

The Dialectics of Operations of Multinational Oil Companies in Nigeria: Exploring the Capture of the Oil Spill Regulatory Agency and the Question of Environmental Security in the Niger Delta Region

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ABSTRACT

The Nigerian government through National Oil Spill Detection and Response Agency (NOSDRA) has the responsibility of monitoring and regulating incidents of oil spill in the Niger Delta region of Nigeria. However, effective performance of NOSDRA in terms of efficient execution of its statutory roles is yet to be actualised. The ineffective performance of the agency has attracted serious negative implications thereby raising conflicting arguments on the degree of oil spills and factors responsible for the spills. The debates on the sources of oil spills as well as factors responsible for inadequate performance of regulatory agency(ies) are yet to be resolved among scholars. The study examined how operations of NOSDRA have engendered effective regulation of oil spill in the Niger Delta region. The study was underpinned by qualitative-descriptive method and regulatory capture theory was employed as analytical framework. The findings of the study indicated that NOSDRA had been found to always delay response to oil spills in the Niger Delta region even when such spills have general adverse effects on the lives and socio-economic well-being of the community affected. It was found that multinational oil corporations such Shell, Elf, Mobile and others are often in control of the monitoring and response processes of oil spills. This is because NOSDRA largely depends on the oil companies in terms of equipment, expertise, vehicles and other logistics before visiting oil spill sites. This dependent relationship is one way NOSDRA succumbs to the capture by the MNOCs leaving the regulatory agency ineffective. The study recommended that the Nigerian government should strategically widen the jurisdictional operation of NOSDRA by amending the 2006 NOSDRA Act in order to strengthen the agency and expand its instruments of capability to monitor, regulate and impose sanctions either directly or by recourse to the courts. The capture of NOSDRA is in most cases a manifestation of paucity of funds as well as mismanagement of available funds. By this very circumstance, it is suggested that the Nigerian government should invest enormous funds and establish financial management mechanisms that can guarantee transparent financial management as well as the independence of the NOSDRA.

Key Words: NOSDRA, Multinational Oil Companies, Oil Spill, Environmental Security, Regulatory Capture

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I. Introduction

There is no gainsaying that over years crude oil producing communities in the Niger Delta region of Nigeria have been poorly defended as a result of human induced environmental security threats. The activities of multinational oil companies such as Shell, Chevron, and Mobil have more or less posed colossal threats to environmental protection and human lives. Oil explorations have to a significant degree contributed to general environmental degradation. The official operations of multinational corporations (MNCs) pertaining to oil exploration have led depletion of biodiversity, oil spillage, gas flaring, noise pollution, sewage and wastewater pollution, land degradation and soil fertility loss and deforestation. Pitkin (2013) argues that reckless oil extraction has many damaging environmental impacts, from the initial clearing of sensitive ecosystem to pollution during the extraction process to the treatment of industrial wastes. These unarmed security threats have advanced a sort of justification for unending armed conflicts between the indigenous communities and oil companies. This has been exacerbated by the oil companies' impunity of operations with no regard for the environment (Emuedo, Anoliefo and Emuedo, 2014).

There are historical facts that the oil industry in Nigeria has had very grave and consequential impacts on the Niger Delta region and its people. In 1980, Texaco spill that poisoned streams serving as sources of drinking led to the death of 180 people, including children as well as hospitalization of about a hundred other villagers, due to the consumption of water contaminated by oil leaks (Manby, 1999). Obvious impoverishment in Ogoni land as well as pursuit for environmental justice culminated in the emergence of the Movement for the Survival of the Ogoni People (MOSOP) (Yakubu, 2017). MOSOP-led protests were to end the prevailing environmental degradation in the Niger Delta. According to environmental experts have maintained that the Niger Delta is rated as the most oil-impacted environment and polluted area in the world (Ikelegbe, 2005; Obi, 2000).

Sadly, both Nigerian government and oil companies have not taken drastic actions to mitigate oil spill pollution in the Niger Delta. Many years of continuous and unregulated oil spills have been attributed to over dependence on oil as the major source of financial inflows by the Nigerian economy. Hence, effective monitoring and regulation by the Nigerian through the regulatory agencies such as National Oil Spill Detection and Response Agency (NOSDRA), Nigerian Maritime Administration and Safety Agency (NIMASA), National Emergency Management Agency (NEMA), Department of Petroleum Resources (DRP), Niger Delta Development Commission (NDDC) has remained problematic. Pitkin (2013) argues succinctly that the Nigerian government is financially dependent on oil companies, thus the actions of the oil companies are encouraged by the favourable regulations of the government.

