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# Addressing Nigeria's Petroleum Sector Environmental Accountability: A Stakeholder Perspective

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**ABSTRACT**
The idea of corporate social responsibility (CSR) has been centred around voluntariness especially in the developed countries, where CSR is believed to be projecting a vision of corporate accountability to a variety of stakeholders with environment as a main concern. However, in developing countries voluntariness has failed to foster corporate accountability due to the lack of incentive or motivations for social responsibility. Thus the level of accountability of multinationals in developing countries for their environmental impact of their operations has been questioned. As such, the issue then becomes whether the 'Western' construct of CSR anchored on voluntariness can address the environmental challenges facing developing countries particularly in Sub-Saharan Africa (SSA). In this light, this study used Nigeria as a case study in order to determine the extent to which petroleum laws can hold multinationals accountable for their environmental impact in developing countries of SSA. The findings showed that the lack of enforcement, weak legal framework, non-compliant corporate culture as well as stakeholder challenges have resulted in the failure of voluntary CSR in developing countries. The study therefore contends that the challenges to environmental accountability in developing countries are distinguishable from the developed countries and cannot be addressed through voluntary CSR.
**Keywords:** corporate environmental responsibility, accountability, petroleum laws, compliance, stakeholder theory, corporate social responsibility

## 1. INTRODUCTION

Corporate environmental responsibility (CER) is regarded as gaining recognition as an important component, dimension, subset, sub-category, aspect or area (Mazurkiewicz, 2004; Gunningham, 2013; Du et al, 2014; Xin, 2014; Kim et al. 2015; Zeng 2019) of CSR. This is due to the failings of CSR initiatives to assuage deleterious effect of firm operations (Helg, 2007; Idemudia, 2008; Kolk and Lenfant, 2010) especially in developing countries. Thereby questioning the ability of CSR practice which is an integral part of multinationals CSR policy in developing countries (Idemudia and Ite, 2006) to promote corporate accountability. Corporate accountability refers to all actions taken by multinationals (environmental damage or contracts et cetera) and the impacts of these actions on social, political and economic dynamics of the country (Cash, 2012). These actions contemplate obligations or actions within and beyond law. The latter, obligations to go beyond the requirements of law (Wei et al., 2017), are often regarded as falling under ethical responsibilities – an expectation by society to do the right thing. The former constitute obligations embedded in law, so called rules of the game that provides a level-playing field for economic activities (Carroll, 1979).

Thus CSR not only contemplates compulsory legislation (Carroll, 1991; Baker, 2010; Bowen, 1953) but the concept of responsibility in CSR presupposes an expectation of accountability (Ihugba, 2012). Accordingly, International Institute for Sustainable Development believes that CSR promotes a vision of business accountability to a wide range of stakeholders with environmental concern as one of the main issues (Ubrežiová, et al., 2015). From a stakeholder engagement stance, compulsory regulation defines duties, provide rights of parties and create order and predictability in procedure (Gatto, 2002). As such, compulsory legislation can achieve accountability especially where voluntariness has failed to provide incentive or motivations for social responsibility (Ihugba, 2012). This is especially in developing countries where there appears to be an absence of incentive for CSR (Amaeshi et al.,

2016). Consequently, some contend that CSR is akin to promotion of fundamental human rights such as: right to property, dignity of labour and good livelihood, and this ethically necessary, morally obligatory and within the sphere of compulsory legislation (Amao, 2008; Wettstien, 2009).

In developing countries such as Nigeria, the importance of law holding multinationals accountable is heightened. Given that corporations have been accused of wielding vast resources against the emergence of appropriate and effective regulatory institutions (Wawryk, 2002) due to the mix of influence, expertise and global exposure in exerting a significant influence on these governments. On the other hand, in communities of the Niger Delta, with its fragile ecosystem and endangered Delta (Wilson, 1999; McGinley, 2008), agitations have not seized despite efforts by the companies to address the adverse effect of their operations through CSR initiatives. As such, environmental obligation located within industry laws could function like compulsory legislation for environmental protection. Given that laws are regarded as a minimum standard for compliance (Thorne et al., 2011) and compliance, a minimum requirement for a firm's responsive behavior (Carroll, 1991).

The question then is to what extent do corporations particularly multinationals conform to the standards or requirements of law and held accountable for their environmental impact. Should the presumption of compliance be made with respect of multinationals regarding environmental obligations in law in the much less regulated environment of developing countries thereby supporting the argument for voluntary approach to CSR? In order to address these issues, it is pertinent to identify the environmental obligations embedded in the petroleum industry legislations and then evaluate the level of compliance from a stakeholder perspective in line with the need for stakeholder voice in effective environmental regulation. In doing so, Campbell's (2007) two basic criteria for a socially responsible behaviour or minimum behavioural standard between a corporation and its stakeholder provides justification for this approach as any action below this standard may be regarded as irresponsible. These criteria are: not to intentionally causing harm to stakeholders and where harm is caused to rectify harm promptly.

## 2. Theoretical Framework

In order to assess the extent to which corporations can be held accountable under industry laws in developing countries, the study adopts a stakeholder approach. A stakeholder refers to any group or individual who can affect or is affected by the achievement of the firm's objectives. It has also been defined differently based on different factors such as: anyone who has "a stake in or claim on the firm" (Hasnas, 1998, p. 20), claims of a contract with the firm (Cornell & Shapiro, 1987); legitimate claim (Hill & Jones, 1992); legitimate interest in the firm (Donaldson & Preston, 1995); ability to influence the firm (Starik, 1994); and responsibility (Alkhafaji, 1989). Thus stakeholder groups are varied and wide including shareholders, investors and employees. Others are: government, organisations, customers, and the local communities where the company is situated and the natural environment (Clarkson, 1995; Donaldson and Preston, 1995; Freeman, 1984; Jamali, 2008; Maignan et al., 1999; Wood and Jones, 1995; Ong, 2001) as an actual or potential stakeholder (Mitchell et al. 1997) or a primary and primordial stakeholder of the corporation based on proximity to business (Driscoll and Starik, 2004).

