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OIL OPERATIONS IN THE NIGERIA'S NIGER DELTA REGION: A LEGAL-PHILOSOPHICAL PERSPECTIVE

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Abstract
In 1958, crude oil was found and produced in commercial quantity in Oloibiri, in present day Bayelsa State of Nigeria by Shell British Petroleum (Shell BP), now The Shell Petroleum Development Company of Nigeria Limited (Shell PDC). This economic activity in the Niger Delta area was what put Nigeria in the map of world producers of crude oil. Oil production has raked in trillions of petro-dollars and it is the mainstay of Nigeria's economy. However, oil production causes serious environmental consequences, which leave the once serene environment of the oil producing communities of the Niger Delta to be devastated and despoiled. Added to this, the International Oil Companies (IOCs) refused to develop or improve the welfare of the oil producing communities of the Niger Delta as part of their responsibility to their host communities. The excuse has always been that oil is on the exclusive list, so it is exclusively owned by the Federal Government and as such, they do not owe any obligation to the oil bearing communities of the Niger Delta. The IOCs also argue that they only own a small percentage of the profit from the oil project. In this work, we disagree with the position of the IOCs and quickly point to the spate of violent agitations for resource control which has resurfaced in the oil producing areas. We also show that Nigeria's variant of Federalism is skewed to the advantage of the majority ethnic groups, which dominate the Federal Government, and that the IOCs have an ethical and constitutional duty to develop and restore the economic dislocations in the Oil Bearing Communities of the Niger Delta caused by oil producing activities.

Keywords: *Niger Delta, oil exploration, environmental pollution and despoliation, environmental hazards, socio-economic dislocation.*

Introduction

We will commence our discourse by placing full reliance on Roberts (1999), who declared that "environmental consequences of oil exploration and production provide insights into industry-mediated scourges of pollution, diseases, resource degradation and socio-economic dislocation". This is why oil exploration, exploitation and production is regulated the world over by International Conventions, Treaties and Regulations, most of which Nigeria is a signatory to and had also domesticated as Laws of Nigeria. In arriving at an objective review of the operations of the IOCs, and especially, their environmentally offensive operations in the Niger Delta area of Nigeria, we would embark on a comparative examination of some of the laws in this respect, and chiefly we will have to do a review of some of the provisions of the 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended), and some of the laws in operation in the Oil/Petroleum upstream and downstream sector. The direction of our enquiry would be to determine what our expectations from these laws are or ought to be? Also, how were they supposed to direct or redirect oil exploitation and production? In what way(s) were they tailored to protect, preserve and safeguard the environment of the oil producing communities? How

adequate and effective are the sanctions that are prescribed for erring IOCs and operations in breach of these extant laws and regulations? Do these laws in any way place on these IOCs any obligations? In what ways are they being fulfilled?

In this work, we are concerned with a discourse on the philosophical review of oil operations in the oil communities of the Niger Delta, and we would do this by examining the various laws that operate in this sector, the scope of the operations and the environmental consequences of the exploitation, exploration and production of oil in the Niger Delta area and the commitment of the IOCs to developing the hosts communities and the duty of care. We will review some known positions, views and opinions on the global best practices in the oil exploration and production activities in Nigeria. This would also include the efforts being made to enforce the extant laws on oil exploration and production and the consequential environmental toll on the environment of the oil bearing communities. In this direction, let us pause and consider what reason we have for the numerous cases of gross environmental pollution and environmental degradation of the Niger Delta area. In this regard, Section 14 (2)(b), 16 (2)(b, c), 17 (2)(b - d), 20, 33 (1), 34 (2)(e)(i),42 (1)(2), 44 (1)and 45 (1)(a) of the 1999 Constitution are at the centre of this great task we have given to ourselves.

The 1999 Constitution and the Welfare of the Oil Producing Communities of the Niger Delta

The various sections of the 1999 Constitution as laid out above ordinarily infers or suggests a favourable disposition to the welfare of the oil bearing communities of the Niger Delta. This is evident in Section 14 (2) (b) of the 1999 Constitution which stipulates that "the security and welfare of the people shall be the primary purpose of government". The fact is that if oil exploration is examined in the light of this Section 14 (2) (b) of the 1999 Constitution, it goes to prove either that the Nigerian nation is a fraud; or that the 1999 Constitution does not in any way regulate or direct the operations of the International Oil Companies (IOCs). This fallacy comes alive when the above provision of the Constitution is married to Section 16 (1)(b) of the 1999 Constitution the later which provides that "control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity." It can be safely contended that if the welfare of the people shall be the primary purpose of Government, how come the Nigerian State has invariably diverted or allowed one ethnic group, herein we mean the Fulani, to control and appropriate the proceeds of the oil wealth that comes from the Niger delta area? If this were not so, why is the Nigerian State's control of the oil wealth done in such a way that it causes the people of the Niger Delta area to wallow in abject poverty and environmental despoliation? If this is contested, would the oil bearing communities agree that the Federal Government's control of the mechanisms for the exploration and production of oil is to secure their maximum welfare, freedom and happiness? In support, we defer to Eghosa Osa-Ekhator (2016:52), who held that "the rigidity and totality of the Federal Government's ownership of oil resources (to the detriment of indigenous oil communities) has been one of the major reasons for the Niger Delta crisis', more particularly because "Nigeria's variant of federalism has been subject of numerous critiques and the subsisting view is that, the system is skewed to the advantage of the central or federal government."

