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**Challenges of Effective Corporate Social Responsibility
in the Niger-Delta Region of Nigeria**

*M.E. Jemialu**

Introduction

The Niger Delta region is home to various tribes or people in Nigeria and is also home (or was also the natural habitat) to abundant land and sea flora and fauna of great economic value. However, the above assertion is hardly the case today due to the systematic and gradual elimination and depletion of both the human, man-made resources – fructus industrialisation – and the natural resources of this fertile region which is one of the largest deltas in the world.

The cause of these gradual and persistent alterations to the land and sea flora and fauna as well as the atmospheric changes, as we all know, is man-made: chiefly due to greed, bad governance and lack of effective legal machineries.

What should have been the greatest economic strength and weapon of the people has turned out to be their dirge – of blood, tears, sorrows, abject poverty and squalor, dehumanisation and great injustice.

The UNDP Report on the Niger-Delta¹ underscores the squalor and abject poverty in that area despite the huge oil resources and hefty foreign exchange

* LLM, BL., Lecturer, Nigerian Law School, Enugu Campus.

¹ The Report was launched by the then President, Olusegun Obasanjo, in Abuja on 18th July, 2006.

earnings for the country. The Report noted that the oil wealth in the region accounts for more than 95 percent of the country's foreign earnings and provides a fifth of America's oil supplies. The report went further: "The Niger Delta is a region suffering from administrative neglect, crumbling infrastructures and services, high unemployment, social deprivation, abject poverty, filth and squalor and endemic conflict."

The problems of the region are multi-dimensional in nature, ranging from political to economic, social and environmental; and they all stem from the presence of the black gold. The concept of Corporate Social Responsibility (CRS), which deals with the global behavioural expectations of governments and corporations toward the three constituent units of sustainable development, will be examined in this work. In a narrower sense, the concept defines what a company has to do, in order for it to win and enjoy the confidence of the community as it generates *economic wealth* and responds to the dynamics of *environmental improvement*. This will be considered in relation to the multinational oil corporations that operate in the region, the impact of their activities on the people, communities and the environment. Focus will be cast on some of the troubling issues that currently undermine CSR efforts in the region by the multinational oil corporations in their bid to show that they are aligning with the global trend of carrying out business with a human face.

Finally, we will look at some of the existing legislations relating to oil and gas, the environment and the need for proactive legal reforms which will comprehensively tackle issues of corporate social responsibilities and bring our laws in tandem with legal reforms in the international sphere.

What is Corporate Social Responsibility?

The concept of *corporate responsibility* or *corporate social responsibility* has acquired broad support in various international fora. While there is no universally accepted definition of the concept, there is however a consensus that it implies a demonstration of certain responsible behaviour on the part of governments and the business sector toward society and the environment.

According to Mallen Baker,² "Corporate Social Responsibility is about how companies manage the business processes to produce an overall positive impact on society." To him, companies need to answer to two aspects of their

² Available at: <http://mallenbaker.net>, accessed on 10/03/2010

operations: (1) the quality of their management - both in terms of people and processes (the inner circle) and (2) the nature of, and quantity of their impact on society in the various areas, or it can simply be defined as “business of giving back to society.”³

The definition this writer finds to be all embracing is that by the European Commission which sees social responsibility as:

A concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment. A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.⁴

Two important international institutions have underlined the need for governments and companies to adhere to the principles of *corporate social responsibility*. These are the World Business Council for Sustainable Development (WBCSD) and the Organization for Economic Cooperation and Development (OECD). Their policies and guidelines as representing a global consensus on the imperative of corporate social responsibility will be reviewed.

World Business Council for Sustainable Development (WBCSD)

The WBCSD is a major driving force on the concept of *corporate social responsibility*. Established in January 1995, the WBCSD is an association of 140 international companies drawn from more than 30 countries representing more than 20 industrial sectors. Two major international organizations – the Business Council for Sustainable Development (BCSD) and the World Industry Council for the Environment (WBCE) – merged to form the WBCSD. Its reports on corporate (social) responsibility have helped to focus global attention on the necessity for governments and businesses to demonstrate a degree of responsibility toward society.⁵ The WBCSD defines *corporate social responsibility* as:

The continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life

³*Ibid.* p., 2.