Consequently, the stakeholder theory asserts that a business' financial success can best be achieved by giving adequate consideration to the interests of its stakeholders and adopting policies that produce the optimal balance among them (Hasnas, 1998). Thus Freeman advocates that effective management requires the efforts at the balanced consideration of the interest of all stakeholders. While some scholars (Mitchell et al, 1997; Burchell & Cook, 2004; Du, Bhattacharya & Sen, 2010) concur with this proposition, others (Brenner & Cochran, 1991; Friedman, 1970) disagree on the basis that the responsibility of business is the maximization of profit for its shareholders.

From the standpoint of stakeholder management, legislation defines the duties, provides for the right of parties, and creates order and predictability in procedure (Gatto, 2002). As such, legislations including those specific to industries should provide accountability standards that are in tandem with the highest standard of environmental protection. In this regard, Simon et al.'s (1972) categorization of CSR obligation into affirmative and negative injunction duties is useful not only as a baseline for this discussion but according to Idemudia (2007) in filling the analytical gaps in CSR. Negative injunctions duties entail the avoidance and correction of social injury caused by the companies while affirmative duties require the pursuit of moral and social good. The fulfillment of the negative

injunction duty is central to CSR obligation as it string its way through morality and as such it is the moral minimum that all firms must observe, especially as good corporate citizens. Thus the goal relating to the protection of the natural environment by minimizing the negative impact of company operations of environmental accountability should be restoration, prevention and improvement (Simon et al., 1972; Epstein and Buhovac, 2014 and Xin, 2014) as shown in table 1.1 below.

**Table 1.1: Categories and Levels of Environmental Responsibility**

| Category | Levels | Description of Activities | Purpose |
|---|---|---|---|
| Affirmative duty | Improve | Improve surrounding environment | Improvement |
| Negative Injunction duty | Maintain | No negative impact on environment | Avoidance/ prevention |
| Negative Injunction duty | Repair | Cause damage to environment | Restoration / Correction |

*Adapted from Simon et al. (1972) and Xin (2014); Epstein and Buhovac, 2014*

As such, a firm's commitment to CER refers to the adoption of responsible actions that aim to protect and improve the environment as a whole while achieving their own economic interest (Huckle, 1995; Holtbrügge and Dögl, 2012). One of such responsible actions is compliance, which can be regarded as the basic requirement expected of a company toward its stakeholder in line with the stakeholder theory. Given that compliance can be viewed as the demonstration of a company's commitment to actualize stakeholder expectation to take responsibility for the natural environment (Buysse and Verbeke, 2003) in the form of CER. Thus compliance is viewed as a function of the firm's treatment of its stakeholder. Thus study examined industry laws in order to sieve out the environmental obligations therein. This was further subjected to stakeholder assessment, which led to the determination of the extent to which these corporations can be held accountable for their environmental impact under law.

## 3. METHODOLOGY

In attempting to address environmental accountability in Nigeria, a Sub-Saharan African country, an understanding of the state of CER regulation is required and stakeholder voice is critical to the conversation. Using Nigeria as a case study, the study explored the environmental obligations of various petroleum industry laws and regulations, which were further subjected to stakeholder scrutiny in order to assess the extent of compliance with key provisions. The research explored the extent to which multinational corporations can be held accountability for their environmental impact on the environment in which they operate. This was conducted by identifying environmental protection obligations in key petroleum industry legislations, which were further subjected to stakeholders' assessment of the extent of compliance by corporations. Some of the regulatory provisions were identified from key petroleum industry laws such as: Oil Pipelines Act, (OPA) 1965, Petroleum Act (PA) 1969 and its subsidiary regulation Petroleum Drilling and Production Regulation (PDPR) 1969, Petroleum refining regulation, Oil in Navigable waters Act, 1968 and its regulations, Mineral Oil Safety Act, Associated gas reinjection Act (AGRA). Regulatory standards and guidelines such as: Environmental Guidelines and Standards in the Petroleum Industry in Nigeria (EGASPIN) and National Oil Spill Detection and Response Agency was established by the NOSDRA Act, 2006 and its regulations.

Through a stakeholder perspective, the study assessed the extent to which multinationals observed these provisions using a qualitative research strategy for data collection and analysis. In line with Ihugba (2012) qualitative data was sourced from three primary sources: laws, semi-structured interviews and focus group discussions. The key petroleum industry laws provided the regulatory provisions for environmental protection while the semi-structured interviews and focus group discussions gave account of their experiences and perspectives on the functionality of the legislations and compliance with key regulatory provisions. The different stakeholders include multinationals, regulators, Non-Governmental Organizations (NGO) and community leaders. A total of 22 semi-structured interviews were conducted with 6 multinationals, 4 regulators, 4 NGOs and 8 community

leaders. Access to participants was granted through the researcher's contacts and family members given that Nigeria is regarded as a collectivist society, a tightly knit society wherein individuals expect relatives or group members to provide for them on the basis of absolute loyalty (Hofsede et al., 2010).

