petroleum producing countries commissioned by the World Bank found that 'much of the emphasis of the EIA process appears directed towards the approval of oil and gas projects, rather than to a life cycle approach for minimizing environmental and social impact.[44] Apart from environmental impact assessment done before the commencement of oil exploration and production, there should also be a post impact assessment done after oil exploration and production has impacted on the environment. A post impact assessment discloses the extent of the impact and environmental remediation measures to be taken to address the impact.

Clauses on Access to Protected Areas

Petroleum operations are particularly contentious when they are located, even partially, within wildlife reserves, parks, or areas of cultural or biological significance. NGOs have long argued that such areas should be off limits to the extractive industries, but most governments are not ready to forgo the potential economic opportunities that the exploitation of these areas for oil offers. In Nigeria the law only forbids a licensee or lessee without consent of the Minister from cutting down protected or productive trees or from laying pipelines through venerated lands.[45] This

[44]See World Bank, Environmental Governance in Oil-Producing Developing Countries 1 (Eleodoro Alaba ed., 2010), http://siteresources.worldbank.org/EXTOGMC/Resources/336929-1266963339030/eifd17_environmental_governance.pdf. Accessed 4/4/2022

[45] See Reg. 18(v) of the Petroleum Drilling and Production Regulations and section 15 of the Oil Pipelines Act

by no liberal interpretation can be taken to mean-. Prohibition of oil exploration and production in protected areas such as wildlife reserves, parks or areas of cultural or biological significance. Oil exploration and production contracts between NNPC and IOCs like Nigerian law only forbids laying of oil pipelines in venerated or sacred places - a prohibition that may be interpreted as a prohibition against oil exploration and production in such places. In oil exploration and production contracts between NNPC and IOCs, this law is not often reflected in a clause that forbids oil exploration and production in such places. Except that legal provisions against oil exploration and production in such places are statutory, failure to include such legal provisions in oil exploration and production contracts could be fatal under the jurisprudential rule of the particular superseding the general. In the event that a portion of the Contract Area is located within a natural reserve area or so-called venerated or sacred places, the contract should provide that the Operator shall deploy all necessary efforts to minimize the negative impacts on the natural reserves, or sacred places in accordance with generally accepted environmental practices in the international petroleum industry.

Clauses on Access to Water &Other Natural Resources

Petroleum operations require the use of natural resources tike water in their construction phase. Such operations require significant amounts of water and electricity throughout their operation. While many operations are self-sufficient in terms of energy supply, natural resources like water need to be obtained within or outside the contract area. From an environmental and community rights perspective, as well as from an economic-development perspective, it is disturbing that many governments appear to focus solely on the potential revenue they can obtain from petroleum production and are willing to give away other valuable natural resources under the terms of oil and gas contracts. For example, Article 27.8 of Mozambique's 2007 Model concession contract provides for the right of the investor to drill for and have the free use of water and impound surface waters.[46] In Nigerian oil and gas exploration and production contracts, there is no provision at all on the use of water by oil exploration and production corporations. This means oil corporations are entitled to use Nigerian water resources free of any charge. Oil corporations' entitlement to free use of water resources reflect the position of Nigerian oil and gas law which entitles oil corporations to free and unhindered access to water in the course of oil exploration and production. The law being thus, Nigerian oil exploration and production contracts can only contain a clause requiring oil corporations to pay for the use of water if the law is amended to stipulate so.

Clauses on Gas Flaring

Many oil and gas contracts appear lenient on the issue of gas flaring. For example, the Bangladesh 2008 PSC provides that: 'any associated natural gas ... which the Contractor does not consider possible to recover economically shall be offered to Petrobangla (Bangladesh national oil company) without any payment to the Contractor. To the extent that Petrobangla does not so take such Associated Natural Gas, the Contractor may flare such Associated Natural Gas provided that such flaring is included in the Development Plan submitted. Although this clause gives priority to utilization of the resource, there is no requirement for the gas to be re-injected into the ground if it is not taken by the state-owned oil company.