⁴*Ibid.* p., 2.

⁵ O. I. Natufe. The Problematic of Sustainable Development and Corporate Social Responsibility: Policy Implications for the Niger Delta. Available at http://www.urhobo.kinsfolk.com/Conferences/Second Annual Conference/Conference Matters/Natufe.htm#N_11_, accessed on 03/05/2010.

of the workforce and their families as well as of the local community and society at large.

The WBCSD grappled with the problems of clarity without losing the vital focus of the concept and therefore sought a conceptual framework that would remain loyal to its "three fundamental and inseparable pillars" of sustainable development: the generation of economic wealth, followed by environmental improvement, and social responsibility.⁶ It proposed a global strategic approach on how to define its third pillar: corporate social responsibility. According to the WBCSD, corporate social responsibility defines what a company has to do, in order for it to win and enjoy the confidence of the community as it generates *economic wealth* and responds to the dynamics of *environmental improvement*. The WBCSD posits *corporate social responsibility* as a vital link "to the long-term prosperity of companies as it provides the opportunity to demonstrate the human face of business..." and underscores "the value of creating practical partnerships and dialogue between business, government, and organizations."⁷ It was considered more appropriate reflection of the scope of the concept without the word "social," which some members of the WBCSD felt was too restrictive. Thus, the term *corporate responsibility* was seen as pertaining to the WBCSD "three fundamental and inseparable pillars" of sustainable development.

Corporate responsibility, therefore, defines the *global* behavioural expectations of governments and corporations toward the three constituent units of *sustainable development*. The WBCSD identified the following "core values" as integral to CSR⁸: Human Rights, Employee Rights, Environmental Protection, Community Development, Supplier Relations, Monitoring, Stakeholder Rights.

In what follows, this paper focuses on the human rights, employee rights, environmental protection, community development, and stakeholder rights aspects. These are the core values that define the responsibilities of corporations (and governments) to the society. Thus, what benefit or harm would a company's project bring or do to the human rights of the society, the employee rights of its workers, the environmental protection of the

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

community, the development of the community, and the rights of the community as legitimate stakeholders?

Under the WBCSD template, the community is respected as a stakeholder in the project. Thus, the company is compelled to construct a base for close collaboration and consultation with the community, as well as assist the community in capacity building in all aspects of social and economic development. To achieve this level of responsibility, a company must implement a transparent policy of working with the community to ensure that these core values are adhered to. It must also ensure that environmental protection is not compromised, and that any environmental risks arising from its project must be *equitably distributed* among all segments of the society, and must not be borne disproportionately by the poor.⁹

In its broadest terms, therefore, the concept of corporate social responsibility is inextricably linked to the notion of *environmental justice*. How do governments and companies resolve the "distributional inequities in the exposure to environmental risks?"¹⁰

According to a study by Harm van der Wal and Klaas Jan Moning, it was found that economic instruments are "socially regressive" and counterproductive to the concept of corporate social responsibility as "the percentage burden is greater for low income households than for higher income households." They argued that market-based instruments reduce the powerful and symbolic appeal of pollution control. As a consequence they may lead to a weakening in the public commitment to a shared environmental ethic.¹¹

Corporate social responsibility is therefore, not only the expected *ethical* behaviour of companies; it also defines the *self interest* of companies. By investing in the core elements of corporate social responsibility, a company is also simultaneously facilitating a base conducive to the emergence of a healthy and well-educated community that would assist the company in attaining its economic growth objectives. All in all, it is a win-win strategy.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Quoted in Natufe, *op. cit.*

Organization for Economic Cooperation and Development (OECD)

The OECD has also been engaged in developing the concept of corporate social responsibility. At its ministerial meeting in June 27, 2000, the OECD approved a set of Guidelines for Multinational Enterprises.¹² The guidelines titled: "A Set of Voluntary Principles and Standards for Responsible Business Conduct Consistent with Applicable Laws," stresses the need for both governments and companies to demonstrate their corporate responsibility by pursuing sound environmental and socially based policies. The guidelines are:

To ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate...and to enhance the contribution to sustainable development made by multinational enterprises." They challenge multinational enterprises "to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives."¹³

The General Policies of the Guidelines¹⁴ advise enterprises to: Contribute to economic, social and environmental progress with a view to achieving sustainable development, and some of them include:

- (a) Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
- (b) Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.
- (c) Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
- (d) Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
- (e) Support and uphold good corporate governance principles and develop and apply good corporate governance practices.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

- (f) Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
- (g) Promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.
- (h) Refrain from discriminatory or disciplinary actions against employees who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise's policies.
- (i) Encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines.
- (j) Abstain from any improper involvement in local political activities.