To broaden our appreciation of the basics as regards the skewed nature of the Nigerian Federalism, Section 16 (2)(c) of the 1999 Constitution is a helpful piece of constitutional provision to the effect that the Nigerian State shall direct its policy towards ensuring that "the material resources of the nation are harnessed and distributed as best as possible to serve the common good;" and that "the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group." The various issues begging for attention include explaining why the Nigerian State refuses to harness the oil reserves being

domiciled and exploited in the heart of the Niger Delta for the good of the peoples of this area? How come the poverty and environmental degradation experienced in the Niger Delta area have not received any positive response from the IOCs or the Federal Government that is deemed to have the oil? Also, how come the allocation and ownership of the oil blocks domiciled in the Niger Delta do not fall to the persons from the minority ethnic tribes of the Niger Delta area but made a preserve of the Hausa Fulani? Having known the above, what is being done or has been done to operate the oil economy in a manner as to permit the even spread of wealth among all the peoples of Nigeria? In addition, we are confronted with why the means of oil production and economic wealth left and allowed to be centralised in the hands of a few individuals, especially those of the Fulani ethnic extraction? At this point, it would be appropriate to admit that the International Oil Companies (IOCs) owe their host communities some obligations, or put differently, that they are in one way or the other indebted to their host communities as a corporate social responsibility?

In this direction, it would be appropriate to direct our attention to Section 17 (2) (d) of the 1999 Constitution which provides that exploitation of human or natural resources in any form or whatsoever reasons, other than the good of the community, shall be prevented and superimpose it on Section 20 of the 1999 Constitution which states that "The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria." Drawing on the above, it is clear that the 1999 Constitution intended that the people's welfare was to be protected and safe guarded as of priority. However, these value laden sections of the 1999 Constitution become redundant and turn into a worthless piece of artefact as it does not draw or command obedience by anybody in the oil sector, excludes those that have links to those in power and those from a section of the nation. The most primary understanding here is that the 1999 Constitution foists a double standard on the minority ethnic groups in Nigeria who find their way into the industry.

The above position considered, it is interesting to note that while Section 24 (d) of the 1999 Constitution stipulates thus, "it shall be the duty of every citizen to make positive and useful contribution to the advancement, progress and well-being of the community where he resides", the IOCs have continued to act as if they are not under the above provision of the 1999 Constitution. This is the basis for the reliance on the tools of philosophy to examine the position adopted by the IOCs as it turns out to be the fulcrum on which the will of this work revolves. This is one valid way we can in this work justify or condemn the responsibility of the IOCs and their indebtedness to their host communities as the oil bearing communities. This is how we can push oil towards empowering the peoples of Nigeria, righting our economic system and instituting merit so that poverty can be eradicated, as sounded by the United Nations World Council on Environment (UN WCED), "All nations will also have a role to play in securing peace, in changing trends, and in righting an international economic system that increases rather than decrease in equality, that increases rather than decrease the numbers of poor and hungry."(UN WCED Document, 1992, Chapter 12).

The consequence of Section 24 (d) of the Constitution of Nigeria, 1999 when viewed against the backdrop of the declaration of the UN WCED is simple, the states of affairs the world over is changing. There is the continuing and overbearing need to, in the words of Blowfield and Frynas (2005:503) undertake and shoulder the "responsibility for their impact on society and the natural environment sometimes beyond legal compliance and the liability of individuals; (b) that companies have a responsibility for the behaviour of others with whom they do business (e.g. within supply chains); and (c) that business needs to manage its relationship with wider society, whether for reasons of commercial viability or to add value to society." In other words, the target of the indebtedness and moral obligation of the IOCs is that of sustainable development and poverty eradication in the oil bearing communities of the Niger Delta region of Nigeria. These sorts of undertakings by the IOCs, to be result-

oriented are a disincentive to the economic interests of the IOCs and statutory provisions guiding their operations because the obligations of the IOCs go "against the tenets of sound business ideals and weakens its focus on the traditional function of business with regards to profit or wealth creation" (Murray, 2005). However, there had been a variety of opinions on this indebtedness, but we are drawn to the views expressed by Ehosa Osa Ekhator (2014: 126), relying on (Kings III Report, 2009:51; Muthuri, 2012, 2013) who declared as follows:

> The responsibility of the company for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that contributes to sustainable development, including health and the welfare of society; takes into account the legitimate interest and expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and is integrated throughout the company and practiced in its relationships.

The series of actions and activities directed at meeting the specification stated in Section 24 (d) of the 1999 Constitution, from a purely philosophical perspective, goes beyond the mere prescriptions in the Nigerian Constitution or in any other Act of the National Assembly or Law of a state. It is also over and beyond merely conforming with agreements to treatises and international protocols, it is rather one that holistically considers the interest of all stakeholders, transcends the sole purpose of a business outfit, profit and wealth creation and is dictated by what is objectively moral. It is one that compels and obliges the IOCs to develop fellow feeling, which aims to ease the spate of sufferings and poverty of the people of the Niger Delta; whose object is to abate the impending catastrophe that might result from a bastardised environment, tends to decrease the widening and increasing gulf separating and dividing the "haves" from the "have nots", and the rich from the poor. In the words of Prof. Itse Sagay (1997:180) and Eghosa Osa Ekhator (2016:50), the path that leads to State ownership of oil is strewn with dangers and evil of large proportions. According to them, state ownership of oil is accompanied by private allocation of oil blocks, one ill that creates enormous wealth for a privileged few, those close to power, or for people from a section of the country, or as retirement benefits to past serving military officers, who ended up amassing enormous wealth for themselves more than they needed, who misuse these funds in such a fashion that it makes room for questions such as "has central ownership and control prevented the emergence of a class of enormously wealthy individuals in Nigeria? Have the proceeds of oil been prudently and patriotically put to use" for the good of all? Not at all. Rather, "due to inherent weaknesses and corruption in the extant regulatory regime in the oil and gas sector of Nigeria, scholars have advocated ownership of mineral resources by the local communities or the indigenous people wherein the oil is found". This is the lone way to take this argument, the control mechanism that will keep the IOCs bound to the host communities.

