

## THE OBLIGATION OF THE INTERNATIONAL OIL COMPANIES (IOCS) IN NIGERIA'S NIGER DELTA: A KANTIAN PERSPECTIVE

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### **Abstract**

*The oil prospection and production activities of International Oil Companies (IOCs) in the Niger Delta region of Nigeria have raked in trillions of dollars into the Nigerian economy, yet the host communities remain a sorry sight as they wallow in abject poverty and utter neglect due largely to irresponsible exploitation of oil. The IOCs have continued to operate to date with palpable sense of indifference at best, and of careless abandon at worse, to the sordid plight of the host communities. It very much seems the IOCs operate on the pretext that their responsibility only lies in the exploitation and production of crude oil to the exclusion of care for the environment and the populations of their host communities. The question, therefore, is how long could this situation last without eventual catastrophic extermination of lives and natural resources of massive proportions? The paper examines the International Oil Companies' obligation for care of the environment against the backdrop of Kantian categorical imperative. It emphasizes the urgent need for compensation for the damages already done so far; and the paramount necessity for moral caution in further exploitation of oil in accordance with the global best practices. It concludes by maintaining that exploitation of oil in Niger Delta of Nigeria could well be embarked on with minimal or zero damage on the environment much as it is in the home countries of the IOCs if necessary cautions are exercised.*

**KEY WORDS:** *Duty, patrimonialism and clientelism, categorical imperative, duty, obligation, environmental devastation, environmental despoliation.*

### **INTRODUCTION**

Oil discovery in Nigeria at commercial quantity was in 1958 at Oloibiri, in the present Bayelsa State of the Niger Delta of Nigeria. By the end of Nigerian civil war in 1970, oil had been found spreading through the present states of what is today known as South-South region of Nigeria which in other words is the Niger Delta region of Nigeria. Quite shortly after oil was discovered in such commercial quantity in the Country, Nigerian economy became largely dependent on oil exploration and agriculture which hitherto was the economic mainstay of the country began to suffer neglect due to oil Dollars as Nigeria became about the seventh largest oil exporter among the Organization of Petroleum Exporting Countries (OPEC) cartel. Hence Nigeria got enmeshed in what became popularly known as oil boom

which eventually proved oil doom to the country as agriculture suffers so much as Nigeria lost the capacity to feed its teeming population.

The oil boom era of seventies saw a lot of white elephant projects in the country, and development of certain cities like Lagos, the then Federal Capital, many new highway projects, flyovers and overhead bridges. Nigeria navigated in such much oil Dollars to the extent that the then Head of State had to lament publicly that Nigerian problem was not how to make money but how to spend it. Awash with oil money, Nigeria embarked on plans for World Blacks and African Festival of Arts and Culture codenamed (FESTAC) at the expense of staggering amount of money that could be invested into developmental projects for the uplift of the citizenry. Abuja as New Federal Capital was proposed and embarked upon in anticipation of early relocation from Lagos to Abuja without sparing the oil money for the development of the host communities of the petroleum. The home communities that suffer collaterally for the new national wealth remain in oblivion as if they do not exist and what is more, those communities remain devastated and gradually degenerated into utter squalor due to exploitation of oil in complete disregard and careless abandon. As if the Federal Government neglect of the area is not enough, the collateral damages of exploitation coupled with lack of moral care for the environment of the host communities accentuated the plight of the those communities who now exist in virtual abandonment and consequently in poverty and penury. Such basic amenities which are taken for granted in advanced nations like good roads, electricity and portable water, to mention but a few are rare privileges to the oil producing communities. In effect, these communities here known and referred to as oil host communities suffer two levels of injustices namely, Federal Government neglect and IOCs' neglect with careless approaches to exploitation and exploration. However, our primary concern in this paper is on the IOCs' duty of moral care and the need for compensation for damages on the host communities.

Our objective is therefore to locate and analyze the indebtedness of these IOCs to their host communities, and the moral imperative to do the needful all under the light of Kantian moral precept of categorical imperative. However, we are not oblivion of the IOCs tendency to rely on the Constitutions of Nigeria and on the many lopsided laws designed to shield these IOCs and enable them evade the duty that comes with exploitation and production of crude petroleum. Needless to say that Nigerian authorities at all times are accomplices to IOCs, after all Nigeria is well known to be suffering from endemic corruption both public and private places which IOCs can always rely on. In recounting what we refer to as lopsided laws, we recall the words of Eghosa Osa Ekhator, that these IOCs thrive in an atmosphere of a deliberate lowering of standards and operational costs, otherwise termed the "*race to the bottom*" practice by the Nigerian State, in order to attract foreign participation in the oil sector. According to Ekhatore (2006: 37, 38):

Nigeria exemplifies a country engaged in the 'race to the bottom' theory to attract FDI, especially in the oil and gas industry. It is argued that by having a weak regulatory regime in the oil and gas sector, the Nigerian government is attracting foreign direct investment via the instrumentality of the foreign oil multinational corporations (MNCs) that operate in the sector. On the other hand, it is contended that the weak regulatory regime and attendant challenges in the oil and gas sector in Nigeria serve as a disincentive to foreign direct investment. 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.