Though the OECD Guidelines are addressed to multinational enterprises, they also apply to domestic companies as well. We can see from the above that a critical element of corporate responsibility is the need for governments and companies to incorporate all the three dimensions of sustainable development - *economic, environmental, and social* - in their decision making process. According to Natufe,¹⁵ most countries and companies seem to ignore or pay little attention to the social component of sustainable development.

Going by the above definitions of the concept of corporate social responsibility, this writer is of the strong view that CSR in its ideal mode should be a built-in, self regulatory mechanism by which companies and governments monitor and ensure their adherence to law, ethical standards and international norms. It involves operators of businesses embracing responsibility for the impact of their activities on the environment, consumers, employees, host communities and other stakeholders. This can be done by the proactive promotion of public interest through encouraging community growth and development, and voluntarily taking practical steps in eliminating practices that harm the public sphere be they environmental or in any other domain.

On the part of governments, it involves the need to be responsible in the formulation of policies, laws and generally promoting governance that places

¹⁵ *Ibid.*

the interest and well-being of the citizens at the centre of all decision making, with adequate and effective sanctions and enforcement mechanisms.

Using the above criteria as a yardstick, we will now examine some of the frictions and challenges to the practice of a robust CSR by both government and multinational companies operating in the Niger Delta.

Bad Governance/Corruption

The Niger-Delta region is riddled with bad governance/corruption on the part of government officials both at the state and federal levels. Majority of the political office holders in the country today, view their offices as their meal tickets and therefore expend the greater part of their energies and monetary allocations on making their coffers fatter and in seeking further terms or appointment to juicy positions.

It is true that the federal government in recent times appears to be on a remedial mission with the amnesty deal negotiated with militants and the creation of the Ministry of Niger Delta. But how far these will go in achieving their intended aims and objectives remains to be seen, giving our penchant for the hydra-headed monster called corruption. So far, there is little developmental impact on the region via the activities of the Ministry and its agency the NDDC.¹⁶

It has also been argued that if government officials in the region have utilized judiciously their monthly allocations, to better the lots of the ordinary people, through the creation of jobs, and embark on infrastructural development of the region, the situation would have been better than this current sorry state. Rather, their monthly allocations are spent on frivolous things that have no corresponding bearing on the life of the people.

The case of Rivers State during the immediate past government lays credence to this assertion:

The Rivers State government, for example, had a budget of \$1.3 billion in 2006. It included transportation fees of \$65,000 a day for the

¹⁶ The NDDC is once again enmeshed in accusations and counter allegations of corruption by top officers and there are calls for every member of the Board to be probed.

governor's office; \$10 million for catering, gifts and souvenirs; \$38 million for two helicopters. Health services received \$22 million.¹⁷

Disturbed by the wastefulness of some States and Local Governments especially those in the oil region, the then Minister of State for Finance, Mrs. Esther Nenadi Usman,¹⁸ asked for greater scrutiny of the activities of governors, particularly those receiving huge sums from derivation each month. In her words:

States have been a source of worry to us, lately. If you look at the way money is shared at the Federal Accounts Allocation Committee (FAAC) meeting, Federal Government gets about 48 per cent, while State and Local Governments take the remaining 52 per cent.... Three to four days after the FAAC meeting, exchange rates jump up, which means they are using them to buy foreign exchange. If you look at the States, the States that get so much, you can hardly see anything to show for it.