These respondents were purposively sampled to ensure that they had the experience and knowledge to provide data on the subject of inquiry and covered a wide range of stakeholders. Thus the interviewees covered both corporate and non-corporate stakeholder participants in order to capture an alternative perspective (Belal et al., 2015). Thus they had experience from ranged from between 5 to 20years. They were promised anonymity and as such data was presented in a manner that preserved their anonymity in order to protect their identities. Interviews lasted an average of one hour and conducted in their business premises or a location chosen by respondents. Interviews were recorded, except where declined and transcribed verbatim. The primary data obtained from interviews and focus group discussions were analyzed, with the aid of computer assisted data analysis software – Nvivo 10, to develop themes through a three step process from which sub-categories, generic categories and main categories emerged. The themes that emerged from the data provided a deeper understanding of the research context, particularly of Sub-Saharan Africa, one of which is the state of CER regulation, which is the focus of this study. The findings therefore identified the regulatory provisions under various industry legislations, the extent of compliance and the practical and policy implications for the state of CER regulation.

## 4. FINDINGS

The regulatory provisions were identified from a combination of stakeholders. These represent those obligations that companies are required to comply with statutorily in order to protect the environment from the impact of their operations and also contribute to the observance of their CER obligations. The question is to what extent is there compliance with these environmental obligations under law. Given the number of such obligations under law, the discussion in this section was under four headings from the most referenced obligations from all stakeholders: to stop gas flares, compliance with laws, regulations and standards, and to adopt industry best practices. This is because most of the obligations can be classified under industry best practices. For instance: the law requires companies to adopt good refining practices in consonance with international standards in the absence of local legislations in relation to construction, operations and maintenance (Reg. 7 of the Petroleum refining regulations). This invariably means that there are best practices in these areas including disposal of industry waste, maintenance of facilities, clean up and remediation et cetera. This section presented the findings, which were also discussed simultaneously under the two headings: extent of compliance and the implication of these regulatory provisions on the state of CER regulation and accountability.

### 4.1 Regulatory provisions for Environmental Accountability

The provisions for environmental accountability were deduced from the responses of the various stakeholders including multinationals, regulatory agencies, non-governmental organisations and host communities. This is captured in tables 4.1, 4.2, 4.3 and 4.4. However these obligations have been classified into three categories namely: to stop gas flares, to adopt industry best practices and compliance with law, regulations and standards due to some overlaps. Thus most of the obligations can be regarded as industry best practices such as: regular maintenance of facilities, prompt clean up, clean up, restoration and remediation. The most prevalent obligations are captured in figure 1.1 below and the summary of stakeholder responses to compliance on these obligations are shown in table 1.2 (with the individual responses by different stakeholders and environment related obligations from different industry legislations shown in appendices).

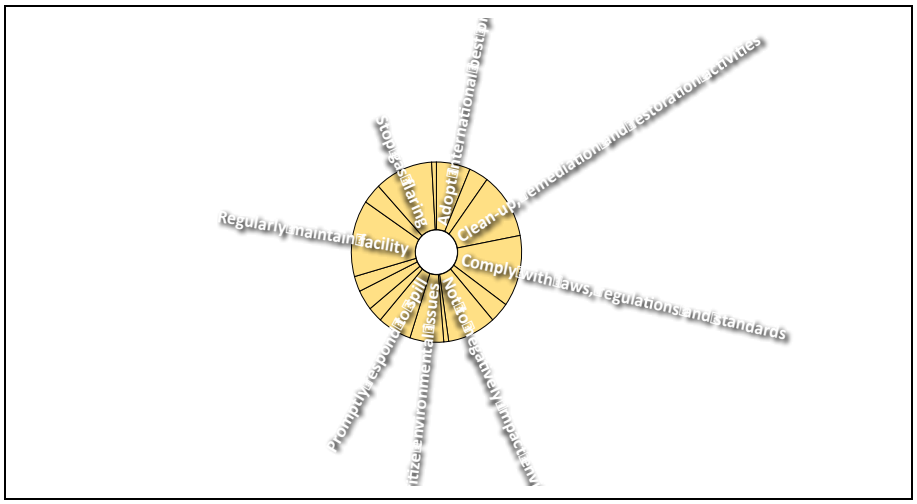


*Diagram from Nvivo 10 showing the most referenced environmental obligations*
**Figure 1.1: Sunburst image on Environment related Obligations**

### 4.1.1 To stop gas flaring

Section 3(2) (a) (b) of AGRA and section 1 of the AGRA regulation have provided the basis upon which gas continues to be flared in Nigeria. The regulatory agencies admit the seriousness of the problem of gas flares and were of the view that despite the extended gas flare out deadline, multinationals can do their part in the conversion of gas for the local market instead of flaring gas. In this light the multinationals believe that they are taking steps in this direction and this includes the agreement on timeline to end gas flaring and some efforts to stop flaring in their different stations. On the other hand, the NGOs called for investment in the right technology and equipment and believe that the government can achieve this. In their view, there should be a complete phase out of gas flares given that the Niger Delta is a gas region with associated oil and not vice versa. They are not opposed to flaring due to exigencies such as emergency but the routine flares that has continued unabated for decades due to "shifting of the goal post" on the gas flare deadlines as stated below:

> Gas flaring has been illegal since 1984 ... they have continued to shift the goal post. Routine gas flare is what we are against, routine gas flaring, otherwise gas flaring may occur as a measure to avoid accidents. That is allowed, when pressure is being built up they can, you know, lose some valves to take care of that industrial concern. That is not our concern but this twenty-four- hours-a-day flaring is what we are against (NGO1).