Nigeria, as a developing nation deliberately introduces and relies upon the 'race to the bottom' theory in the several manifest ways that we tinker with our standards and regulations in the oil sector in order to gain competitive advantage over foreign exporters. The 'Race to the bottom' syndrome is also evident in the weak regulatory regimes that fail to control and moderate the activities of these IOCs in their day to day operations. This explains the basis for these multinational oil corporations (IOCs) to rely on and continue to adopt poor and inefficient environmental standards, and the consequent abandonment of their moral duties and denial of any indebtedness to their host communities. (Ekhator 2006: 48).

### **KANTIAN CATEGORICAL IMPERATIVE VIS-A-VIS MORAL OBLIGATION/DUTY**

Immanuel Kant very much understands the primary role played by persons undertaking reasonable obligations and duties, hence he consistently confronts us with what he terms “categorical imperative”, which is the consideration of the worth of human beings in what we do. Kant’s categorical imperative conceives for humanity the test or method of determining whether or not a particular action or duty should be considered moral, immoral or otherwise amoral. For Kant the source of moral justification is the categorical imperative. Shandon L. Guthrie (2001). Drawing inspiration from Guthrie (2001), Kant’s categorical imperative is suggestive that “Nothing in the world - indeed nothing even beyond the world - can possibly be conceived which could be called good without qualification except a good will.”(Kant,1964: 9). In dealing with his ethical masterpiece called “categorical imperatives”, Kant was quick to point out that categorical imperatives are quite different from hypothetical imperatives. Categorical imperative encapsulates “the simple conformity to law in general, without assuming any particular law applicable to certain actions that serve the will as its principle, and must so serve it, if duty is not to be a vain delusion and a chimeric vision”. (Immanuel Kant 1989: 29).

The kernel of ‘race to the bottom’ syndrome outlined above does not in any way serve the common good, but hangs on duty to extract a pound of the flesh off the people of the Niger Delta area. It has no consideration for humans as ends in themselves, but rather as mere means to an end. We say this because Kant holds that “[T]he moral worth of an action does not lie in the effect expected from it, nor in any principle of action which requires to borrow its motive from this expected effect”. (Immanuel Kant 1989: 28) This is best appreciated when it is realized that the actions consummated by “race to the bottom” is based upon the effect anticipated, to avoid and reject the duty and obligation owed the Niger Delta peoples, of making deliberate and purposful contributions to the progress, advancement and well being of the oil bearing communities, whose environment and source of livelihood had been decimated and devastated by oil prospecting and production activities. This is more palpable when viewed against the backdrop of the fact that these IOCs operate in their own countries of origin based on the principles and tenets of Kantian categorical imperative, holding the worth of man as an end in itself and not merely a means of realizing some greater ideals.

In their home states, these IOCs have been known to promptly comply with the regulatory provisions, exhibit concern and care for the environment of their home countries. They work assiduously to protect and develop the environment for the good of their people, and they do much to reduce pollution and safeguard and protect the environment and pay huge penalties for each and every violations. This is accessible from recorded violations of the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act and the Hazardous Waste Management Act by the USEPA website at [www.ehso.com/prevp0](http://www.ehso.com/prevp0); Settlements/Enforcement/USEPA @ [cfpub.epa.gov/enforcement/cases/](http://cfpub.epa.gov/enforcement/cases/); or from Major Criminal Cases/Enforcement/US EPA at [www2.epa.gov/.../enforcement-basic](http://www2.epa.gov/.../enforcement-basic). It is the fact that these IOCs do not allow their activities to disrupt the eco-balance, the primary ingredient that engenders the welfare and health of the communities in their home states that also inform the factors considered necessary as a fundamental prerequisite for oil exploitation and exploration and production. What operates in the IOCs home nations or countries is akin to acting in good will. As seen by (Miller 1984/1992: 461); “For Kant a good will, or a pure will, is an intention to act in accordance with moral law, and moral law is what it is no matter what anything else is. To act out of a good will is, then, to do X because it is right to do X, and for no other reason. This would be rational morality.” It is quite obfuscating the more when one tries to grasp why the differences in application of the rules of engagement and community service, as a member of that society that is being gradually decimated and desecrated by environmental pollution. This brings us to the consideration of the constitutional and statutory provisions which regulate and guide oil exploration and production in Nigeria.