In order to hold oil firms responsible and accountable as well as in an effort to curtail the negative impacts of oil extraction and exploration, the Federal Ministry of Environment (FME) stipulates that any owner or operator of oil facility is directly responsible for spills and their impacts on the environment. Consequently, in 2006, the Federal Government of Nigeria, through the Act of the Parliament established the NOSDRA with the main responsibility to detect and respond to oil spill issues in the country. After more than a decade of the existence and operation of NOSDRA, incidences of oil spill have been a daunting issue among policy makers and the Niger Delta region. Despite operations of NOSDRA, the physical environment of the Niger Delta has been negatively affected by the activities of the oil Multinational Corporations (MNCs) operating in the region (Ekhat, 2013). This, therefore, calls for critical questioning the ability of the agency to effectively regulate and manage the activities of multinational oil exploring companies, and the 'will' of Nigerian government to protect the rights of the Niger Deltans. Arguably, Nigerian Government has given the green light to private actors, and the oil Companies in particular, to devastatingly affect the well-being of the people (African Commission on Human and Peoples' Rights in Amnesty International, 2013). There have been deliberate acts of oil MNCs defying the extant laws (Ekhat, 2012), and NOSDRA as a regulatory appeared overwhelmed. This is possibly caused by external interferences into internal affairs of the agency. For instance, oil MNCs have been accused of taking the lead and providing resources during official oil spill investigations. Amnesty International (2013) concurs that in many cases, oil companies' personnel usually lead oil spill investigations and NOSDRA does not initiate oil spill investigations.

Today, writers and analysts have attempted to identify the major causes of oil spills in the region, however, there have been ongoing debates among scholars, policy makers, oil companies and indigenous people of Niger Delta on the main factors responsible for oil spills in the region. Despite plethora of studies, critical questions concerning the regulatory authority and capacity of the Nigerian government as a 'rentier state' over oil MNCs are yet to be adequately raised. In light of this, this study attempts to critically and analytically raise questions on 'who regulates who?' 'Is it the MNCs or the Nigerian Government?'

II. Conceptual Review

The Concept of Oil Spill

Oil spill occurs when there is release of petroleum hydrocarbon into the physical environment (Ibrahim, 2014), as a result of inability to control the flow of crude oil (Rim-Rukeh, 2015). This has been a common trend in the Niger Delta region where vandals, militants, saboteurs, oil companies and the government have all been seen culpable (Olaniyan, 2015). In reality, there are various factors responsible for the occurrence of oil spill. For instance, poor maintenance, sabotage, tank failure, rupture of pipelines, tanker accident, oil well blowout, human error and criminal bunkering. In his words, Chika (2009) states that the causes of oil spills are traceable to pipeline and flow-line leakages; blow out from well heads due to poor maintenance, damage and spills from flow stations. Rim-Rukeh (2015) maintains that the causes and circumstances of oil spills are many and varied in this forms such as: operational (equipment) failures and human factor, corrosion of pipelines and storage tanks, over-aged pipelines and other production infrastructure, fire and explosion during drilling operation, loading and discharging operations at the terminal, allisions/collisions of oil carrying vessels, bunkering activities and crude oil theft process and pipeline vandalization (sabotage). By and large, crude oil spill takes place in situations where the flow and movement of crude oil is poorly or not controlled, therefore, resulting to physical damage of the environment or ecosystem. The causes are human induced in one way or the other.

There exists different categories of oil spill which include: Tier One, Tier Two and Tier Three. According to NOSDRA, *Tier One* is oil company(ies)' operational type of spills, which is less than or equal to 7 metric tonnes (50 barrels). In other words, the amount of the oil spills is relatively low. An individual company takes responsibility of such spills and provides official response resources because they occur as a result of its operational activities. *Tier Two* is a larger spill, greater than 7 metric tonnes (50 barrels) but less than 700 metric tonnes (5000 barrels). This volume of spill may require the attention of the government on mutual aid basis. *In Tier Three*, there is large spill, greater than 700 metric tonnes (5000 barrels), where substantial resources are required. Based on the large volume of spilled oil, there may be support from a National (Tier 3) or International Co-operative Stockpile, like the Oil Spill Response Limited (OSRL). However, such operation is subject to government control and direction. It is important to recognize that a spill which receives a Tier 3 response may be close to, or remote from company facilities (www.nosdra.org).