Therefore compliance with these obligations of ending gas flares is to the extent permitted by law. In this light, the law under AGR (Continued Flaring of Gas) Regulation 1985 grants conditions under which companies may flare gas. Consequently, companies have taken to the exception to continue to flare gas as it is regarded as cheaper to pay and flare gas than comply with the law as explained by LEAA (Regulator) below:

> A lot has been said about gas flaring. So as gas is the energy of the future one would expect that gas could be converted for our domestic use, that's expected. Penalties have been put in place but they are not strong enough so the companies find it cheaper to flare and pay the penalties than to convert the gas because the penalties are very cheap. So if those things are tightened… so if we make it unattractive to flare, the gas will be converted for use. Basically that, the fines are not there, not enough deterrence that's why it's been there for years now, we are still flaring till tomorrow and they will flare till, God know when (LEAA).

### 4.1.2 To adopt industry best practices

This refers to the obligations under laws that promote the adoption of international standards in the absence of local legislations. For instance the adoption of good oilfield practices in various industry codes in the areas of drilling, production or handling of crude oil and natural gas installations

(Petroleum Act; MOSR); good refining practices for construction, operations and maintenance of refineries (Petroleum Refining Regulation) where there is no specific regulation in these areas among others. From the findings the best practices relate to: prompt response to spill, maintenance of facilities and clean up, restoration and remediation.

*4.1.2.1 To promptly clean up spill*

The law requires that in the event of oil spill, companies are to take prompt steps to control spill and end it or control it and end pollution (see Reg.25 PDPR; Reg.43(3) PRR; EGASPIN). The findings show that the regulators consider the prompt response by multinationals to clean up spill as a necessary compliance issue that needs to be taken seriously if spills were to be contained. As such, companies are required to clean up spills irrespective of the cause of spill through equipment or system failure or through third party interference such as sabotage or through other illegal activities. The non-governmental agencies believe that multinationals have failed to adhere to the standard of promptly responding to spill by failing to attend to spills on time. This has resulted in the contamination of the soil and causing serious damage as stated by LEAD below:

> The companies… have to take compliance issues more seriously, they would have to ensure that there is prompt response when there is a release of pollutants from their facilities. They have to be prompt in response for them to contain and clean up whatever pollutants released from their facility (LEAD).

However, there is evidence to suggest that the frequency of occurrence of spills appears to be partly responsible for the inability of multinationals to promptly clean up spills. Thus some regulators believe that this frequency has impacted on the ability of the multinationals to cope with the number of spill sites and their ability to enforce. The latter issue is mainly attributed to the inability of multinationals to address community grievance, which include the failure to honour agreements. As such, communities resorted to the use of clean up exercises as a means of bargaining on the basis that they will be denied access to company staff after clean up. Thereby failing to realize the long- term effects on their lives, which is NGO1 referred to as "self inflicted injury". LEAC statement shows the frequency of spills is high:

> Then when host communities don't have any grievance with companies, they will have no reason to go and vandalize pipelines. So if they don't vandalize the cases will be very, very minimal. Just like what we had before the 1990's. Then we have just one or two spills in three months, in four months but now almost everyday there's a spill incident (LEAC).

The issue of clean up of oil spill incidents presents a complex situation. The operators are responsible for the containment of and recovery of any spill discovered within their operational area irrespective of whether the source is known or not. This responsibility requires taking adequate and prompt steps to contain and dispose of any spill. However, where there is spill as a result of third party interference for which the operator is not responsible for, they are entitled to be compensated (EGASPIN). As such, it is believed that this has created an incentive for companies to attempt to claim that all spills are from third party interference.

> **LEAC:** Whenever a spill occurs they have a responsibility to: Firstly, report such incident of oil spillage to the agency within 24hours, if not it attracts fine. Secondly, when a spill occur they are expected to respond promptly to such incident to see how they can clean and remediate the area and they are mandated to clean the area whether it's caused by sabotage or equipment failure or operation failure. Irrespective of the cause the companies are mandated to clean pollution resulting from oil spillages.

From the findings, the ability of multinationals to undertake prompt response to spills is dependent on the extent to which they can effectively manage community grievances and it is arguable that addressing community grievance should be part of the cost of clean up and/or doing business.

*4.1.2.2 To regularly maintain facilities*

In terms of regularly maintaining facilities, the obligation under law requires multinationals as licencees to take practicable precautions to prevent pollution on waters, rivers or lakes by maintaining

their apparatus (Reg.37 PDPR 1969) and maintain and operate oil pipeline and ancillary installations (11(1) OPA). According to the law enforcement agencies, there is a strict maintenance programme to address multinationals aging facilities particularly, oil pipelines. However, they questioned the compliance of multinationals in following proper maintenance guidelines and safety measures. They believe that this has affected the integrity of pipelines, which have outlived their lifespan and are unable to withstand pressure. The companies attributed this failure to several reasons including: the federal government's inability to make payment of its joint venture cash calls, budgetary constraints and security issues as a result of community illegal activities as stated by LEAA below:

> Pipeline integrity is very questionable. Pipelines, these things have life spans, life spans… with maintenance schedules. Do they really maintain them, as they should? Have the pipeline in the environment… not outlived their lifespan? Most of them, have they been replaced as at when due? Have they carried out checks, integrity checks on them to ensure that they can still carry the pressure, which they are subjected to from time to time? You see there are a lot of things. The operating companies will also give you a thousand reasons why they are not doing it. Either the Federal government is not paying their own share of the joint venture cash calls and several other reasons, security is also part of it, oh we sent some people to carry out work on the pipelines along X and Y, Z and they were kidnapped. So we can't send again, we don't have the money to pay ransom; our staff are not willing to go. Story, stories down the line (LEAA interview).

On the other hand, there is evidence to support the failure by the industry as a whole to maintain oil pipelines. From the findings, the MNOCs (multinational oil company) attributed this to what they believe is the failure of the federal government in its responsibility as a joint venture partners in investing in replacement or update of oil installations following strict international guidelines as well as a lack of enforcement by the regulatory agencies.