Oil Exploration in the Niger Delta: A Curse or a Blessing to the Host Communities?

Mitee (2007: 25), decried the hijack of oil rights from the indigenous peoples. According to him, "pervasive regime of poverty, an increasing army of unemployed youths, a ready pool of recruitable youths of political thuggery, the natural result was militancy." Unfortunately, today what was merely "political thuggery" for youths who gather round the new found class of wealthy individuals who got transformed from being military dictators to political kingmakers, and did metamorphose into terror, crime, assassination, piracy and kidnap gangs. This demonstrates that the Nigerian example of the management of oil exploited from the Niger Delta area makes oil look like a curse to the people rather than being a thing of joy. This view is amply complemented by Ekhator, (2016: 48), who lamented that

"due to the inability of the Nigerian government to properly regulate the oil and gas sector, especially against the negative consequences of oil related activities by MNCs, foreign investors are now exposed to various risks occasioned by the hostility of the host communities. This lacuna in enforcement marks all the claims of the IOCs that they have nothing to do with the equitable development of their host communities.

If these IOCs are to be believed, then how can we come to terms with the fact that these same IOCs are the unseen architects of all government policies including those directed at the exploitation and production of crude oil and the maximization of their profit margins? Nyemutu Roberts (1999: 24), captures it tersely when he declared that "Oil TNCs often apply subtle pressures on the State, pressures mostly conditioned on their monopoly of capital and technology, to bend industry conditions to suit their motive of profits maximization." It therefore tends to wickedness and mischievousness to the oil bearing communities when they realize that these same powerful IOCs are shedding crocodile tears about their inability to reach out to and put the same pressure and influence on the Nigerian State to adopt operational, environmental and compensatory schemes and policies aimed at even development, rejuvenation and transformation of the Niger Delta oil bearing communities. By harping on the philosophical conception of duty of care, it is pertinent to know whether their avowed powerlessness also restricts and limits them when it has to do with their obligation to the object of their economic viability and their economic interest, and their unbroken loyalty to the principal partner, the Federal Government. Here, these IOCs at least agree that they readily succumb to rationality, and allow it to take preponderance over the constitutional and statutory limitations hitherto put on their operations because it determines their profit, if so why don't they apply same lobbying power to sway the federal Government to help the oil bearing host communities?

We call for a balancing of the act on the part of the IOCs and the host communities, because it is obvious that the viability, survival and profiteering of the IOCs are not tied up with reason and rationality, but have prejudice and sentiments as their bedmates instead. We are not forgetful to the fact that self-protection is the first of virtues but it is our position that only one rich man in a town is a poor man. This, Immanuel Kant calls "categorical imperative", the concept which "asks us whether or not we can 'universalize' our actions, that is, whether it would be the case that others would act in accordance with the same rule in a similar circumstance." (Shandon L. Guthrie, 1994, 2001).

It is imperative at this juncture to recall that prior to 1976, the IOCs enjoyed a total or absolute stake in all the petroleum investments in Nigeria, yet they did nothing to improve the lot of their host communities. It was the administration of the late General Murtala Ramat Mohammed in 1976 that introduced the indigenization policy by which the Federal Government compulsorily acquired between 51 and 60% equity shares in all the oil prospecting and producing companies. This acquisition was to soon become the basis for the malicious refusal and objection by the IOCs to accept any responsibility for other forms of obligation or indebtedness to their host communities. In our understanding of the above within the context of Kantian categorical imperative therefore, we would ask if the Federal Government takeover of a paltry 51 – 49 percent of equity shares completely divested the IOCs' of their continued control of the oil leases granted to them and the management of the huge investments in the oil sector? In what ways does this takeover prevent these IOCs from continuing to launch themselves into maximization of their profits? Therefore, it is pretty difficult to rationalize and universalize any such refusal or default to take responsibility for the proper development of their host oil bearing communities of the Niger Delta? However, some sort of uncertainty trails the position hitherto adopted by the IOCs, whether these multi-national companies have been exculpated and exempted from the fulfillment of some moral obligations to their host communities by being stuck to the Federal Government (Nyeenenwa & Nnamdi 2019:116).

It is worthy of note that with an average of 57% majority stakes to the NNPC on behalf of the Nigerian State in the joint venture between the six major IOCs, the aggregate take home for them is higher than what the Nigerian State has as its total accruals considering the attendant responsibility attached to its share. Take for instance, crude oil which accounted for about 58.1% of foreign earnings in 1970 rose to over 95.6 in 1979 and today, accounts for over 98% of foreign earnings; therefore, oil "provides the Nigerian State with the dominant handle for its fiscal operations. Essentially, governments in Nigeria have come to depend solely on oil to stay in power." (Roberts 1999: 20). The problem with the IOCs in their "lackadaisical attitude to the plight of the oil bearing communities" (Roberts 1999: 10), is that the IOCs have abdicated their Kantian moral duty genuinely owed the oil bearing areas of the Niger Delta of Nigeria as they would have done were it to be a Canadian, British, an American community or any community in the developed economies. With a 48% share of the proceeds going to the IOCs, it can be surmised that when the Nigerian State distributes its share among the federating states, and juxtaposed with the thievery, fraud and corruption, and the insincerity of the Nigerian type of Federalism, the IOCs are said to "make super profits, without the knowledge of either the regulatory authorities or joint venture partners" (Roberts 1999: 19). (See also Eghosa Osa Ekhator 2016: 73). This means the IOCs have an excess flow of returns for their investment in the oil sector in Nigeria, and they seem to be the better for it.