Confronted with the challenges of oil spill incidents, ineffective performance of the agency has attracted serious negative implications thereby raising conflicting arguments on the degree of oil spills and factors responsible for the spills. The debates on the sources of oil spills as well as factors responsible for inadequate performance of regulatory agenc(ies) are yet to be resolved among scholars. The study examined how operations of NOSDRA have engendered effective regulation of oil spill in the Niger Delta region.

The Concept of Environmental Pollution

Crude oil production and its resultant pollution of water, soil, and vegetation have adversely affected the people's pre-colonial economic activities (Raji and Abejide, 2013). The pollution has endangered traditional economic activities of the communal people of Niger Delta who originally involved in fishing, hunting, farming and so forth. The dimension of oil pollution and destruction of the environment has been an issue of public concern. The volatility of the climate as well as depilation of the ecosystem due to oil pollution are issues that provoke negative sentiments and reactions. In line with the observable realities, Jike (2004) submitted that the environmental problems associated with oil production in the Niger Delta include the contamination of nitrogen, phosphorous and sulphur, useful for the preservation of soil nutrients and fertility; widespread air, water and soil pollution; the creation of waste that cannot be disposed of in a short time or recycled; and the depletion of resources that cannot be replenished. Oil related environmental problems pose a human security threat at both local and global levels (United Nations Environmental Programme-UNEP, 2011). In this case, gas flaring, oil spill, disposal of toxic waste and so forth in the Niger Delta are a security threats beyond national borders.

Theoretical Framework

Regulatory Capture Theory propounded by George Stigler in 1971 is adopted in this study. The theory explains who will receive the benefits or burdens of regulation, what form regulation will take, and the effects of regulation upon the allocation of resources (Stigler, 1971). Stigler argued that regulated profit-oriented industries maintain a keenly influence the regulators, whereas ordinary citizens are less motivated. Consequently, despite the rules such as pollution standards, often affect citizens in the aggregate, individuals are unlikely to lobby regulators to the degree of regulated industries. In this regard, as advanced by the theory, regulated industries devote large budgets to influencing regulators at federal, state and local levels. Contrarily to financial strength of the supposedly regulated industries, individual citizens who have a very limited financial power spend only limited resources to advocate for their rights.

The term capture as expressed by MacMahon (2002), means the behaviour of the constituted authorities which acts to protect the illegal, unethical, immoral or anti-public interest practices that those authorities are charged with 'policing' (MacMahon, 2002). Further, as analysed by MacMahon, regulatory capture stands to mean the capture of regulator by the regulated in three stages.

At a first level of capture, the regulator allows the regulated to breach the law, ethic, good practice rule, moral principal or public interest duty that the regulator is responsible for upholding. At a second level, the regulator assists the regulated to avoid the regulatory consequences after the fact. At a deepest level of development, the 'capture' is so complete that the regulator may assist the regulated to defeat the regulatory regime before the fact (MacMahon, 2002).

By and large, regulatory agencies that are controlled by the industries they are charged with regulating are known as captured agencies. This is classified as government failure due to assumption that government agencies, in contrast to their original purpose of establishment, advance the commercial or political concerns of special interest groups or large industries that dominate the sector they are charged with regulating. When regulatory capture occurs, the interests of firms, organizations, or political groups are prioritized over the interests of the public, leading to a net loss for society. On this premise, Stigler (1971) argues that an industry benefits from regulation if it captures the regulatory agency involved. In view of this, regulation is not about the public interest at all, but is a process, by which interest groups seek to promote their private interest (Ezeibe, 2015).

Ezeibe (2015) noted that:

This capture is achieved by constant gift/bribe giving and taking between the government agencies and the industries. Rather than promoting efficiency, the regulating agencies create an efficient environment for profit maximization for industries.