> I am aware that for most companies, I am looking at the entire industry, for most companies these lines [pipelines] have actually been there for so long and… **they are supposed to do some integrity update of their pipelines and I am also aware that most companies are not keeping that.** I will like for DPR, NOSDRA to work with the oil companies to ensure that companies keep within that regulation – do integrity check and update of their pipelines. That can reduce or avoid system failures. **The rest are generally security issues**, which are generally federal government and state government responsibilities to ensure that pipeline vandalization is reduced or stopped of course, oil theft (MNOC 1 interview. *The highlighted parts are mine and it corroborates the statement from LEAA questioning integrity update of pipelines by multinationals and insecurity issues*).

This position was also shared by an NGO, relaying his discussion with company personnel, who admitted the bad condition of pipelines. However, he stated that the companies are making efforts to innovate using technology in order to make pipelines more durable and less susceptible to vandalism while meeting their maintenance obligations. This was stated during the interview with NGO1 below:

> Yeah, integrity check is there. I was with a very senior, senior personnel of one of the oil companies, let me not mention any specific now, and he also confided in me that actually their pipes are old and they are doing something about it. Apart from doing something to prevent spill to occur on its own, they are going into some kind of innovation to ensure that the pipes are protected in such a way that it will even be difficult for those who want to sabotage it. The way they are coating it now, so these are in-house technologies. The companies are also looking for ways to beat those who want to sabotage and also to take care of integrity, old pipe rupturing on their own. Then not only pipes, other facilities, like valves, you know, regular checks to make sure that they are up to standard and once you know that it is aged, you shut down, maintenance, and all of that (NGO1 interview).

The failure to maintain pipelines is seen as one of the main causes of pollution in the region especially from the perspective of host communities and as such it has become a very contentious subject. The findings show that all participants believe that the cause of spill is as a result of both the activities of multinationals and communities. The former believes that the spill from equipment failure is

insignificant. However, there is some evidence to suggest that it is significant. For instance between 1976 and 1990, the Ministry of petroleum resources reported that 2676 cases of oil spillages, out of which 59% was attributed to equipment malfunction and corrosion as opposed to 3% sabotage. Similarly, the NPP (2017) suggests that the negative impact of industry in the Niger Delta as a result of sabotage or theft, equipment failure or human error and the failure of the operators to operate in line with standards of good oilfield practices. Thereby accusing both communities and oil companies for the damage.

*4.1.2.3 Clean up, remediation and restoration*

Another responsibility closely related to prompt response to spill is the obligation for clean up, remediation and restoration (s.6 NOSDRA oil spill regulation) of the environment back to its original state, extending beyond cleaning up alone. The regulators asserted that in the event of an oil spill, the responsibility of multinationals went beyond the requirement to clean up but also for remediation and restoration. This is irrespective of the cause of the spill from either sabotage or vandalism or equipment failure. Again regulators maintained that due to increase in spill incidents, operators were sometimes overwhelmed. It was also suggested that the pressure on operators was less when it was a third party spill as opposed to an operational one as one regulator put it below:

> So sometimes it tends to become overwhelming on the companies so they have to be scheduling how they can carry out this clean up or remediation bearing in mind the tight budgets that they are operating, so, okay. And you cannot press too hard on them because this was not caused by them, okay… But if it an operational spill, for example one can press very hard to do the clean up and remediation within the shortest possible time because it was operational (LEAD).

On the issue of restoration, the multinationals maintained that they had internal policies that guide their operations. Though they declined to provide details, they revealed that it covered areas relating to biodiversity conservation, waste management and public enlightenment on environmental protection as stated by MNOC2 and MNOC3 below.

> Biodiversity conservation. As a result they put in place Biodiversity Management Plan and Waste Management Plan. They preserve the habitat and keep it how it was before they entered so that it will be as good as when they met it (MNOC3).

> Essentially, we operate with the highest standard of ethics, which are guided by our Operational Excellence and Management System policy. They are intended to restore the necessary environment back to how we met it. We also make special contribution and donations to the National Conservation Foundation Centre, which we helped build over 25 years ago. This centre sits on a 98-acres of land for environment, live animal natural habitat and our Company provides the subvention. This is done annually as part of our CSR (MNOC2).

However, in the event of a spill, the multinationals have the responsibility to report the incident to the agency within 24 hours, failure to do so attracts a fine and then to promptly respond to the spillage by cleaning, remediating and restoring the impacted area back to its original state. One regulator, LEAA rationalized the importance of restoration as recognizing that the communities will continue to exist and carry on with their lives and businesses even after oil exploration activities cease. As such, companies are required to develop oil spill contingency plan to establish the methodology for preparedness to respond in the event of a spill emergency. Consequently, some NGOs are advocating for the clean up of the entire Niger Delta due to years of pollution on the premise that the region is getting to a "point of no return" in which it would be difficult to clean up it up effectively.

> There are reports that are saying after now, we are in 2016, so by 2020 and 2025. We will not be able to drink from any aquifer in the Niger Delta, not one, all of them would have been polluted and that's just 5 to 10 years from now. It means that we are getting to the point of no return where it will be difficult, very, very difficult to say, we want to do a clean up that will be effective, so I think for me, we should start the entire processes now and that will make people understand that the government and principal actors are interested in cleaning up the

> environment and then they will get the support from us, like NGOs and civil society organizations…(NGO4).

From the findings, the NGOs believe that the multinationals are operating double standards by adopting lesser standard in their home countries from their host countries. They attributed this trend to "self regulation", referring to the industry regulating itself due to lack of enforcement by the regulatory authorities. From the responses, including NGOs and community leaders, the standards referred relates to dealing with oil spill incidents especially with respect to prompt response to clean up and cleaning up spills, safety standards, disposal of waste and maintenance of pipelines et cetera and this perception was shared by some community leaders.