Continuing, she said: "make telephone calls to any of the States and ask after the Governor and you will be told that he has gone abroad. Not only the Governors, even the Commissioners for Finance." Mallam Nuhu Ribadu, ex-Chairman of the Economic and Financial Crimes Commission (EFCC), estimated that in 2003, 70 per cent of oil revenues, more than \$14 billion was stolen or wasted.¹⁹

With the above sorry state of affairs, the money coming from the Federal Government on earnings on crude oil sales therefore has little or no positive impact on the ordinary people. Confirming why the militants were fighting against the system and bad governance to Jeff Koinage of CNN, a leader of MEND, General Godswill said, "we are in the middle of a struggle for the liberation of the Niger Delta, the most devastated and the most threatened region in the world."²⁰

¹⁷ Available at: <http://www.henryjacksonsociety.org/stories.asp?id=1312> (accessed on 12 May, 2010).

¹⁸ Usman, N. E. "Governors Waste Monthly Allocations" in *Corruption in High Places*, <http://www.unitedijawstates.com> (accessed June 2, 2010).

¹⁹ Nigerian Oil, Curse of the Black Gold in <http://www7.nationalgeographic.com> (accessed June 2, 2010).

²⁰ CNN.Com "Nigerian Kidnappers Release Hostages", February 13, 2007, (accessed June 2, 2010).

Our former President, Olusegun Obasanjo, also decried the situation in the Niger Delta that despite the 13 per cent of revenue from onshore and offshore oil fields, it has not rubbed off on the ordinary people. In his words, “so far not much impact has been made on the lives and living standards of most ordinary people of the Niger Delta.”²¹

The twin issues of corruption and bad governance are the major challenges to the practice of CSR in the region because they have direct bearing on all other challenges and these cut across all tiers of governments. In order to gauge just how serious a hindrance corruption is to development in Nigeria, it is worth taking a moment to look at the statistics. Though oil production has generated around \$500 billion since 1960, studies by the World Bank and Economic and Financial Crimes Commission (EFCC) have estimated that between \$400-500 billion has been stolen by corrupt officials over a similar period.²²

The oil companies have always complained that “the significant corporate efforts to meet community demands are made negligible in the face of... government failure to meet its fair share of responsibility”.²³ At this juncture, one is forced to ask whether the government owes a duty of care to the people of this region and their well-being?

One would be tempted to answer yes to the above question bearing in mind chapter 2 of the Constitution and also the National Policy on the Environment²⁴ which succinctly states that:

The most valuable national resource is the human resource base – the people of Nigeria. *Consequently, the protection and enhancement of the health and well-being of the people constitute a major responsibility of government.*²⁵ By their individual and collective behaviour, humans

²¹Olusegun Obasanjo, “Let Us Build Nigeria Together”, Radio speech marking 44th Independence Anniversary, October, 2004, [http:// www.nigeria.gov.ng](http://www.nigeria.gov.ng) (accessed June 4, 2010).

²² <http://www.henryjacksonsociety.org/stories.asp?id=1312> (accessed on 12 May, 2010).

²³Adam Groves “(Un)civil society and corporate security strategies in the Niger Delta” in *Shell and Society: Securing the Niger Delta?* Contributed on June 10, 2009.

²⁵ Launched in 1988 and later revised by FEPA in 1992.

²⁶ Underlining mine simply for emphasis.

²⁷ Adam Groves “(Un)civil society and corporate security strategies in the Niger Delta”, *op. cit.*

make significant positive or negative impact on the natural resources and non-human environment of the country.”

However, given the fact that these provisions are not justiciable, then where does that leave the region?

I will therefore answer the above question using the argument of Dr. Natufe²⁶ when he said:

It is quite obvious to any observer that Niger Deltans residing in the areas of oil exploration bear a significantly higher exposure to environmental risks than, say, residents of Kaduna who enjoy much higher benefit from the exploits of oil exploration without incurring any environmental risks arising from such exploration. Furthermore, the entire Niger Delta region has become an environmental disaster, a "dead land" due to the activities of oil companies, led by Shell, while other states of the federation enjoy the benefits of those activities without an understanding and/or appreciation of the impacts of oil spillages and environmental degradation caused by improper exploitation. Fishery and agriculture have been rendered obsolete as a result of environmental degradation caused by oil exploration in the Niger Delta. If we accept the premise that, the fundamental function of a government is to provide for the safety and security of its citizens, we are baffled as to the whereabouts of Nigeria's federal government on this issue. Every other function - economic prosperity, etc. - derive from this fundamental function. Thus, any activity of government that fails the test of enhancing the *safety* and *security* of its citizens is inimical to the principles of good governance. Not only have oil exploration and exploitation ruined the economic base (fishery and agriculture) of Niger Deltans, it has grossly endangered their *safety* and *security* in such a way that, any future recovery becomes a matter of doubtful conjecture.