> In Nigeria, the new Petroleum Act provides for natural gas flare elimination plan. Thus, notwithstanding any provision to the contrary under this Act, a licensee or leasee producing natural gas shall within twelve months of the effective date, submit a natural gas flare elimination and monetization plan to the Commission, which shall be prepared in accordance with regulations made by the Commission under this Act.[47]

Clauses on Responding to Emergencies and Accidents

In 2008, thirty-two companies in the International Association of Oil and Gas Producers reported 2,978 spills resulting in the release of 18,266 tons of oil into terrestrial and marine environments.[48] Spills, accidents and emergencies in the oil and gas industry have the potential to occur and should be planned for. As such, separate from EIA, an emergency response plant should be required from the contractor. Some oil and gas contracts also cover three additional elements in respect of emergencies: notification, response, and consequences for failure to respond. In some oil and gas contracts, notification is limited to the contractor appraising the government of the situation, but not the local community or the broader public. In some contracts terms of the response are often vague; for instance, it is often provided that the operator shall take prudent steps. In Nigerian oil and gas exploration and production contracts, there are no clauses on the responsibility of oil corporations responding to emergencies and accidents. This perhaps explains the lackadaisical attitudes of international oil corporations operating in the country

[46] Gov't of the Republic of Mozambique, Exploration and Production Concession Contract, art. 27.8 (2007) (Mozam), http://www.inp.gov.mz/content/download/192/790/file/Mozambique%20Model%20EPC-Public-April%202007.pdf. Accessed 4/4/2022

[47] See s. 108 of the Petroleum Act, 2021

[48] www.oilspill.com

to oil spills such as that in Bodo community in 2008.[49] In some jurisdictions however, oil exploration and production contracts do stipulate that in the event the contractor did not act promptly to respond to an emergency or accident, the government had the right to mount its own response and charge the contractor for expenses that it incurred in doing so.

Clauses on Liability, Indemnity and Insurance

Issues of liability for environmental damage can be complex, especially when multiple parties, including state-owned enterprises, are involved in petroleum production. Contracts, therefore, should have provisions that are explicit about *who* is to be liable' for *what* and to *whom.* The issue of *who* depends somewhat on the form of the contract. Generally, however, it is the contractor, operator or concessionaire (the IOC) who will be liable, except in cases where fault can be directly attributed to the State or state-owned enterprise. If there is more than one contractor or operator involved in the project, then there should be a clause that stipulates that they are jointly and severally liable. On the issue of to *whom* the contractor or operator is liable, he is likely to be liable to the state. An additional issue closely related to liability and indemnity is the requirement for the contractor or operator to have insurance coverage. This clause should specify that insurance would cover pollution or environmental damage. One potential problem with both liability/indemnity and insurance clauses is that the term pollution is quite narrow and does not cover all of the various environmental impacts from oil and gas operations.

Clauses on Decommissioning and Remediation

When an oil operation reaches the end of production, a number of costly activities must be undertaken. The extent to which decommissioning is dealt with in contracts depends somewhat on the contractual relationship between the parties and the expected life of the project. Under some arrangements, states retain ownership over production facilities and may continue operations after the termination of the contract. However, even in such instances, there may be contractual provisions covering decommissioning of installations that are not destined to be taken over by the state. Clauses on decommissioning and remediation found in oil exploration and production contracts are generally lacking in detail. For example, a 1997 PSC agreement from Benin Republic states that:

> At the end of the Contract, in any other situation than an abandonment case, the Contractor must take measures according to Good Practices in the Oil Industry to restore the environment and the sites where the Petroleum Operations have been performed to their original state on the Effective date of the Contract, taking into account rules of abandonment procedure.

Although the above provision appears quite strict, as it suggests that sites should be restored to their *original state*, it Is weakened by the generic reference to good oilfield practices. In addition to an absence of guidelines, there are obviously strong incentives for some companies to *cut and run* or to conduct only superficial remediation to minimize costs. One method for ensuring that decommissioning and remediation are carried out to plan is to use a financial mechanism such as a performance bond or reserve fund, Tanzania is an example of a country that has set up such a regime in its 2008 PSC model.

4.2. Corporate Social Responsibility

Corporate social responsibility has been broadly defined as a form of corporate self-regulation by which a business ensures it complies with the spirit of the law, ethical standards and international norms.[50] For this text, corporate social responsibility carries the popular meaning of the duty of an international oil corporation to provide pipe-borne water, light, schools, hospitals and even employment of qualified host communities' indigenes. By this, oil corporations are required by corporate social responsibility to do things that further the social good of their host communities, which things may be beyond the financial interest of the corporation, and in some cases beyond what the law strictly requires from the corporation. Oil corporations are by the requirements of corporate social responsibility seen as artificial citizens of their host communities. As such citizens, they owe their host communities obligations to advance and promote their welfare just as natural citizens in the form of human beings do. Corporate social responsibility in this sense may be referred to as corporate conscience, corporate citizenship, social performance or sustainable responsible business. There is no Nigerian statute that provides for corporate social responsibility for international oil corporations in the form expressed above. What various Nigerian petroleum statutes provide for is corporate environmental responsibility, not the provision of social amenities to host communities which corporate social responsibility is popularly understood to mean. This lack of law no doubt precludes host communities in the Niger Delta from asserting claims of corporate social responsibility against international oi! corporations operating in the region on the basis of statutory provision. It is only in oil production contracts entered into between international oil corporations and the Nigerian National Petroleum Corporation