> Why would they do it in Scotland and not here, okay. So it's about best practices and like I said before, the regulators have failed this country for so long… (CLA interview).

> It is not done, the EIAs are often very, very cosmetic. Sometimes they are not done at all… But these things should not be taken for granted, environmental impact assessment. Furthermore, because of the world we live in today, things are not done in isolation. There are standards all over the world now, so if you as an oil company, you are operating in Norway, the Norwegian government wouldn't allow you to do certain things why would you come to Nigeria and do those things. So abide by your own internal guidelines and policies and follow them strictly wherever you are operating. Don't lower them, don't lower your own standard. The Nigerian federal government will have to have their act together, seriously (NGO 2).

**4.1.3 Compliance with Laws, Regulations and Standards**

Another key obligation is to compliance with all relevant laws, subsidiary legislations and industry standards. Based on the findings, the regulators asserted that MNOCs have an obligation to comply with statutory rules and carry out operations in line with all laws, safety rules and industry guidelines and standards, just as they had an obligation to ensure compliance. In the same vein, multinationals stated their commitment to compliance with all laws and regulations of the country of operation. This is achieved through their health, safety and environment (HSE) department or department with similar role. One company staff highlighted this point as follows:

> HSE department makes an assessment of the area and subject the operations to approval, then standardized processes are carried out. Our Operational Excellence Management System procedures and processes are implemented and our behavioural guidelines are followed. The External and regulatory bodies as well as the procedures from the Ministry of Environment, NOSDRA are complied with, in terms of waste, water effluent discharge etc. We treat our medical waste, incinerator is used and the appropriate practices and standards are followed as much as possible. We do not compromise our environmental etiquette **(**MNOC 2**)**.

However, there are skepticism with regards to the extent of compliance with laws, regulations and industry standards including their own internal policies in some instances. In the same vein, there is evidence pointing to an industry wide culture of non-compliance as suggested by the NGO below:

> We can't operate in an environment where oil companies will come… Not just oil companies, any foreign company will come to this country and do anything they want to do without abiding by our laws and guidelines in whatever sector, whatever area. But we see that in the oil and gas industry, they really don't adhere to Nigerian laws or respect them or anything like that. That is shockingly obvious and that in my opinion is unacceptable. People come to your country they should abide by laid down laws and regulations and if they don't you should be able to…. first of all, have the willingness. Secondly, the ability to enforce whatever regulations you have in place. And if that means putting in place strict penalties and enforcing them, you do it… If that means if those guys are not listening, …are not abiding by the rules and doing what they are supposed to be doing, you can actually send them packing…So that is usually sadly the norms and standards in this country. People will come here and do whatever they want to do and they get away with impunity, that's sad (NGO 2).

The issue of compliance is broad and covers different issues from adopting industry standards relating to maintaining facilities, to ensure the prompt clean up of spills to following company internal procedures and processes. However, some multinationals generally rated themselves very highly when it comes to compliance, within the range of 85% to 97%. This was on the basis that the allegations leveled against the company did not amount to any indictment. Others simply declined to provide any overall assessment of the company they work for. However, the respondent who stated that the level of pollution from equipment failure is a negligible 5percent also stated that companies do not generally follow the regulations on maintenance of facilities.

> I would say that the company complies to a great extent – 97% because in instance where there were substantial allegations and investigations were carried out, the company has never been found wanting (MNOC2).
> …compliance is a legal issue to the extent of that, I will like to say we have near hundred percent compliance. But where environmental incidents are caused by third party interference, then that is beyond the responsibility of the oil company (MNOC1).
> Up to 85% compliance with regulatory prerequisites (MNOC3).

| **Obligations under Law** | **Stakeholders' responses on MNOC's compliance** |
|---|---|
| • To stop gas flaring (AGRA)<br>- AGRA grants conditions for flaring<br>- Install gas capturing technology/facilities | - NGO's against routine gas flares<br>- LEAs expect gas to be captured and produced for commercial purpose<br>- MNOCs flare gas and pay cheaper penalties<br>- HCs consider gas flares as pollution and expect stoppage of flares |
| • To adopt industry best practices<br>- Requires prompt response to oil spills and end it (PDPR; PRR)<br>- Requires oil spills to be cleaned up irrespective of cause of spill. (NOSDRA; EGASPIN) | - LEAs believe that there is a lack of compliance issue but concede frequency of spill<br>- NGO's believe that companies have failed to do so<br>- MNOCs contend that frequency of spill due to sabotage has impacted on ability to response promptly |
| To regularly maintain pipelines (PDPR; OPA)<br>- To prevent oil spill through pipelines (OPA)<br>- To ensure integrity and safety of pipelines (OPA)<br>- To take practical precautions to prevent pollution of water, seas<br>and land through maintenance of installations (PDPR)<br>- To adopt good oilfield practices of various industry codes<br>where there is no specific regulation<br>- To maintain best international standards of operations (PA)<br>- To install up-to-date equipment (PDPR; PRR) | - LEAs query compliance of MNOCs<br>- MNOCs concede failure to do integrity update on pipelines but allege budgetary restrictions and FG inability to address it JV agreements<br>- NGO's believe that failure to maintain pipeline is the main cause of pollution |
| Clean up, remediation and restoration (NOSDRA Act)<br>- To carry out restoration and remediation to acceptable levels (EGASPIN)<br>-To restore impacted site through remediation/rehabilitation<br>methods (EGASPIN)<br>- To clean up impacted site (NOSDRA Act)<br>- To carry out remediation of oil spills on impacted sites<br>(NOSDRA Act) | - LEAs believe that the pressure of clean up can be overwhelming for companies<br>- MNOCs claim to have policies on restoration as their guide<br>- NGOs advocate for comprehensive clean up of the region due to years of pollution to prevent irreversible damage |
| • Compliance with laws, regulations and standards<br>- To comply with all existing safety regulations in connection with operations under the licence. (PDPR)<br>- To adopt good oilfield practices of various industry codes (PDPR; PA)<br>- To adoption of international codes in relation to drilling, production or handling crude oil and natural gas installations | - NGOs believe that MNOCs fail to comply with laws, regulations and standards but their own internal policies<br>- MNOCs rate themselves highly on compliance |