This writer is of the humble view that until the Nigerian government plays its part, the CSR practices of the oil companies in the Niger Delta will continue to be rudimentary at best thereby failing to have the desired impact on local communities and corruption is at the root of government's failure.

Negative Community Perceptions of the Oil Companies

Negative community perceptions of the companies mean that their efforts at CSR are often dismissed by civil society representatives as PR exercises.²⁷ As a consequence of their past experiences, communities perceive the government and oil companies “as antagonists to be confronted.”²⁸

Thus, it has been opined that “any attempt to foster long lasting harmonious [corporate-community relations] cannot take place without attempts to transform community perceptions.”²⁹ And it seems “there have been virtually no systematic attempts to study and understand the nature of community perceptions or...to integrate community perceptions into the design and implementation of CSR initiatives.” For example, Shell focuses on scientific evidence and conventional environmental impact assessments, which often detract from an understanding of the constructed ‘reality’ as perceived by local populations.³⁰

Companies’ failure to consider community perceptions has meant that they “have been unable to derive the maximum advantage they deserve and expect from the CSR initiatives.”³¹ Idemudia and Ite³² recommend that Shell begins “a conscious business effort and strategy to demonstrate to the communities that [it] is doing all it can within its power to meet their expectations”. This requires stronger partnerships so that community perceptions can be taken into account at an early stage of the planning process. Also, the companies often seek to implement moral and progressive CSR policies without first correcting social and environmental injuries they have caused in the past. Consequently, the “host communities continue to bear the unpleasant social, economic and environmental costs of oil production,” even as the companies claim to be socially responsible.³³ Though cleaning up spills and acknowledging mistakes do not allow for the same public relations opportunities as opening a hospital

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

or launching a new scholarship scheme, such measures may be more effective in winning a social licence to operate amongst host communities. Lack of clear communication channels is also a challenge. The companies need to improve on communication as a means of understanding the needs and wishes of the people; as this may make the communities more receptive.

Insecurity and Volatility of the Region

Some of the companies like Shell have pointed out the lack of an enabling environment for effective CSR, emphasising the inherent volatility of the region and its roots in oil bunkering and inter-ethnic and communal violence, but it should not be forgotten that the oil companies have often been indicted as being complicit in government assaults on civilians under the guise of fishing out militants. Shell, for example was an avid participant in making the region what it is today; with its divide and rule tactics, active connivance with government forces as instruments of repression and its surveillance strategies amongst others and so cannot be heard to complain. It must therefore, be part of the crusade to reduce violence in the region by carrying out credible CSR projects and policies.

On January 4, 1999, it was alleged that Chevron provided a helicopter and boats to government forces that used them to destroy two villages, killing 60 people including a village elder who approached the soldiers to negotiate. Chevron absolved itself of any responsibility, saying it had no right to stop the soldiers using its equipment, but did offer the communities \$8,300 each in compensation.³⁴ These and other similar incidents have been responsible for mobilisations against the oil companies and the government. Also, in an effort to secure their employees and their facilities from attack and also as part of their CSR, oil companies have frequently resorted to paying local communities and militant groups not to attack them, often by way of payments to so-called “ghost workers”, workers that do not actually exist. Oil companies have even resorted to hiring militants to guard their facilities from other militants, which has tended to exacerbate the problems. Rivalries are stoked between groups competing for the comparatively well-paid security jobs, jobs that provide funds for the purchasing of more weapons, in turn exacerbating the conflict still further.³⁵

³⁴ *Ibid.*

³⁵ *Ibid.*

Obsolete Law, Inadequate Provisions and Unenforceable Laws/Lack of Enforcement Mechanisms

The constitution of a country constitutes the first and primary level in its hierarchy of judicial norms. It is the supreme law of the land and the constitutions of several countries have increasingly incorporated the basic principles of environmental management. The 1999 Constitution of the Federal Republic of Nigeria in chapter 11, Fundamental Objectives and Directive Principles of State Policy, provides in section 20 that the State shall protect and improve the environment and safeguard the water, air, and land, forest and wild life in Nigeria. However, the provisions of chapter 2 of the Constitution as we all know are not justiciable contrary to ongoing trends in other countries even within the African continent³⁶. Governments, the world over have begun to recognise the negative impacts of man's activities on the environment and legislations are being put in place to combat same.