### **NIGERIAN STATUTORY PROVISIONS FOR OIL INDUSTRIES OPERATING IN THE COUNTRY**

It is obvious that there is a robust statutory framework to regulate and control oil exploration and its production in Nigeria. However, the prime question that keeps nudging at one’s heart is, whether it

could be safely assumed that the Nigerian State in enacting these laws would be deemed to be acting in the interest of the public good? The foregoing question is necessitated by the fact that one of the fundamental provisions of the 1999 Constitution says that the “exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented.” [Section 17(2)(d) of the 1999 Constitution]. The statutory enactments meant for regulation and control of the activities and operations of the IOCs in Nigeria includes the following: Laws of the Federation of Nigeria, 2004; Petroleum Act, Cap. (P10), Laws of the Federation of Nigeria, 2004; Hydrocarbon Oil Refineries Act, Cap. (H5), Laws of the Federation of Nigeria, 2004 and Harmful Waste Act, Cap. (H1), Laws of the Federation of Nigeria, 2004 among others.

Most pertinent enactment here is the Constitution of the Federal Republic of Nigeria, 1999 (as amended), herein the 1999 Constitution. Being the grundnorm, the 1999 Constitution remains the source and the main inspiration for all other relevant laws in this sector. However, the 1999 Constitution is not without its antecedents, in other words it was not enacted in a vacuum, for it came to be a reenactment from previous constitutions before it such as 1979, 1966 and 1960 Constitutions. Despite these Laws being spelt out in these Constitutions, in effect they amount to centralizing and unifying the exploitation, production, ownership, use and earnings from crude oil rather than protecting and preserving the host communities of the Niger-Delta region. It appears a conspiracy of the political elites of the major ethnic groups who by their numerical majority have the advantage of pushing out Laws to undermine the minority oil producing communities of the Niger Delta. The conspiracy theory seems plausible especially in view of apparent lack of political will from the dominant ethnic groups to seek decentralization of the control and management of petroleum in the true spirit of Federalism as was the case in the First Republic Constitution of 1963. Consequently, the hosting communities are inclined to think that the provisions of the 1999 Constitution are intended to suppress the minority in their natural endowment and aspirations for self-development through their God-given resources. In a true and fair Federalism, one would expect the Constitution to guarantee the host communities the right of control of their resources only to pay taxes to the Federal purse. In such a case of true Federalism, the host communities will use the resources of their lands to cater for their environment as much as they feel the negative impact of the exploitation.

It is however on record that political clamor for restructuring for true Federalism has severely been resisted by the Northern elites who have always insisted on maintaining grip on political power and not the majority ethnic groups of House/Fulani, Igbo and Yoruba. The injustice of the present 1999 Constitution has generated some yearning for Republican Constitution of the like of 1960 and 1963 Constitution and the same has inclined many Nigerians to preference for Republicanism. It is believed that 1960 and 1963 Constitutions had it within its primary objectives to allay the fears of minority as expressed by the minorities themselves. Indeed, the 1960 and 1963 Constitutions did include some safeguards intended to protect the minorities from the centrism and bossiness of the northern elites. It is worthy of note that the 1960 and 1963 Constitutions apart from being republican, were actually more foundational and made to address the embarrassing lopsidedness of the Nigerian Federation that we have come to contend with today. In the words of Okoko & Nna, the unstable nature of the Nigerian federalism is attributable to inequality in size and resource endowment between the component units of the federation, and the asymmetrical relationship between the component units’ access to the instrument of state power and the appropriation and utilization of resources from oil. p. 18 the principal provisions of the 1960 and 1963 Constitutions that are worth making references to include Sections 31, 79 (3), 82, 137 (2), 138 (1 & 2), 139, 140, 141, 159 and Item 25 of the Exclusive List. Relevant here are the following: Section 31 (1 – 4) of the 1963 Republican Constitution, which is the same with Section 40 (1 – 3) of the 1979 Constitution and Section 44 (1 – 2) of the 1999 Constitution. The above provisions relate to the restriction on the power of the State to compulsorily acquire the moveable and immovable property of a citizen of Nigeria. The referenced provisions of the 1960 and 1963 Constitutions on compulsory acquisition of property is absolute, because the land and things that pertain to land under these two constitutions are the property of the people and communities, as the case may be.

However, the provision of the 1979 and 1999 Constitutions begin a new phase of assault and usurpation of the powers of the people over their property. According to Okoko and Nna (1999:24) –

further damage was again done by the Report of the Aboyade Technical Committee on Revenue Allocation which completely replaced derivation with population, need, equality of states, etc as principles of revenue or revenue allocation. This was followed by the Land Use Decree of 1978 which 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.

## **OIL PRODUCTION AND ITS NEGATIVE IMPACTS IN OIL PRODUCING NIGER DELTA REGION**

The Niger Delta coastline is adjacent the Atlantic Ocean, in the central part of Southern Nigeria, covering a total land area of about 7,000km<sup>2</sup>, Africa's largest Delta with a rich mangrove, salt water swamp and rain forest, the third largest mangrove swamp forest in the world (Ajibade & Awomuti, 112). This area is rich, fertile, alluvial plains for agriculture, and harbors waters for fishing and farming, and a variety of sea and forest animals which is what had provided subsistence for the people of the area for decades. Intensive and aggressive oil activities began in the Niger Delta area in 1956 after oil was first struck in commercial quantity in Oloibiri in Bayelsa State. The statistics today show that over 60 Billion barrels of oil and 137 Trillion Cubic Feet of Gas had been discovered, over 27 Billion Barrels of Oil had been produced, and over 400 Billion Dollars sold from oil produced from the area (Ajibade & Awomuti, 121). Unfortunately, at all the stages of oil petroleum business, beginning from the geophysical prospecting and seismic activities, oil platform sites, construction of access roads, drilling and production of oil, right of ways for pipelines, refining and distribution of the refined products, all cause extensive damage and pollution to the environment.