Regulatory capture theory is akin to the rent-seeking, client politics and political failure theories as well as the capture theory of politics (Onuoha 2008 in Ezeibe, 2015). The rent-seeking attitude of Nigeria as a rentier state has engendered a clear ground for over dependence on rents (profits from oil) from oil exploring industries whose operations and activities are assumed to stand against the general interest of the public. This appears to be the dilemma of NOSDRA that operates as government agency entrusted with the responsibility of monitoring, regulating and controlling the operational practices of oil companies in Nigeria. Instead of oil firms to be effectively regulated, the reverse has been the case. In the final analysis, the gains and profits go to few individuals at the expense of the majority, as Wilson (1989) submitted thus: Capture occurs when most or all of the benefits of a programme go to some single, reasonably small interest but most of all the costs will be borne by a large number of people such as the taxpayers. This is a form of corruption where government regulatory agencies assumed to advance only the interest of the few.

NOSDRA and Effective Regulation of Oil Companies

As a regulatory agency, the Act of the parliament that established NOSDRA statutorily powered it to respond to oil spills management and also cooperates with other Agencies regarding implementation of the NOSDRA Plan. It is in this regard that NOSDRA has been positioned as a should-be-agency that possesses instruments of capacity in the management of oil spill incidents in Nigeria. However, empirical evidences have pointed to the fact that NOSDRA is yet to realise this, as there are challenges negating optimum accomplishment of the original objective of the said agency. In fact, one of the greatest challenges confronting NOSDRA is how to effectively regulate oil companies to consider the effect of their operations on their host communities.

Table 1: The Major Transnational Oil Companies in the Niger Delta

No	Oil Company	Shareholders	Operators	Share of National Production
1	Shell Petroleum Development (SPDC)	NNPC – 55% Shell – 30% Elf – 10% Agip – 5%	Shell	42.0%
2	Mobil Producing Nigeria	NNPC – 50% Mobil – 42%	Mobil	21.0%
3	Chevron Nigeria	NNPC – 60% Chevron – 40%	Chevron	19.0%
4	Nigeria Agip Oil	NNPC – 60% Agip – 40%	Agip	7.5%
5	Elf Petroleum Nigeria	NNPC – 60% Elf – 40%	Elf	2.6%
6	Texaco Overseas (Nigeria) Petroleum	NNPC – 60% Texaco – 20% Chevron – 20%	Texaco	1.7%
TOTAL				93.8%

Extract from Uyigüe and Agho (2007).

These multinational oil producing companies have often engaged in violation of human rights of the people of Niger Delta communities through different official means. Although, the Nigerian government had in the past made some policy statements within the context of regulating the operations of oil Multinational corporations that are tantamount to human rights violation, the situation has continued unabated, with serious implications. The obstinacy of oil companies polluting their operational areas, as well as their interferences in the activities of regulatory agencies is quite worrisome. This raises the question concerning the regulatory power of NOSDRA as a regulatory agency of government. There are cases of litigations between the host communities and oil companies over general oil related environmental pollutions. The empirical investigation conducted by Atubi (2015) revealed that the environmental degradation factor is the destruction of vegetation and farmlands by oil companies with 57.1% and gas flaring (53.6%), and this has left Niger Delta region one of the five most severely petroleum damaged ecosystems in the world (Kadafa, 2012). In most cases, oil companies such as Shell have heaped the blame on the activities oil bunkers who allegedly involve in the destruction of oil pipelines for personal gains. Abgonifo (2016) states that the activities of sabotage, theft, illegal bunkering and artisanal refining have been identified as the major source of oil spills in the Niger Delta. On the other hand, oil communities have often drawn the attention of the public regarding what they classify as destruction of their environment and means of livelihood. At the centre of these accusations and counter accusations, oil companies often deny to accept full responsibility for oil spill, hence leading to prolonged litigations. Nigerian government usually claims to be non-partisan, thereby leaving the legal battle between the oil communities and the concerned oil companies. Sadly, weak regulatory power of the NOSDRA has been exploited by oil companies resulting to frequent spills of large quantities of oil as well as extensive pollution of large areas in the oil communities (Ikporukpo, 2020). As a result of this, oil spills have become a reoccurring phenomenon with far-reaching and devastating implications in the Delta Niger region (Ejiba, Onya and Adams, 2016). For instance, there were 5,848 incidents resulting in the spillage of about 169,691 barrels of oil between 2010 and 2018 (Ikporukpo, 2020).

Table 2: Oil Spill Incidents in Nigeria, 2010-2018.

Year	Number of Spills	Quantity of Oil Spilled (Barrels)
2010	537	17,658.10
2011	673	66,906.84
2012	844	17,526.37
2013	522	4,066.20
2014	1,087	10,302.16
2015	753	32,756.87
2016	434	1,658.98
2017	429	9,097.05
2018	569	9,718.22
Total	5,848	169,690.79

Source: Department of Petroleum Resources (2018).