The IOCs contend that they are basically commercial organizations, whose primary motive is to make profits and not to take care of their host communities. This was of concern to Nyemutu Roberts (1999:44), who taking after D. Haastrup, in *The Guardian on Sunday*, (October19, 1997: 11-13) stated that the development of the oil producing areas is the primary responsibility of Government and not that of the IOCs. While acknowledging the plight and extreme neglect of these communities, Shell had maintained that it cannot afford to be the Government of the Niger Delta." In the same way, the Chairman of Chevron Corporation argues that Chevron's core business is finding and producing oil for a profit for the benefit of the company and Nigeria, and that development is not the primary duty and role of their company or of any of the oil producing companies for that matter. It is to act this script that they have consistently argued that the economic interests of the oil multinational corporations supersede the health and general wellbeing of the inhabitants of the Niger Delta who are the victims of pollution from oil spills and gas flaring.

This was contrasted and contradicted by Nyeenenwa and Nnamdi (2019: 117) who did rightly declare that "A review of the intention of the IOCs in accordance with Kant's precept, brings us to the realization that the focus of the IOCs towards Nigeria and their operations here is contorted and operates in the obverse." Most disturbing, is the fact that health and welfare of the citizens of the Niger Delta area are not considered as important in any way, because to them, the economic benefits of oil and gas projects ubiquitously scattered all over the Niger Delta landscape are held to outweigh the negative environmental effect of such projects on the inhabitants of the Niger Delta. Painfully, Ekhator (2016:87) also agree that these IOCs are yet to proffer any plausible explanation for the ways in which they threat of massive oil spills, which cause serious damage to farmland, aquatic life and human life, and which on the long term are liable to cause large scale environmental degradation, environmental toxicoses and the disarticulation of the ecological balance and massive dislocation of the peasant economies are not concomitant too hard a pill for the Niger Delta communities to swallow. According to Roberts (1999: 26), "the impact of Oil E and P on the environment, like other forms of mining and mineral processing activities, has diverse expressions". Diverse indeed when one considers the land mass taken up freely by these IOCs, the extensive network of active oil wells and flow stations, gas plants, oil and gas pipelines, export terminals, and trunk lines and an array of overlapping, contiguous, accumulation and superimposed geological structures. These array of oil facilities, definitely have serious adverse impact

on the environment and cannot be wished away as being of no consequence, which is what these IOCs keep doing.

The only requirement here is that the IOCs plough a meager percentage of their resources into fixing a few individuals in the communities of the Niger Delta, where they live and do their business. According to Roberts (1999: 23), the major oil companies concede that oil production costs in Nigeria are the lowest worldwide and that this is steeped in the fact that the memorandum of understanding between the Nigerian State and the IOCs are "outrageously lopsided" in favour of the IOCs. Considering the above, it is both surprising and frustrating that while the IOCs have continued to avoid taking positive steps to salvage and improve the environment of the oil host communities, they have also continued to stand by and watch while the global best practices are rubbished and the resources of the Niger Delta communities are appropriated by a group to the exclusion and detriment of the producers of the oil (Okoko and Nna 1998: 25). Annoyingly, the IOCs are mesmerized by the odious notion that oil is a God-given resources which ought to be shared among all, forgetful that as stated by (Okoko and Nna 1998:23); this mentality supports the ideology of domination and exploitation. It is criminal and immoral for the Hausa/Fulani overlords to continue to use their political control over the central government to allocate resources in such a way that it would favour them. (Okoko and Nna 1998: 25). The IOCs cannot feign ignorance unless the status quo is necessary to support their partnership with the Nigerian State. Fact is that if the insensitive stance and policy of the Nigerian State is modified or moderated to favour the indigenous peoples control of oil resources, or increase the derivative principle due to the pressure from the IOCs, their profit margin would increase tremendously because the demand for development and corporate social responsibility by the host communities would dip as they increasingly have shares in the oil business.

The question this raises is whether the IOCs do not portray double standards when confronted with issue of environmental degradation and pollution of the Niger Delta areas as a result of oil exploration and production. In their separate submissions, both Roberts (1999: 32) and Nyeenenwa and Nnamdi (2019: 111 - 114) agree that the reality of the oil spill at Ejamah – Ebubu in Ogoni in 1970 confirms the fact that these IOCs are deceitful and hypocritical. According to Roberts "The slow release of retained oil, even at low concentrations, remains devastating to the ecosystem. The reality exposes how economical with the truth oil TNCs are when they claim that 'although oil spills can be temporarily quite damaging to the environment, they are quickly dissipated by the combined effect of evaporations and biological action in the tropical environment of the Niger Delta." But this aside, the real intent of Shell when they made the above assertion is its refusal to spend money to remediate the environment devastated by its operation. Shell, one of the IOCs, it was revealed by Roberts (1999: 45-46), that the protection of the immediate environmental costs plenty of money and if they divert moneys for oil development, it would compete with investments in environmental protection and which would not be good for development of the oil sector. But this was not the case for the oil spill in Ejamah – Ebubu in 1970. It is part of the grand design of the IOCs to shift environmental responsibility to local communities to justify their do-nothing stance and embark on a divide and rule tactics, which Roberts (1999: 45) called the "rock 'n' rule stratagem." Therefore, it is our point of departure that political will, and not the much taunted "cost-benefit imperative" that is the crucial determinant of the environmental responsibility of the IOCs in the Niger Delta area.