In looking at the issue on our hands, the following are the points of negative and devastating impacts of oil prospection and production in the oil rich Niger Delta Area:

- a. Environmental problems;
- b. Contamination of water sources;
- c. The problems of oil spills;
- d. Health Risks;
- e. Forest destruction and bio-diversity losses;
- f. Effects of Gas Flaring;
- g. Effluent discharge and disposal;
- h. Socio-Economic Underdevelopment of oil bearing communities;
- i. Community-IOCs conflict;
- j. Inter and intra-communal conflicts.

### **A. ENVIRONMENTAL PROBLEMS:**

Expert studies have revealed that once crude oil is discharged into an aquatic environment, it immediately undergoes physic-chemical changes in its properties due to the effect of weathering processes. The weathering processes include evaporation, spreading, dispersion, dissolution, emulsification, adsorption into suspended particulate materials, sedimentation and in particular, agglomeration and sinking, oxidation and biodegradation. The pollution of water resources has a far reaching effect on all the other aspects of the environment of the Niger Delta area. The environment of the Niger Delta Area has therefore been subjected to extreme environmental despoliation and extensive damage beyond words. The pollution of the environment by oil exploration and production companies causes serious disruption in the atmosphere, breathing air is loaded with particulate matters introduced into the air from the oil operations, the carbon dioxide and carbon monoxide content in the Niger Delta Area has thus risen far above the normal limits, thereby, putting the lives of the people of the area at great risk.

Only recently, black soot showed up in Rivers State with its attendant problems, and especially, its health implications which border on its effect on the kidneys, lungs and its link to respiratory diseases

and cancers. The incidence of black soot is closely linked to environmental pollution from oil production activities in the Niger Delta area. According to Ibama Brown & Eyenghe Tari, 2015, petroleum when released into the environment can cause air pollution either burnt or not burnt. In a further explanation, it was stated that “the toxic fraction of light crude oil (found in The Niger Delta Region), evaporates most easily carrying with it a deadly cocktail of PAHs, including benzene (a known human carcinogen) and toxic fumes, such as toluene, xylene, butane, and propane.” (Ibama Brown & Eyenghe Tari 2015: 279). The end result of such adverse impairment of air caused by petroleum exploration and production is acid rain, which grossly changes and destroys the water in the seas, streams, creeks and underground water and attacks the roof and form of the people’s habitat.

## **B. CONTAMINATION OF WATER SOURCES**

The United Nations Environmental Programme (UNEP) findings in Ogoniland is exhaustive in this aspect of our work, and we would urge a detour save a peripheral discourse on same. The issue of the contamination of water resources by oil exploration and production activities as stated in the said UNEP Report is one that requires immediate intervention by all parties in order to save lives. It has been stated that “as the spill occurs in this region, emulsification occurs and there is the degradation of the immediate and adjoining environment. This seriously jeopardizes the chances of survival of those who fishing and farming are of commercial importance to them in these areas” (Ibama Brown & Eyenghe Tari 2015: 273). The indiscriminate discharge of oil from oil and gas exploration activities invariably by the time it either evaporates, spreads, disperses, dissolves, emulsifies, adsorbed into suspended particulate materials, sediments, agglomerates and sinks, oxidation and biodegradation would result in the accumulation of these oil in the water and on the land by drainage. Such Petrolia oil accumulations in water endanger estuarine and marine organisms. This is because the pollution of the marine habitat due to exploration and production of petroleum in the Niger Delta area destroys the marine bionetwork, kills fishes and birds and exterminates other live forms which get in contact with the spilled oil. The fishes that manage to escape death from the spilled oil migrate to safer grounds to spawn and breed. This is what has killed fishing and farming in an area that was once rich in fishing and farming.

## **C. THE PROBLEMS OF OIL SPILLS**

It has been stated that of all the problems of pollution of the environment of the Niger Delta by oil and oil operations, that the most vast and most destructive of the sources of oil pollution is that arising from oil spills (Iloeje, A. F., 2016: 47). In their work, S. O. Oladipupo, R. B. Mudashiru, M. O. Oyeleke and S. B. Bakare 2016: 92 held as follows “oil exploration activities has rendered the Niger Delta region as one of the five most severely petroleum damaged ecosystems in the world. Studies have shown that the quantity of oil spilled over 50 years was at least 9 – 13 million barrels, which is equivalent to 50 Exxon Valdez spills (FME, et. al. 2006)” in about 6, 817. The problem with oil spills is that the oil seeps and is absorbed by both animal and plants alike, thus making the food chain heavily impregnated with petroleum residues of deadly proportions.