**Petroleum Refining Regulation (PRR); Oil in Navigable Waters (OINW); Oil Pipeline Act (OPA); Mineral Oil Safety Regulation (MOSR)**

## 5. DISCUSSIONS

### 5.1 The Extent of compliance

From the findings, the environmental obligations obtained from a combination of stakeholders are consistent with the regulatory provisions as shown in table 1.2. Generally, the regulatory provisions mostly fall under Simon et al.'s (1972) classification of CSR obligations as negative injunction duties, which refer to the avoidance and correction of harm to stakeholders such as the community, society at large and the natural environment and Xin's (2014) levels of responsibility (repair and prevent but not improve). As a result, they are in tandem with the environmental aspect of CSR (Mazurkiewicz, 2004) in addressing the environmental implications of company's operations in terms of products (prompt response to oil spill), facilities (maintenance of facilities) and eliminate waste (adopt industry best practices) and emission (stop gas flares) and minimize practices harm that will have adversely affect use of resources by future generations (adopt industry best practices). However, the law does not mandate any provision to improve the natural environment given that the concepts of restoration and prevention represent two different assumptions that do not involve improvement. While the latter refers to the maintenance of the status quo, the former refers to bringing back to its original state.

From a stakeholder theoretical perspective, stakeholders expect firms to take responsibility for the natural environment and CER implementation is viewed as the commitment to actualize this expectation (Buysse and Verbeke, 2003). For Campbell (2007), this expectation is a basic requirement of a company toward its stakeholder under a set of criteria for socially responsible behaviour or minimum behavioural standard. These are: not to intentionally causing harm to stakeholders and where harm is caused to rectify harm at any time it was brought to their attention. The latter criterion appears too broad given that delay in environmental harm may lead to irreparable damage. For the purpose of this study, rectification of harm should be done promptly. On the former criterion, intent refers to the desire to produce a particular outcome, which may be difficult to establish thus intent here was inferred from the outcome of operator's actions in line with the Max Weber's ethics of responsibility (consequentialism), which focuses on outcome (Conrad, 2018). The stakeholders referred to includes the host communities and the environment. The foregoing is consistent with Simon et al., (1972) negative injunction duties to avoid harm (intention not to cause harm) and correction of social injury (rectify harm caused). Consequently, compliance is not only viewed as a demonstration of a company's commitment to actualize stakeholder expectation but also an expression of a company's treatment of its stakeholder by meeting the minimum behavioural standard toward a stakeholder.

From the findings, there were generally more reasons for non-compliance than compliance with the identified regulatory provisions. The continuation of gas flaring is undertaken under exceptions created under law (Ajiya and Habibu, 2014) where companies pay fines for flaring, a situation that has been criticized by some (Eseduwo, 2014) as contrary to the standards in other developed countries. This is contrary to the national policy on gas, which is consistent with the Sustainable Development Goals (SDGs) on climate action. Goal 13 requires the integration of climate change measures into national policies and strategies and planning. The exceptions and absence of stringent penalties under law creates negative incentives for continuation of flaring and fails to enable corporations internalize their negative externalities. This is therefore inimical to the achievement of sustainable development in the industry and amounts to socially irresponsible behaviour.

Similarly, corporations have been accused of operating double standards and non-compliance especially relating to clean up, remediation and restoration, maintenance of facilities and compliance with regulations (NGO1, NGO2; CLA; LEAA, MNOC1). This is supported by the United Nations environmental programme (2011) report which also indicted corporations of not following their internal policies. For the multinationals, in the area of prompt clean up, clean up, remediation and restoration, the reasons for non-compliance have been largely attributed to community grievances. In terms of maintenance of facility, it has been as a result of the failure of the government to make its joint venture contributions, absence of compliance culture and insecurity. Similarly, the regulatory framework has been regarded as weak in some respects such as mandating compulsory clean up and restoration and provisions relating to maintenance of facilities, pipeline integrity and security (Nnadi et al., 2014; Okafor and Olaniyan, 2017). As such the Petroleum Act and its subsidiary legislations have been criticized (Gao, 1998) for failing to provide adequate environmental guidelines to control the multinationals (Amaduobogha, 2009). Therefore the foregoing situation contradicts the assertion

that law meets the minimum standard of compliance (Thorne et al., 2011) especially in developing countries.

On the average, the level of compliance appears to be very minimal. Though their action may not be regarded as intentionally causing harm to their communities, there is evidence to suggest some level of intentionality due to the failure to maintain facilities and flaring of gas. Given the awareness of harm from such activities and the capacity, resources to address such harm. For that reason, intent may be indirectly imputed. On the issue of rectifying harm promptly, community grievance have not been properly anticipated and addressed. Thus from a stakeholder perspective, multinationals have failed to demonstrate the commitment to address stakeholder concerns in terms of environmental protection. Thereby failing to meet the minimum behavioural standard expectation of a company toward its stakeholder. Consequently, the extent of compliance by multinationals is dependent on their ability to address community related issues and their relationship with government and navigate through the shortcoming of law. The implication of the foregoing for CER regulation in developing countries is that compliance with environmental obligations within law, is mediated by non-compliant corporate culture, stakeholder engagement issues (relationship with government and host communities) and shortcomings in law. As distinguished from developed countries with higher level of compliance, voluntary CSR in the context of developing countries is untenable and is unlikely to serve as incentive for compliance.