So far in Nigeria, these innovations have not found landing spaces in our laws relating to oil and gas and the environment. The best we have is the National Policy on the Environment which has remained in the realm of lofty ideas without concrete plans for its implementation and actualization by integrating same into our laws. Most of the current laws are obsolete and therefore do not have provisions that reflect the new and emerging species of offences in the oil and gas industry in relation to the environment. For example, when the Criminal Code was enacted in 1916, pollution control was not a priority at that time and you will agree with this writer that oil had not been discovered in Nigeria. The oil and gas industry presently is primarily regulated by the Petroleum Act (Cap P10 Laws of the Federation of Nigeria 2004) and the Petroleum Profits Tax Act (Cap P13 Laws of the Federation of Nigeria 2004) both of which were enacted prior to 1970 (1969 and 1958 respectively).

Although the Petroleum Act at present has 7 regulations and both statutes have been amended severally over the past 40years, nonetheless, both legislations remain substantially in the original forms in which they were enacted. The circumstances are therefore such that the primary laws regulating the industry including NNPC Act Cap N123 LFN 2004 are 40,50 and 32 years respectively. The fact that these legislations are out of date means that sectors and aspects of the industry (such as natural gas utilization and environmental

³⁶ Article 15 of the Constitution of Mali 1992, Article 35 of the Ugandan Constitution 1995, the Constitution of Congo, 1992.

issues) which have gained prominence over the last forty years have remained outside their purview and are therefore subject to the arbitrariness of regulatory authorities.

Moreover, the penal fines prescribed by these statutes appear absurd and dismally inconsequential, in relation to the times we are in and the impacts of the violations on the people, communities and the environment. For example, the *Associated Gas Re-Injection Act 1979* and the *Oil in Navigable Waters Act 1968* (with its amendments), penalizes the flaring of gas with a fine of *2.5 U.S cents per 1,000 cubic feet of gas flared*³⁷ and fines which in most cases do not exceed N1000.00 (which is approx. \$7.30) respectively.

The oil companies therefore, find it more economical to pay the fine rather than re-inject the gas³⁸ or take practical measures to prevent spills or carry out clean ups along with best practices obtainable in other jurisdictions.

Also, the offences and penal provisions of most of the laws relating to oil and gas and the environment in Nigeria, are couched or drafted in vague and ambiguous languages that leave much legal loopholes for violators to avoid responsibility. This renders the laws ineffective thereby making enforcement a near impracticability.³⁹

Lack of monitoring and enforcement mechanisms is another factor militating against the practice of a robust CSR in the region. For example, the *Environmental Impact Assessment Act* makes it compulsory for an Environment Impact Assessment (EIA) – which is a comprehensive evaluation and assessment of the likely environmental impact on the surrounding ecosystem of any proposed project, to be carried out in respect of projects in the oil and gas field, development and construction of oil refineries, pipelines, processing and storage facilities.⁴⁰ But, it remains doubtful if any of the oil companies operating in Nigeria ever adhered strictly to EIA provisions. Shell Petroleum Development Company, the largest operator in the Niger Delta area was challenged to produce a copy of its self acclaimed EIA report

³⁷ Emphasis mine.

³⁸ Y. Omorogbe, 'Legal Framework for the Production of Petroleum in Nigeria', (1987) p. 15.

³⁹ A case in point is the Petroleum (Drilling and Production) Regulations No 25, 1969 made pursuant to Section 6 of the Petroleum Act of 1969, it does not provide for the meaning of the phrase '*up-to-date equipment*', nor the yard-stick for measuring same. Also, the phrase '*shall take prompt steps to control and if possible end it*' leaves much to the judgement of a polluter in deciding whether it is possible to combat a spill or other hazardous acts or not.