## **D. HEALTH RISKS**

The risks associated with oil exploration, exploitation, production and distribution is quite overbearing on the health of the populace. Oil pollution, either through oil spills, gas explosion, gas flaring, or fires and the indiscriminate and insanitary disposal of drilling mud and drill cuttings include an upsurge in respiratory, dermatological, asthma, difficulties in breathing, headaches, nausea bronchitis, etc among the population of thoses in close contact with crude oil because of the high volatility of the constituents of crude oil like toluene, xylene, butane, and propane and high toxicity of the resultant fumes. This is aside the health challenges and ailments that arise as a result of the improper handling and management of crude oil such as diseases associated with poor water quality due to destruction and pollution of all available water sources by oil exploration. According to S. O. Oladipupo, R. B. Mudashiru, M. O. Oyeleke and S. B. Bakare 2016: 100, such health concerns arising from pollution of the environment

by the IOCs (International Oil Companies) are a violation of the fundamental right to dignity of the human person and right to a clean environment of the people.

In its extensive findings by the Rivers State Ministry of Environment and published in 2019 in its Technical Report on Soot observed that “The comparative analysis of 27 months before and after observation of soot shows a clear rise in the assessed soot related respiratory dermatology and reproductive conditions after the observation of the soot in 2016 as compared to cases before the observation of the soot.” According to that report, the difference is significant of a range  $P > 0.05$  (Rivers State Ministry of Environment Soot Report, April, 2019: 86). In that report, the hazards of particulate matters from petroleum refining, especially, illegal petroleum refining, alias “*Kpofire*” was highlighted at page p. 42, thus “This is very dangerous depending on the nature and chemical composition of the substances. This may result in making surface water acidic, variation in nutrient balance of coastal waters and large basins, depletion of soil nutrient, damage to sensitive and endangered species of farm crops and forest reserves, eco-diversity and most contemporary, is the contribution to acid rain.” This obviously spell a bad omen to the people of the State and shows that all forms of pollution resulting from petroleum is a time bomb merely waiting to explode on the health of the people. The most disturbing is that there are not qualified medical institutions to manage these health challenges, which is why they ought to be controlled, and at best totally eradicated.

#### **E. FOREST DESTRUCTION AND BIO-DIVERSITY LOSSES.**

The forests and bio-diversity of the oil bearing communities of the Niger Delta area have been decimated and damaged extensively by the over five (5) decades of oil exploration in the Niger Delta area. Gas flaring and accidental fires and purposeful burning have rendered the original rich and diverse mangrove and fresh water forest reserves of the Niger Delta Area a waste land. In addressing what is termed accidental fires, we refer to fires which occur at oil locations, along pipelines carrying crude oil, refined petroleum products or gas, either due to equipment failure, pipeline blowout but which were not as a result of deliberate plans to set these products on fire. Among this class of fires however, we add fires from the wanton vandalism, theft and sabotage by third parties, because the primary object of the second class was illegal collection of crude oil or refined products, but not to set them ablaze. The other group of fires that we term “purposeful fires” are those fires that are set deliberately to destroy crude oil or illegally refined petroleum products as a punishment or deterrence to the illegality of the practices. This includes the setting ablaze of illegal refineries, illegally refined products and seized crude oil by the armed forces. In either case, one thing stands out, fires exert a huge toll on the forests and bio-diversity of the Niger Delta area.

#### **F.EFFECTS OF GAS FLARING**

Gas flaring and venting, Aniefiok E. Ite, Udo J. Ibok, Margaret U. Ite, Sunday W. Peters, 83 says is a practice in the oil and gas industry used to dispose of associated gas during production of crude oil. Presently, this practice has been overhauled and drastically reduced in the developed countries of the world. However, in Nigeria, over 75% of associated gas produced has been flared since oil was discovered and despite all the legal and administrative attempts aimed at arresting this evil, it has had only to be shifted from time to time, and from year to year. It is in the Niger Delta area that the effects of such inglorious practice of gas flaring can be seen in the form of excessively heavy concentrations of carbon-dioxide, carbon-monoxide, particulate matters, nitrogen oxides, sulphur dioxide, heavy metals, black carbon soot on land and in the waters in the Niger Delta area. Presently, there are over 123 gas flaring sites in the Niger Delta alone, which makes it the highest contributor to green house gases, with a discharge of over 45.8 billion kilo watts of heat from burning over 50,970,240 m<sup>3</sup> (or about 1.8 billion ft<sup>3</sup>) of gas, a large variety of volatile organic compounds (VOC) and polycyclic aromatic hydrocarbons (PAHs); some of which are carcinogenic. Studies have also proven that the flaring of gases from petroleum production process also leaves the soils surfaces with PAHs of pyrogenic sources, an indication of soil contamination and poor agricultural yields. It has also been established that gas flaring is the cause of vegetation gradient, rendering the land unsuitable for

cultivation, causes the charring of mangrove and rainforest vegetation, loss of economic and botanical plants needed as local medicinal herbs. Gas flaring also causes thermal pollution, because of the way it creates a distinct micro climate around the gas flare sites. (Ajibade & Awomuti: 115).