At this point, having viewed the attitude of the IOCs towards environmental remediation, let us pause and revisit Section 43 (4) of the 1999 Constitution within the confines of philosophical analysis, as the pathway towards the equitable involvement of the IOCs in the development and environmental justice of the oil bearing communities of the Niger Delta. According to Section 43 (4) of the 1999 Constitution, "the entire property in and control of all minerals, mineral oils and natural gas in, under

or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such a manner as may be prescribed by the National Assembly." Analyzing this further, we collapse the provisions of the Land Use Act, 1978 onto Section 43 (4) of the 1999 Constitution and what arises are the numerous lapses and loopholes which speak volumes about the operational regulatory regimes that have evolved since independence and why the IOCs are deemed to have captured and usurped the role of the Government. One vital connection between these statutes is that they all consider the petroleum oil; minerals or natural resources found in or upon the land as public goods and that government's intervention in their exploitation is simply a case for public use. (Ehkator, 2016: 71).

It has been contended that one basic explanation for the lax regulatory regime in the oil and gas sector is that the government plays the role of both a regulator and a player in the oil and gas industry in Nigeria. In examining this, Ekhator (2016: 64), found out that one of the biggest mistakes in the practice and procedure in the Nigerian oil industry is that of the government being an operator, regulator and partner in the oil and gas industry. He contended that it is ethically wrong for the state to regulate the oil production and at the same time to be the major party to most of the oil-related environmental problems confronting the Niger Delta environment. This brings out the undeniable truth that the 1999 Constitution and the Land use Act operate like a double barreled gun, which forcefully extricated from the Niger Delta oil bearing communities their customary rights over the land and stole from them the mineral resources lying within the bowels of their soil. In the case of the Land use Act, it "completely deprived the peasantry in the oil producing states of the country by vesting control of all land in the Federal Government, thus enhancing the capacity of the oil multinationals and their collaborators to appropriate agricultural land for meager or no compensation. The central government becomes increasingly dominant at the expense of the oil producing states." The annoying thing is that the referenced provision of the 1999 Constitution above also lacks the propensity for equity, justice and fair play; and coincidentally, these are the conditions that are crucial for the survival of any federal system, the central theme in Kantian moral principle. (Okoko & Nna, 1998: 30).

The consideration of Kantian categorical imperative favours the moderation of the role of Government as the impartial regulator of the oil exploitation and production process through government policies and enforcement by independent and impartial institutions. This is the purpose for setting up certain laws and regulations in the oil sector if the Government meant well for the oil bearing communities. In this direction, Kantian moral principles prescribe that the Government only operates within the ambit of the 1999 Constitution, being the grundnorm; and such other relevant laws like the Petroleum (Drilling and Production) Regulations 1969, Petroleum Refining Regulations 1974; Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN); Oil in Navigable Waters Act, Cap 106 LFN 2004; Petroleum (Drilling and Production) Regulations (PDPR), Environmental Impact Assessment Act (2004) Cap. (E12), LFN, 2004; Oil Pipelines Act Cap. (07); Nigerian Minerals and Mining Act (2007) and the Petroleum Act Cap (P10), LFN 2004. However, the most disturbing trend running through these laws is that there exist a wide rift between the law as enacted and the political will to enforce the laws so enacted to regulate the activities of the IOCs. One of the ills plaguing the oil sector is that the IOCs have hijacked the regulatory tools, the agencies and the Nigerian State against the oil communities. (Ekhator 2016: 90). The IOCs embark on "regulatory capture" by blackmailing the Nigerian State and the regulatory agencies with threats of divestment of the oil and gas sector, which is why the IOCs are allowed unhindered freedom to operate as they choose because the regulators are made to believe that adequate enforcement of the laws would result to these IOCs refusing or opting out of their continuing to invest in the Nigerian oil sector. But the way these IOCs operate in Nigeria's Niger Delta is different from how they operate in the United States, Britain

and Europe under their very stringent and jealously enforced laws. This was equally anticipated by Section 7 of the Nigerian Minerals Oil (Safety) Regulations which provide that all drilling, production and any other operations for exploitation, production and subsequent handling of the crude oil and natural gas shall conform to British and American standards. (Ehkator 2016: 63).

Injustice and Marginalization of Oil Producing Communities of the Niger Delta

The plausible understanding here is that there is so much injustice and marginalization of the oil bearing communities of the Niger Delta area which acts of injustice cry to high heavens for equitable remedy. Some of these injustices consist in subjecting the minority tribes of the Niger Delta from where crude oil is drilled, exploited, produced and handled to grave environmental degradation and pollution problems for over six decades now, and which includes the present intractable problem of black soot been experienced in Rivers State. Embarrassingly, the same Niger Delta area is made to battle with being constitutionally denied the accrued benefits from the oil operations by the IOCs and the government.

The environmental problems confronted by the peoples of the Niger Delta area and the indifference of the Federal Government to resolving these myriad of problems can be better appreciated when we draw a philosophical comparison with reference to other countries using Kantian categories. For example, it is provided in Section 109 of the Constitutional Act of 1867 of Canada, otherwise called the British North American Act as follows "All lands, mines, minerals and royalties belong to the several provinces of Canada: Nova Scotia, Quebec, Ontario, and New Brunswick at the Union and all sums due or payable for such lands, mines, minerals and royalties shall belong to the several provinces of Canada: Nova Scotia, Quebec, Ontario, and New Brunswick in which the same are situate or arise". From the above, it is obvious that while the Canadian Constitution provides that the native peoples of Canada owns, controls and manages the mineral resources including petroleum reserves and all their lands, it is the direct opposite of what the Nigerian Constitution makes available to the oil rich Niger Delta area of Nigeria. As distinct from the Canadian case, the Nigerian State in the name of the central government forcefully appropriates the ownership, control and management of the resources and proceeds from the oil wealth, mines, minerals and all lands to itself. This offends the Kantian categorical imperative.