⁴⁰ Schedule 12 EIA Act.

commissioned on the Niger Delta but till date, none has been tendered.⁴¹ The EIA Act is seen in practice as a burdensome paper work that need to be done to satisfy the requirement of the law.⁴²

The Nigerian National Petroleum Corporation (NNPC) and its subsidiaries, charged with the responsibility of monitoring and enforcing compliance is itself a major polluter as it participates actively in both the upstream and downstream sectors of the Nigerian oil industry. It is therefore doubtful whether the NNPC will enforce these regulations against its own self or take firm measures against any of the operating oil companies in which it holds majority of the shares.⁴³ On the other hand, the courts are to interpret the laws having in mind the intention of the legislators and the purpose of the law or mischief the law was to cure or correct but it is common knowledge in Nigeria today, that a plethora of oil-related cases have been thrown out by the courts hiding under various common law (tort) principles. All these are pointers to the fact that our laws in respect of the oil and gas industry need a comprehensive overhaul. It was therefore a welcome development when an executive bill seeking to harmonise and streamline, review and reform existing legislations in the Petroleum Industry, was first presented to the sixth assembly of the National Assembly in 2008. The Petroleum Industry Bill which has been in planning in some form for more than a decade was far-reaching and was promoted by the then presidency through the Oil and Gas Implementation Committee, as the answer to oil sector problems. However, events that greeted the public discourse of the bill from 2009 created fears or suspicion among various stakeholders in the nation's oil and gas industry.

For example, there were allegations by the multinational oil companies in the country that the 225-page bill would change the status quo and automatically leave them in the lurch in the conduct of their operations in Nigeria.⁴⁴ The

⁴¹ ER Action, Jan-March 1999, p. 10.

⁴² As argued by an author R.T. Ako, 'the EIA provisions in Nigeria are merely to give a form of legitimization to the process and is not a genuine attempt to protect the environment especially given the role of the public in participating in the process.' See R.T. Ako, 'Ensuring Public Participation In Environmental Impact Assessment Of Development Projects In The Niger Delta Region Of Nigeria: A Veritable Tool For Sustainable Development', *Environtropica*.

⁴³ A.A. Adedeji, Response to the Control and Management of Oil Pollution in Nigeria, (Chapter 34 in Current Perspectives in Law, Justice and Development), Adedokun Onibokun et al; eds., Demm-Ditt Projects, 2007.

⁴⁴ Available at <http://allafrica.com/stories/200908210336.html> and accessed on 16/3/2012

then Managing Director of Chevron Nigeria, Andrew Fawthrop,⁴⁵ stated that "some of the provisions in the bill are still open to interpretation. It is very important that we clarify that before it is codified." Also, Mark Ward, the Managing Director of Exxon Mobil Nigeria, said that the Bill as drafted, implied that all new planned (upstream) projects would be uneconomical, stressing that his company planned to invest \$60 billion in Nigeria over several years.⁴⁶ Another multinational oil company has recommended more than 200 amendments to the bill, while others have privately spotted dozens of concerns to the NNPC.⁴⁷

Note that oil workers also alleged that the original version of the Bill has been substituted with fake ones after the public hearings in 2009, which are now in circulation. Commenting on the above allegation, the chairman of the Lagos branch of PENGASSAN⁴⁸ stated that the said fake Bill contained certain lopsided tendencies in the regulation of the industry, and the document shows that it was actually set out to protect some interest and create more openings for their cronies, rather than tend towards effectiveness and efficiency in regulating and monitoring the nation's interest in the sector...that Nigerians should expect confusion in implementation of the Bill if accepted". There are also allegations by the South-South Legislators that the bill was nothing but a continuous enslavement and degradation of the Niger Delta region. A provision in the Bill which was introduced by the then President and Head of State, Alhaji Musa Yar'Adua, was the creation of a Host Communities Fund which mandated operators to pay a "nominal ten percent equity participation in upstream petroleum operations into the Fund as beneficial owners to hold in trust." 80 percent of the total sum of the Fund will, from time to time, be allocated for development projects within the host communities. The provision was to be of benefit to communities wholly or partially within the lease areas of the oil and gas operators. However, a caveat was included to the effect that the benefiting communities were to demonstrate their direct involvement or exposure to petroleum operations within the licensing areas by collating the number of oil wells, flow stations, oil terminals and power generating plants in their territory. They also have to sum up the length of pipelines that cross their area and also the number of gas flares.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

This writer, having studied the above provision of the proposed bill, posits the following questions as food for thought:

1. What are the modalities or structures that would be put in place to ensure that the 10% equity plan finds its way to its intended destination and not siphoned off through corruption;
2. What would be the sharing formula in deciding what is due to each community?, and
3. How will the communities carry out the above analysis, measurements and summations in order to prove their direct involvement or exposure to petroleum operations?