### **G. EFFLUENT DISCHARGE AND DISPOSAL**

Oil production involves the production and accumulation of oil related wastes and effluents on a large scale. These wastes require special treatment and management before they are disposed of but which are not done for those disposed of in the Niger Delta area because of lack of appropriate regulatory machinery. Some of these wastes include drill cuttings, drill mud, produced water and other associated wastes. In addition, drill cuttings and drilling mud have been indicated in destruction of the benthic macrofauna, and it was established that it takes a minimum of five (5) years for the recolonization of such macrofauna. Among these, the chemical composition of produced water, that is the waste water from oil production activities consists of large amounts of dissolved salts, hydrocarbons, heavy metals, organic and inorganic components, naturally occurring radioactive materials, etc., which are usually dumped indiscriminately by the oil companies in and within their operational areas without recourse to the environmental implications and consequences of such waste dumps.

Produced water is a highly complex effluent which has within it thousands of compounds, with varying concentration of the chemicals between wells and in line with the lifetime particular a well. In most cases, produced water contains oil dispersed, alkylphenols and aromatic hydrocarbons, heavy metals such as lead and mercury and some naturally occurring radioactive materials (NORM). Produced water also contains large amounts of dissolved particles, sulphur and sulphides, organic materials, inorganic salts, acetic acid and propionic acid. It has also been found to cause corrosion inhibition, scale inhibition, coagulants and flocculants. (Torgeir Bakke, Jarle Klungsoyr, and Steinar Sanni: 2013). The harmful constituents of produced water arises from the chemical component of the accompanying monocyclic aromatic hydrocarbons such as benzene, toluene, ethyl benzene, xylenes and polycyclic aromatic hydrocarbons (PAH). Produced water is has been discovered in studies by Meier, S., Andersen, T.E., Norberg, B., Thorsen, A., Taranger, G.L., Kjesbu, O.S., Dale, R., Morton, H.C., Klungsoyr, J., Svoldal, A., 2007b causes DNA-damage, gonadal development and digestive gland histochemistry which can affect a number of reproductive parameters in fishes.

### **H. SOCIO-ECONOMIC UNDERDEVELOPMENT OF OIL BEARING COMMUNITIES**

The main problem confronted by oil producing communities is that where the oil is being produced are seriously disadvantaged, grossly underdeveloped and reeling in abject poverty. This is because the ownership of oil has been taken from the traditional owners and handed over to the Government as Federal Government property. The said Federal Government ownership of oil makes the IOCs to ignore the issue of developing the areas where the oil comes from and where their operations take place. This is why we have set out in this work to examine whether in the face of the activities of the IOCs which devastate and pollute the Niger Delta environment, the operators and owners of the oil and mining leases have no obligation towards the locals, and hence any corporate social responsibility as anchored by the 1999 Constitution of Nigeria and other international regulations and treaties. This has been the reason for the numerous agitations by the Ogoni people under the Movement for the Survival of the Ogoni People (MOSOP) and the various groups in the Niger Delta area for resource control of the petroleum resources as it is obtainable in other climes of the world. The whole system of underdevelopment and pauperization of the people of the Niger Delta Area who own the lands from which the oil is taken is aptly stated by Iloeje, 2016: 275 thus- "The Oil producing communities have basically remained dependent and underdeveloped, persistently dis-empowered, socio-culturally marginalized and psychologically alienated. The oil wealth from the oil resource exploitation and exports benefit directly only the operators of the oil industry and the bureaucrats in government."



## **I. COMMUNITY – IOCs CONFLICT**

The real basis for the oil bearing community – IOCs conflict is the alienation of the people who own the oil from exploitation, production and the proceeds of the oil. The 1999 Constitution and the Land Use Act totally divest the people of any claims to the oil wealth, and since the Federal Government that should be confronted is in far away Abuja, the demands are laid before the IOCs. For Ajibade, L. T. and Awomuti, A. A., 2009: 116, these laws were primarily promulgated to restrict access to such land, while at the same time making it possible for multinational investors to have unrestricted access to explore for oil unchallenged even on sacred land. These have led to a series of social conflict between host communities and multinational companies.” In order to protect the huge capital outlay invested in the oil industry, the IOCs resort to dependence on and use of heavily armed army and Mobile Police officers to pummel the people into submission while they continue to “harvest” the oil and its petrodollar proceeds.