The allowance to given to the indigenous peoples to own, control and manage the oil resources and proceeds from mines, minerals and all the lands within their enclave, it must be stated transcends what is provided for in the Canadian Constitution. There exist several international treatises, protocols and instruments that promote the ownership of mineral or natural resources by the indigenous peoples and states where such resources are discovered or located. One of such instruments is the United Nations General Assembly Resolution No. 626 (VII), adopted in 1952, which states succinctly thus "the right of people freely to use and exploit their natural resources is inherent in their sovereignty." After that the United Nations came up with Resolution 1803 of 1962 (XVII) (Permanent Sovereignty over Natural Resources) adopted by General Assembly in 1962, which says "the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interests of their national development and of the well-being of the people of the state concerned." Further, in 1974, the United Nations General Assembly adopted Resolution No. 3281 (XXIX) of which Article 2 declares that "every state has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over its wealth, natural resources and economic activities." The others are is the Charter of Economic Rights and Duties of States, G.A. Res. 3281 (XXIX), Article 2, U.N. Doc. A/RES/3281 (XXIX) (Dec. 12, 1974) and Article 21 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, which mandated the indigenous peoples to have the right to freely

dispose of their wealth and mineral or natural resources for their own good and not one placed on the central government. The provisions of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act are justiciable, hence there had arisen some disputations that have been disposed of by the Courts on the despoliation of the environment in favour of the peoples. (See Eghosa Ekhator, 2014). One other such instruments which prompts Kantian categorical imperative is the United Nations Declaration on Peoples' Right to Development, which aside its many essentials, stated that:

i. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, and contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.
ii. The human right to development also implies the full realization of the right of the peoples to self determination, which includes the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

The central theme that underlies the above declarations is that multi-national companies exploiting and producing oil and other natural resources in any country as in Nigeria owe it as a moral duty and obligation to their host communities to contribute to the development, wellbeing and advancement of the communities where they operate. This moral duty holds true notwithstanding that any or all other statutory provisions were or are to the contrary. On the heels of the above, we also examine Principles 5, 13 and 16 of the U.N. Doc A/CONF. [51/26 (Vol. I) (Aug. 12, 1992) or the Rio Declaration of the United Nations World Commission on the Environment and Development (WCED) (see a copy at Our Common Future - @ lexmercatoria.org) which among others prescribe as follows:

PRINCIPLE 5
All States and all people shall co-operate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

PRINCIPLE 13
States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within the jurisdiction or control to areas beyond their jurisdiction.

PRINCIPLE 16
National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment."

Nigeria as a member of the United Nations World Commission on the Environment (WCED) was represented at the U.N. CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, RIO DE JANEIRO, BRAZIL, June 3-14, 1992 and was a signatory to the U.N. Doc A/CONF. [51/26 (Vol. I) (Aug. 12, 1992) or the Rio Declaration. Flowing from this fact, it is pertinent to state that Nigeria is under a moral obligation to allow the Niger Delta peoples to control and manage their resources in obedience to and observance of the principles elucidated in the Rio Declaration. Nigerian Government

ought to have a robust plan to engender sustainable development of the rural Niger Delta communities, eradicate poverty, decrease the disparities in standards of living of Nigerians so that the needs of both the rich or poor; and the majority and minority tribes are met by the Nigerian State without disadvantaging any other. The tenets of the Rio Declaration also bind the Nigerian State to enact laws which confer strict liability on the IOCs and compel compensation in an expeditious manner for adverse effects of environmental damage occasioned by human activity, and laws which promote the internalization of environmental costs and the use of economic instruments which would oblige every polluter to bear the cost of their polluting activities. This is what the Nigerian Government has deliberately refused to do for the oil bearing minority communities of the Niger Delta area since 1956. Sadly, rather than do this, the Federal Government has continued to tie the indigenous minority peoples to the rigidity and totality of the Federal Government's ownership of oil resources, which has been one of the root causes for the Niger Delta militancy. (Ekhator 2016: 52).

The injustice is so revolting when one recalls that when groundnut, rubber, palm oil, hides and skins were the major foreign exchange earners for Nigeria, the derivation was hinged on a fifty per cent of the proceeds of any royalty received by the Federation in respect of any produce and mineral extracted in that Region; with thirty percent been paid into the Distributable Pool Account for the whole country. The ruling class has failed to realize the huge injustice stalking the people of the Niger Delta in the face, despite knowing that they contend with the ills and problems of environmental degradation and pollution that attend oil exploration and production. In the face of being denied resource control, they also face the absence of viable developmental projects in their area while right before their face; the petro-dollar from the oil wealth is used to develop distant non-oil producing communities in the North. This has invariably led to the current wave of radical political consciousness blowing across the Niger Delta area, one that has led to illicit breaking of oil pipelines, oil bunkering and illegal refineries. (Okoko & Ibaba 1998: 57). The Nigerian State has turned itself into a monstrous self-seeking private capital accumulator of the petrodollar that is spewed from the Niger Delta area and gathered to feed fat political sectionalism and ethnic cleavages (Roberts 1999: 21). The Nigerian State, intoxicated with unearned revenue from oil, has like a Father Christmas, been given to the frenzy of illicitly doling out oil proceeds to non-viable states merely created by Military Dictators as an extension of the patrimonialism of the oil rich Niger Delta peoples.