The bill also lacks clear Corporate Social Responsibility provisions. Sections 6 and 7 on Environment and Air Quality Emissions and Community Development provide as follows:⁴⁹ (1) The Federal Government shall, to the extent practicable, honour international environmental obligations and shall promote energy efficiency, the provision of reliable energy, and a taxation policy that encourages fuel efficiency by producers and consumers. (2) In accordance with the provisions of subsection (1) of this section, the Federal Government shall introduce and enforce integrated health, safety and environmental quality management systems with specific quality, effluent and emission targets for oil and gas related pollutants, without regard for fuel type such as gas, liquid or solid, in order to ensure compliance with international standards.

The Federal Government shall, in co-operation with the state and local governments and communities, encourage and ensure the peace and development of the petroleum producing areas of the Federation through the implementation of specific projects aimed at ameliorating the negative impacts of petroleum activities.

Other Sections of the Bill (Ss. 283 to 286 and Part VII) dealing with environmental quality management, health, safety and environmental regulations are all couched in vague, elusive and evasive languages. There are no clear guidelines for the administration and maintenance of proper health and safety standards that companies must employ while exploring or clear provisions stating the dos and the don'ts nor specific penalties, offences or

⁴⁹ Part I: Fundamental Objectives, PIB 2009.

responsibilities as they relate to environmental protection and overall social responsibility of the government and the oil companies to the people of the region. The above provisions are a far cry from the provisions of the National Policy on the Environment.

According to a civil rights expert,⁵⁰ “the fallout of the above flaw...could potentially make oil and gas companies controllers of their host communities,” since one of the many flaws of the Bill “was its ineptitude at holding companies accountable to their host communities.” One other perceived drawback of the Bill is the stipulation of a twelve-month bar within which to commence an action and the lack of concrete provisions for ending gas flaring by oil companies or economic measures which could compel the companies to end gas flaring. We can see from the above tumult and furore that the Bill is presently generating that it may not signify *uhuru* for the Niger Delta when it is finally passed. In my humble opinion, the bill will have a pro-active effect on the industry only when it welcomes more inputs from stakeholders (not multinational oil company holders and lobbyists) and becomes national-interest driven.

Conclusion

In this work, I have examined some of the definitions of Corporate Social Responsibility and what it should entail in its ideal mode. Bad governance/corruption was identified as one of challenges to the practice of a robust CSR in the Niger-Delta and it can be summarised as the bane of the Nigerian society today.

Negative community perceptions of the oil companies is another challenge. And this, as this work demonstrates, is due chiefly to the lack of robust company/ community interactive fora and also the past underhand ways that community complaints and agitations were managed or suppressed by the oil companies using the government as a cloak. The third challenge, insecurity and volatility of the region, is an off-shoot of the second challenge. What this work also discloses is that obsolete laws, inadequate provisions and unenforceable laws/lack of enforcement mechanisms are yet major factors militating against a viable CSR regime in the region. Some of the laws dealing

⁵⁰ Executive Director of Civil Society Legislative Advocacy Centre (CISLAC), Mallam Auwal Rafsanjani, Thisday Newspaper of 27th July, 2010.

with oil and gas and the environment generally, have been engaged with a view to spotting out some of their inadequacies and the need for reforms. This led to a discourse of the Petroleum Industry Bill of 2008, the provisions in the Bill that relate to CSR and the various interests that played over its passage.

Finally, one can only ‘watch and pray’, hoping that the executive and the legislature will have the ‘will power’ to make a law that will be responsive to the people of the region and the Nigerian nation as a whole. That the multinational oil corporations’ lobbyists will truly align their core values with the global trend of carrying on business with a human face (ethically responsive CSR) and leave the government to enact a responsive law that will tackle the multi-faceted environmental, social, health and economic problems of the region.