The climax of community – IOCs face off is the justification and formation of such ethnic and militant groups like the Movement for the Survival of the Ogoni People (MOSOP), Ijaw National Congress (INC) and such other groups in the Niger Delta fighting and demanding for an equitable share in the proceeds from oil. For the Ogoni people, they came out with “The Ogoni Bills of Rights” while for the INC at a Conference in 1998, made a declaration at Kaima on the 11/12/1998 which they call the “Kaiama Declaration”, where they declared in part thus “We cease to recognize all undemocratic decrees that rob our peoples/communities of the right to ownership and control of our lives and resources.” It is quite obvious that from the above and the present level of oil theft, pipelines vandalism, kidnapping of oil workers and armed conflict with oil companies, it is unlikely that this wind of agitation and violent confrontation will die down unless changes are made to the foundation.

## **J. INTER AND INTRA-COMMUNAL CONFLICTS**

The continued survival of oil companies depends on the inability of the oil bearing communities to speak with one voice and to approach them with united zeal, hence they have often been accused by the ethnic groups such as MOSOP and INC to be sponsoring and instigating inter- and intra – communal conflicts in their areas of operation. There have been numerous incidents of violent conflicts between interest groups in the same community fighting for the ownership of one oil field or the other and between different communities laying claim to the same land in order to determine who gets the contract of clearing pipelines, refuse disposal and cleaning the yards, which are the type of jobs given to host communities and landlords by the IOCs. This is made worse when seen in the light of the destruction of the land and sea, resources on which the communities thrived, whose environment has been made toxic and unfit for survival of the faun and fauna. It is the inability of the natives to farm and fish that has heralded the increase of crimes in the Niger Delta as the search or survival has taken different turns, pipeline vandalism and oil theft. The fact remains that without oil, most of the communal clashes, in-fighting and conflicts, and at times costly litigations in courts of law for possession of land on which is sited an oil facility would not have existed, hence they are primarily oil induced intra and inter communal conflicts, with attendant effects on the environment.

## **THE OBLIGATION OF CARE BASED ON KANTIAN CATEGORICAL IMPERATIVE**

In considering the obligation of care placed on the International Oil Companies, we have to refer to companies like The Shell Petroleum Development Company of Nigeria Limited (SPDC), Nigerian Agip Oil Company Limited (NAOC/ENI), Total E & P Nigeria Limited, Mobil Company Nigeria Unlimited, Chevron Nigeria Limited, and the many other multi-national companies engaged in oil prospecting, exploiting and producing in Nigeria. The obligation of care required these IOCs to conduct their operations only within what ought to be considered as being morally right, in the interest of the people and persons living where the oil is produces and exploited, and which complies with the provision of Section 17 (2) (d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). This section of the 1999 Constitution provides that “exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented.”

However, this proactive and highly protective shielding provision of the Nigerian Constitution had been continually relegated to the background, surreptitiously swept under the carpet, and with no attention been paid to the values sought to be vested in the people by law. These provisions have been repeatedly breached by the IOCs, with no attendant reproof or punishment by the authorities. Even worse, is the fact that these IOCs are aided in their persistent noncompliance with the Constitutional provisions that seek to promote the duty of care for the IOCs by the State or organs of the Nigerian State. This has rather added to the spate of noncompliance as these IOCs relish such support and without much ado, abandon their obligation to the peoples of the Niger Delta region of Nigeria.

In our examination of the inability or refusal to operate these oil facilities for the good of the community, we again look at this against the back drop of the “*race to the bottom*” as adopted by Nigerian Government Ekhaton (2006: 37, 38). Pertinent questions here are thus: “as the standards are lowered, do these IOCs not know about it, and if they do know what are their reactions; are they happy working under a system where the standards have been reduced or do these IOCs stand to gain anything from the policy thrust of “*race to the bottom*” or lowered standards?” Well, it is because these IOCs stand to benefit immensely from “*race to the bottom*” that they accept such lowered standards, something that they would not dare compromise in their climes. This falls grossly short of Kant’s take that laws are to be universally considered so that conformity to law is done generally, without assuming that any particular law ought to merely apply to certain actions and not so serve the will as its principle. When different laws are allowed to apply to different climes, Kant says it is “a vain delusion and a chimerical vision”. (Immanuel Kant 1989: 29). In agreement that the IOCs benefit largely from every lowering of standards, Nyemutu Roberts 1999: 24, 25, says “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 profit maximization”. This explains the flurry of excitement among oil TNCs to buy up Nigerian stakes in the oil industry whenever such an opportunity shows up.

The fact remains that any lowering of standards occasioned by “*race to the bottom*” syndrome is not intended to serve the common good, but to perpetrate and promote a regime of environmental hazards and denigration on the people. Without a human face to all of their operations, humans are not taken to be ends in themselves, but as mere means to the anticipated end – reduction in production costs and maximization of profits. It is realized that by focusing on the effects, the IOCs forgo and avoid their duties of obligation, and consequently refuse to undertake purposive and significant contributions to the wellbeing and growth and progress of their host communities outside what is required to merely serve as rite of passage for them.