Immanuel Kant's Categorical Imperative as the Basis for the Appraisal of the Obligation of the IOCS Under Section 24 (c) & (d) of the 1999 Constitution

We have succeeded in giving a layout of the laws put together by the Nigerian State to regulate and control oil production in the Niger Delta area since 1958. This is vital for a critical understanding of Immanuel Kant's categorical Imperative as the basis for the appraisal of the obligation of the IOCs under the relevant Sections of the Constitution and other relevant laws and in particular, Section 24 (c) & (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This Section provides that every citizen shall respect the dignity, rights and legitimate interests of others citizens and that he shall make a positive and useful contribution to the advancement, progress and well-being of the community where he resides. The introduction of the Kantian categorical imperative not only defeats but transcends the arguments and objections put forward by the IOCs. It neutralizes the argument that theirs are business concerns, whose main motive is profit-making; and that the development of the oil producing communities is the primary responsibility of Government and not their immediate concerns at all. This they contend is because there is no law that gives them any such obligation and that thus owe no duty to perform functions that pertain to the Government. However, a glimpse at Kantian

categorical imperative shows that "moral requirements" placed on the shoulders of the IOCs do not depend upon the enactment of any law or constitutional provision.

According to J. David Velleman, Kant's moral requirement that the IOCs develop the oil producing communities where they work leaves no room for inquiring into why they should obey the obligations stated in Section 24 (c) & (d) of the 1999 Constitution. What the IOCs are doing in all their evasive arguments reduces to asking for reasons and more reasons for doing what they owe the people as a moral obligation required of them. In the words of Velleman, "this demand implicitly concedes the very authority that it purports to question—namely, the authority of reasons. Why would we demand a reason if we didn't envision acting for it?" he questions. The fact remains that once the IOCs begin to adduce reasons for acting or failure to act positively, then it immediately becomes clear that there is something self-defeating in their adducing selfish reasons at variance with universal reasons to cover up their inaction for over six decades now. Velleman 2006: 19 goes on to say that:

> Yet the argument does more than close off one avenue of escape from the requirement to act for reasons. It shows that we are subject to this requirement if we are subject to any requirements at all. The requirement to act for reasons is the fundamental requirement from which the authority of all other requirements is derived, since the authority of other requirements just consists in there being reasons for us to obey them. There may be nothing that is required of us; but if anything is required of us, then acting for reasons is required. . . the foregoing argument . . . unable to foreclose escape from the requirement to act for reasons.

The point we are stressing is that the "requirement to act for reasons" is demonstrable of the inescapability of moral obligation or duty such as those bequeathed onto the IOCs in their neglect of the Niger Delta area. This duty as spelt out in Section 24 (c) and (d) of the 1999 Constitution is captured by what Eghosa Ekhator (2014: 121) calls the IOCs obligation towards the oil producing companies of the Niger Delta area as well as to its shareholders to pursue those policies; to make those decisions and to follow the lines of action which are desirable in terms of the objectives and values of a good society. Kant's emphasis is not on law, but transcends the interests of the firm and that which is required or expected by law (Eghosa Osa Ekhator 2014: 121). The Kantian notion of duty is that "to act for reasons is to act on the basis of considerations that would be valid for anyone in similar circumstances", or in other words, to do for the oil bearing communities of the Niger Delta area what the IOCs would have done for an oil bearing community in Canada, Britain, United States of America or France, not dependent upon their developmental level or economic growth.

This is so because "whenever our behavior is determined by our conception of law—that is, by our realization that some action is required—we are being governed at bottom by a recognition of reasons, either constituting or backing up that requirement." This reminds us of Kant's words in the Groundwork and the Metaphysics that "Everyone must admit that a law, if it is to hold morally, i.e., as a ground of obligation, must imply absolute necessity". What Kant means by the above is that we must admit that the command, "Thou shalt not lie," does not apply to men only, as if other rational beings had no need to observe it, but to all rational beings. The same is true for all other moral laws properly so called (Kant 1964: 27). It is more Kantian to understand that "persons are things for the sake of which other things can have value", hence a man is not held to be a means to an end. This is the basis of the obligation owed the IOCs to the oil bearing communities of the Niger Delta region of Nigeria. This can best be expressed very tersely by relying on the words of J. David Velleman when he declared that- "The phrase 'for the sake of' indicates the subordination of one concern to another. To want money for the sake of happiness is to want money because, and insofar as, you want to be happy; to pursue exercise

for the sake of health is to pursue it because, and insofar as, you want to be healthy. You may also care about things for the sake of a person. You may want professional success for your own sake, but you may also want it for the sake of your parents, who love you and made sacrifices to give you a good start. In the latter case, your concern for your happiness depends upon your concern for others; in the former, it depends upon your concern for yourself."

Eghosa Osa Ekhator (2014: 13) expresses that this obligation among other things ought to cover six (6) core areas which are corporate governance, ethical business conduct, fair employment practices, health and safety at the work place, environmental protection, corporate philanthropy and socio-economic development. For Immanuel Kant, only the unconditional ought is the moral ought. Why? This is because, as we all recognize, morality must be necessary and universal, that is, it must be absolutely binding, and absolutely binding on all IOCs and the Nigerian State alike. This immediately brings to the fore the views expressed by Miller, 1992: 402 when he stated that:

> [A] categorical imperative would command you to do X inasmuch as X is intrinsically right, that is, right in and of itself, aside from any other considerations—no "ifs," no conditions, no strings attached . . . a categorical imperative is unconditional (no "ifs") and independent of any things, circumstances, goals, or desires. It is for this reason that only a categorical imperative can be a universal and binding law, that is, a moral law, valid for all rational beings at all times.