[49] See chapter thirty of this text

[50]www.investopedia.com/terms/corp-social-responsibility. Accessed 4/4/2022

(NNPC) that corporate social responsibility requiring corporations to provide certain amenities to host communities is often provided for. For instance, a Production Sharing Contract between NNPC and an IOC provides that the IOC shall:

> Prepare and carry out plans and programmes for industrial training andeducation of Nigerians for all job classifications with respect to petroleum operations in accordance with the Petroleum Act... Give preference to such goods, which are available in Nigeria or services rendered by Nigerian nationals, provided they meet the specifications and the standards of the goods and services required.

Apart from these contractual provisions, international oil corporations sometimes enter into Memorandums of Understanding (MoUs) with host communities under which they pledge themselves to corporate social responsibilities. Shell Petroleum Development Corporation (SPDC) Nigeria Ltd tags its Memorandum of Understanding Global Memorandum of Understanding (GMoU). The Corporation enters into GMoU with a group or a cluster of host communities based on local government, clan or historical affinity lines usually based on advice by the relevant state government. The GMoUs bring communities together with SPDC, representatives of state and local governments and non-profit organizations such as development NGOs in a decision-making committee called Cluster Development Board (CPB). Under terms of a GMoUs, the community decides the development it wants while SPDC on behalf of its joint venture partners provide secured funding usually for five years ensuring that the community has stable and reliable finances to execute its development plan.[51] By Joint Venture or Production Sharing Contract agreement provisions, the cost of corporate social responsibility is not part of operating cost an IOC is entitled to recover before profit oil is shared between the parties. GMoUs represent a significant shift in approach by SPDC that places more emphasis on corporate social responsibility, transparent and accountable processes, regular communication with host communities, sustainability and conflict prevention. If well handled, MoUs can be the panacea to recurrent conflicts between international oil corporations with host communities in the Niger Delta. In recent times, most of the projects executed by SPDC pursuant to its corporate social responsibility are projects executed pursuant to GMoUs, the international oil corporation executed with host communities in the Niger Delta.

Sustainable Development

Sustainable Development is seen as constituting development that meets the needs of the present without compromising the ability of future generation. It is also defined as a requirement that the use of resources today should not reduce real income in future. Our discussion of sustainable development under this sub heading has been discussed under corporate environmental responsibility. Therefore, there is no need for repetition.

5. Conclusion and Recommendations

There is no doubt for nexus, if not relationship between corporate social responsibility, corporate environment responsibility and sustainable development. We have discussed corporate social responsibility which is the responsibility of oil and gas corporations to see that a business carries out its legal, primary productive and economic activities to the satisfaction of the ultimate owners. We also discussed corporate environmental responsibility of oil and gas corporations which is their duty to prevent environmental pollution or degradation in the course of their operations. Thus, where environmental pollution or degradation occurs as a result of an oil or gas corporation's operations, it has the corporate environmental responsibility to clean up or restore the environment to its original state. Sustainable Development is seen as constituting development that meets the needs of the present without compromising the ability of future generations. Sustainable development goals (SDGs) on the other hand are a new universal set of goals, targets and indicators that UN member states will be expected to use to frame their agendas and political policies over the next 15 years. There are about 17 goals that address human and societal problems. These goals are what government should pursue to fulfill their political progammes and better the lives of their citizens under social contract. It follows therefore that when oil and gas corporations are socially responsible to their community of locations and are also environmental responsible to them, sustainable development is subsumed. We observed that there is legal framework binding the corporation of oil and gas corporations vis-à-vis corporate environmental responsibility. But there is no such defined legal framework as far as oil and gas corporations and their social responsibilities to communities are concerned. On the other hand, oil and gas corporation are bound by international laws regulating their operations and environment for which they are socially responsible. It is therefore recommended that there is imperative need to have legal framework on corporate social responsibility as this is lacking in our laws. We found that there is legal framework in our laws as far as corporate and environmental responsibility is concerned. Oil and gas corporation are bound by international laws which Nigeria is signatory to. Therefore, our laws should be made to provide for corporate social responsibility since we have semblance of legal framework on sustainable development and that of corporate environmental responsibility. This is the only way to maintain sustainability development, hence the nexus between them.

[51]www.shell.com.ng. Accessed 4/4/2022