Any wonder that the same companies in their home countries promptly respect and comply with all law and regulations on exploitation of human and natural resources, but within our clime, disdain and jettison our local laws, subvert and under conditions of subtle blackmail, decide to “have their way in any matter irrespective of where the relevant Nigerian law stood” Nyemutu Roberts 1999: 25, continuously and constantly destroy the once serene environment of the Niger Delta peoples and even when criminal cases are instituted against them on environmental despoliation and degradation, they prefer to spend millions of Dollars to defend their violations from the court of trial up to the Supreme Court, while continuing to ignore the prerequisite of environmental restoration desired by the people. On the contrary, it is observed that for certain violations, some of them quite common if put within our setting, Shell British Petroleum (Shell BP) has had to pay \$4 billion in criminal crimes and fines for the alleged violations of the Clean Air Act and the Migratory Birds Treaty; and in connection with the Deepwater Horizon Explosion and Gulf Oil spill which occurred between 20<sup>th</sup> April, 2010 and 19<sup>th</sup> September, 2010, Shell BP paid over \$20 Billion for the Deep Water Horizon oil spill for management of the ecology and natural resources, and for compensation and over \$4.5 billion for what the Judge described as reckless and gross negligence for the Deep Water Horizon oil spill all to the United State Environmental Protection Agency. This, it is obvious that Nigeria’s Shell PD will not accept to pay any such penalties or compensation, but would rather challenge such demands in court knowing that the consequential cases would last from 10 – 30 years in a Nigerian court. The disturbing aspect is that, by the time the final verdict would be given by the Supreme Court, the environmental problems that attracted the penalties would have become permanent and irreversible, the compensation would be diminished by inflation, a large chunk of the persons to be compensated would be dead from

the effect of the environmental despoliation, while the rest would have been rendered invalid by reason of certain hostile policies of these IOCs, especially, that of divide and rule.

Then aside the above, 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 its operations here is contorted and operated in the obverse. The inability, refusal or inducement to the regulators and state authorities, or passes made or directed at permitting these IOCs to act outside the ambit of the moral law calls all their action to question. If a good will, or a pure will, is an intention to act in accordance with moral law, and moral law is what it is no matter what anything else is, then refusing to do any particular act out of good will is a dent on rational morality (Kant). This calls to question why these IOCs do nothing to stop, ameliorate or mitigate the adverse effect of their operations even after these IOCs know based on the statistics at their disposal; know about and experience acidification of soils, corrosion of roofing materials, poor crop yields, ambient air degradation, thermal conduction/convection into the environment, dispersal of carbon dioxide, nitrogen oxides and volatile organic carbons, black soot and other high particulates, noise waves, methane, benzene, drilling wastes, drilling mud, cement, oil spills. The years of the operation and comparisons with their home countries also make them aware of the accompanying adverse effects of oil production and exploitation such as large scale environmental pollution, degradation and environmental instability. These adverse effects of oil exploitation and production in the oil rich Niger Delta region, stand at the base of the "disarticulation of the delicate balance in the natural peasant economies of the producing areas" (Nyemutu Roberts 1999: 31 – 35) , yet they remain insensitive and do nothing. In Rivers State since 2016, the environment has become saturated with what has come to be called "black soot", with its attendant but slowly killing hazards, and as at today, not one of these IOCs seems to be involved in proffering any viable solutions except to show peripheral and topical concerns, despite its obviously very high consequences on the health of the people. In other words, the IOCs we have proven continue to refuse to act to uphold or build up the Kantian good will, to act rationally and to act morally by ensuring that the "exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented." See Section 17 (2) (d) of the 1999 Constitution. The IOCs continually direct their acts are towards increased profit from their old and obsolete investment in the Niger Delta region, hence they are caught hands down by the Kantian imperative to the effect that to act is to act so that man is the ultimate end and not a means to an end. Nyemutu Roberts 1999: 25.

## **CONCLUSION**

It is ominous and glaring that the IOC's continual act against the moral guide is an affront to the Kantian imperative. They continue to show their preference for short cuts, deliberately ignore morally justifiable acts, and defend and endorse acts which tend to favour maximum profitability and negative impact interventions, and these IOCs rather remain untouched by the magnitude of environmental violations in their areas of operations. They continue to do nothing to address the perceived inadequacies in the legal framework available to regulate the oil industry and revel in the "lackadaisical attitude of oil companies to the plight of the oil bearing communities (which) finds unity with that of a state equally perceived to be insensitive." (Nyemutu Roberts 1999: 10).

Added to this is the inclination of the IOCs to operate parallel compliance to the statutory provisions in their home states as different and diverse from that undertaken in Nigeria's Niger Delta oil producing areas. In drawing on the above, therefore, we have a positive and strong indication that the obligation of the International Oil Companies to the Niger Delta oil producing areas, in terms of helping to ameliorate and mitigate the effect of their activities on their environment, in terms of restoring the environment to a habitable state, which obligation as have been shown above, falls grossly short of the Kantian perspective. It is rather a queer aspect of the continual violations and failures of the IOCs to respond positively to the demands of the oil bearing Niger Delta area of Nigeria, which ultimately have no place within the categorical imperative of Immanuel Kant, except there is a reversal of interest and focus.

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