In considering the above terse declarations, it is self evident that the duty trusted upon the IOCs under Section 24 (d) of the 1999 Constitution qualifies as a categorical imperative. It is a call to carry out their businesses guided by corporate governance, ethical business conduct, fair employment practices and health and safety at the work place whilst ensuring that they continue to network and commune with local communities so that all the commitments of the IOCs are based entirely on grass-roots priorities. In this way, such obligations like corporate philanthropy and socio-economic development are not to be driven by the whims and caprices of outsiders who decide which specific initiatives should be implemented so that the IOC can operate freely, but to be largely determined by the people of the localities where the oil facilities are situated. (Frynas, J. 2005 & Eghosa Osa Ekhator 2014: 136). Kantian imperative is a command to undertake community service and develop the oil bearing communities all round, inasmuch as it is right morally, independent of any reasons given by the IOCs for refusing to develop the oil bearing communities and whether or not the Federal Government does their bit or not. It simply does not admit of any conditions, because as Eghosa Osa Ekhator (2014: 134) declares, the corporate codes of the IOCs operating in Nigeria are moderated and modified to resemble the characteristics of those found in their home countries. Eghosa Osa Ekhator (134). This explains why it ought to operate independent of any thing, circumstances, goals and desires of the Nigerian State and rather to ensure that it is made universal and binding because the said corporate codes adopted in Canada, United States of America, Britain, Germany, France, Italy, etc and such other home countries of these IOCs, being categorical in nature, are rationally binding for all beings everywhere and at all times. This is why it is intrinsically right, that the same standards and guideline are operational in Nigeria in as much as they are in their home countries. It is a moral law that applies to everyone, hence it is also binding on the IOCs. The fact that Kant forces us to consider the worth of human beings will forever drive future debates that will haunt us for years to come, therefore the IOCs are enjoined to only act in such a way that the peoples of the oil bearing communities of the Niger Delta of Nigeria are treated as human beings and considered as an end in themselves, and never to be considered as a means to the end, the end here being profiteering by the IOCs.

Conclusion

The issues that we have distilled when Kant's categorical imperative is placed side by side with the various Nigerian Constitutions, the numerous statutory provisions and the evasive and non-compromising attitudes of the International Oil Companies is that they have acted selfishly, to continue to maintain the "astronomical profits accruing to oil MNCs" from the lands which have been forcefully appropriated by them for their operations. There is need for everyone to admit that a law, if it is to hold morally, i.e., as a ground of obligation, must imply absolute necessity", not admitting of vagaries, distensions and personal gains.

It is our recommendation that there is need to make a change of guards by amending the Constitutional provisions and the regulatory frame work so that these IOCs are made to adopt global principles on corporate social responsibility. It is also imperative that the IOCs know that they owe a moral duty towards the society where they work and make their money beyond their primary obligations to their shareholders or owners and should adopt a voluntary community social responsibility approach for addressing the social and environmental impacts of business activities. This "changing of guards" in the statutory provisions in Nigeria should be deliberate and ought to include those who prescribe stiffer penalties for violations and accompanying intercalated regulatory regimes with interdisciplinary camouflage. This tilt would come with roles assigned to the local communities, local, state and federal tiers of government and the IOCs based on their percentage participation in the oil production process, each acting in complementarity.

The anticipated change should lead us to tinker with Section 44 (3) of the 1999 Constitution, revisit the Derivation Principle and revert to what obtained under the 1960 and 1963 Republican Constitutions, reposition and give life to Section 24 (c) and (d) of the 1999 Constitution, and review the Land use Act in terms of when and how much of compensation that ought to be paid out and the ownership of communal land hitherto forcefully appropriated by the State from the customary owners. In particular, it would enthrone and promote the principles that lay beneath Kantian categorical imperative, secure the goodwill of the people and thus ground the obligation of the IOCs to the oil bearing communities. It will also compel compliance with some good laws such as those which require compensation for all acts of despoliation and environmental degradation. The real intentions of the makers of Regulation 21 (2) of the Petroleum (Drilling and Production), Regulations (PDPR), Sections 11 (5) and 20 (2) of the Oil Pipelines Act and Section 7 of the Nigerian Minerals Oil (Safety) Regulations would be brought to life by the application of Kantian categorical imperative, so that what we will have left will be a marriage of our local laws with those that apply in the home countries of these IOCS. It is only by such a marriage of our laws with Kantian categorical imperative that the interventions of the State would improve instead of to worsen the conditions of the peoples of the oil communities of the Niger Delta. The uncelebrated victims of the States preferred mode of lopsided accumulation of petrodollars. The current of change would also require the wholesale collapse of Kantian categorical imperative onto the 1999 Constitution raises the need also to review, indeed, strike down Section 44 (3) of the 1999 Constitution. The current spate of violence being perpetrated against the IOCs is wont to possibly get worse, and a total overhaul of the system is the only preferred alternative. The goal of this re-ordering is intended to engender a smooth interface, collaboration and inclusion of the local communities in the delivery of the IOCs obligations under Section 24 (c) & (d) of the 1999 Constitution. The sole thrust and only drive of this change is intrinsically woven with the Kantian categorical imperative as the means to adopting a useful framework within which new ways of collaboration and partnerships among corporations, governments and civil society can be established, creating innovative mechanisms for addressing existing governance deficits and assuming and fulfilling

their universal obligations (Eghosa Osa Ekhator 2014: 131). This invariably follows on the fact that, "It is irrational to treat any person merely as a means, for any reason whatsoever. No reason for acting can justify treating a person as a mere reflector of value, because the importance of acting for reasons depends on the importance of personhood in general as a source of value" (Velleman 2006: 44). The end-result is that, the new arrangement will reposition the worth of the people of the Niger Delta area so that they become the end in themselves, and not merely a means of realizing some greater ideals – profit. This is the purpose and intendment of Section 17 (2) (d) of the 1999 Constitution, that the "exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented."

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