**5.2 Practical Implications**

Based on the findings, law therefore does not provide a minimum standard of environmental protection especially in developing countries of SSA. Given that legislations in such countries fail to meet the moral minimum of avoidance and correction of harm to stakeholders. This is due to the failure to adequately address the issue of restoration, which may lead to irreparable damage to the environment (Xin, 2014). Consequently, compliance with law in developing countries of SSA may not meet the minimum standard of compliance required in the area of environmental protection. This knowledge provides corporations operating in such environments to understand the context in which they operate. So as to provide a basis to identify the risks and to re-strategize in order to mitigate the potential risks especially in relation to addressing the concerns of local communities and the natural environment. Rather than relying solely on local legislations, which may be inadequate in some respects.

In the context of Nigeria where the subsidiaries of international companies are required to be incorporated as local companies, the compliance of the former companies with local legislations alone may be insufficient in meeting their environmental obligations. This is especially due to the growing sensitivity of stakeholders to environmental and ethical concerns (Adeyanju, 2012) in developing countries. Thus companies should seek strategies to aid navigate the challenges in developing countries in spite of the lack of incentives. One way of doing so is to adopt an underlying ethical approach – hinged on taking responsibility for the consequences of their operations. This has the potential of addressing the shortcomings in law, even when local legislations are inadequate by adopting international best practices, which can be regarded as CSR (Buhmann, 2006). Likewise, companies will be more willing to address negative industry wide practices and satisfy stakeholder expectation by doing the right thing- proactively and meaningfully engaging with stakeholders. This indicates that firms can make the commitment to adopt these practices in order to protect the natural environment and can serve as a basis for within law accountability especially in relation to prevention and restoration level of environmental responsibility.

**5.3 Policy Implications**

The foregoing indicates the complexity of environmental regulation in the petroleum industry in developing countries of Sub-Saharan Africa like Nigeria and as such government policy should be broad and robust to address the multi-faceted nature of the issues, which involve the shortcoming of law, stakeholder engagement and industry culture. Notably, most environmental laws and standards in developing countries have fairly embraced the principles of sustainable development (Asfaw et al., 2017) as shown in local national policies. Thus the government strategy could be to encourage greater environmental accountability through different industry laws by reviewing them with a view to raising the standard of environmental protection. This can be achieved by improving the provisions relating to restoration and prevention as a minimum standard. Such that a compliance with law meets the moral minimum – avoidance and correction of harm, expected of good corporate citizens.

Subsequently, government can encourage corporations to go beyond compliance through various incentive schemes.

## 6. LIMITATION AND SUGGESTIONS FOR FUTURE RESEARCH

This research focused on Nigeria, a developing country in Sub-Saharan African country and so did not provide an opportunity for cross-country analysis. However it provided a basis for future research in other developing countries, which can lay the foundation for such analysis. On the basis of the idea of industry laws promoting greater environmental accountability in developing countries particularly, of Sub-Saharan Africa, it is pertinent that further studies could focus on different industries or sectors in Nigeria. Further research may also be required in other African countries in order to ascertain whether the environmental obligations in different industry legislations meet the minimum standard of environmental protection or not. Also this could pave the way for identifying the state of CER regulation in the region and in developing countries in order to develop better strategies to deal with the complex issues of environmental protection.

## 7. CONCLUSION

This paper examined the extent to which laws can hold multinationals accountable for their negative environmental externalities in developing countries. Using Nigeria as a case study, in examining key petroleum industry legislations, the findings showed that these laws are inadequate in addressing the environmental impact of oil operations in some respects such as restoration. As such, it failed to meet the moral minimum of environmental responsibility expected of corporations to not only avoid harm but to correct harm. This is an indication that the assumption that law is the minimum standard of compliance may not be met in developing countries of Sub-Saharan Africa.

From a stakeholder perspective, compliance was viewed as a function of corporation's demonstration of commitment to meeting stakeholder expectations, multinationals failed to demonstrate this commitment. In spite of the low compliance threshold, compliance with law was minimal and thereby failing to meet the minimum behavioral standard expectation of a company toward its stakeholder as well as failing to address local and international concerns in achieving sustainable development. This further heightens the need for mandatory regulation in the area of corporate social responsibility due to the failure of voluntariness.

As such, the extent of compliance with environmental obligations is dependent on the ability of multinationals to manage the dynamics of stakeholder relationships, between the multinationals and government, their host communities and the environment. It also involves navigating through the shortcomings of law and addressing industry culture. Consequently, the state of CER regulation in Nigeria is one of a weak legal framework for environmental accountability and flawed stakeholder relationships. The implication of the foregoing for CER regulation in developing countries especially of Sub-Saharan Africa is that: compliance with environmental obligations within law may be mediated by stakeholder engagement issues (relationship with government and host communities) and industry culture and shortcomings in law.

However, the paper concludes that industry laws have the potential to serve as a tool for corporate environmental accountability. A good step in this direction is to ensure that these legislations are positioned to achieve sustainable development by meeting the minimum standard of environmental protection envisaged by key policies of the government and international standards. Hence, these legislations need to be updated to the minimum standard of environmental protection in meeting the standard of restoration and prevention and work toward improvement. On the hand, corporate strategy should involve acting ethically in order to overcome the shortcomings of law, industry culture of non-compliance and stakeholder challenges in developing countries especially in Sub-Saharan Africa.

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