Despite the alarming rates of oil spills in Nigeria, and human security challenges they have posed to communities are directly affected, NOSDRA seems to operate cluelessly. International environmental organisations such as United Nations Environment Programme, (UNEP), Amnesty International, Human Rights Watch and United Nations Development Programme (UNDP), agree that there is obvious ineffective management of oil spill in Nigeria. Obviously, ineffective management of oil spill incidents has been attributed to frequent occurrence of oil spills; large quantities of oil spilled; persistence of impact of oil spills; and extensiveness of oil polluted areas. Although, studies have shown that the volume and incidents of oil spills are under reported (Emuedo, Anoliefo and Emuedo, 2014), the dimension at which oil is spilled in the Niger Delta is worth giving adequate attention. Nevertheless, viable regulatory institutional mechanisms are lacking in this regard to avoid or reduce large quantities of oil spill. For instance, in spite of the report(s) by oil companies that majority of oil spills in the region is due to sabotage; neglect on the part of IOC's and ageing infrastructure have equally contributed to the high incidence of oil spill and gas flaring as experienced in the region (Ejiba, Onya and Adams, 2016). In his view, Akpomuvie (2011) laments that there are serious questions regarding the age and condition of oil pipelines in Nigeria with regard to industry and international standards. Unfortunately, in many oil fields across the Niger Delta communities as well as many parts of Nigeria, ageing pipelines abound, which have been in use over the past four decades that are overdue for replacement (Omofonmwan & Odia 2009). By the provision of the Oil Pipeline Act 1956, a 10 years replacement and maintenance of oil and gas pipelines was compulsory to avoid incidents of corrosion and ruptured pipelines resulting in environmental pollution.

Prominent oil spill incidents include the Bonga (2011), GOCON's Escarvous (1978); Idoho (1998); Shell Petroleum Development Company (SPDC)'s Forcados Terminal (1978); and Texaco Funiwa 5-Blowout (1980). The Niger-Delta area is the hub for oil and gas activities in Nigeria and it is plagued with so many problems that make incidents of oil spill rampant (Olaniyan, 2015).

Table: Slowest 10 Responses of oil spills in Nigeria

	Response time (Days)	Reported volume (Barrels)	Year	Location
Eni	430	4	2015	8" Nimbe South-Obama flowline
Shell	252	10	2016	20" TEP at Ugbuegunun
Shell	190	0.2	2015	12" Imo River - Ogale Pipeline at Owaza
Shell	189	0.4	2015	Ubie Well 5S/L Flowline at IduEkpeye
Shell	180	44	2016	20" Otumara-Escarvos Pipeline at Ogidigben
Shell	156	3	2014	Bonny Well 2L Flowline at Ererekiri /Okolo Launch
Shell	126	18.84	2012	16" South Forcados Trunkline at Oviriolomu
Eni	123	3.2	2015	Idu 11Ls Thermo Well
Shell	121	15	2017	12" Imo River-Ogale Pipeline at Umuololo
Shell	113	73	2016	20" Kolocreek to Rumuekpe Pipeline Riser at Aminigboko

Source: Amnesty International (2018).

It has been argued that NOSDRA has the reputation of delaying response whenever cases of oil spill are reported. There are factors responsible for this situation of delay. For instance, instead of NOSDRA to lead during oil spill verification, the oil firms are the ones to decide when to visit oil spill sites (Davis & Jones, 2011). In 2009, a letter that emanated from NOSDRA office that was addressed to Shell Petroleum Development Corporation (SPDC) for site visit reads: It is, however, regrettable that SPDC has not deemed it fit to respond to the various efforts of the Agency in ensuring that the damage assessment exercise is carried out promptly (Kumor, 2021). By this letter, it is believed that MNOCs determine when NOSDRA should carry out its assessment assignment which is a clear contradiction to what it is supposed to be under normal circumstances. The NOSDRA that is supposed to determine and regulate the time and mode of operation regrettably operates according to the dictates of the oil companies. The extent of oil spills in the Niger Delta region suggests that some essential provisions in the EGASPIN which in particular provide the 24 hours clause are being disobeyed by the oil companies in Nigeria without adequate sanction (Abgonifo, 2016). Due to the huge financial and material resources that are involved in oil site inspection the oil companies are reluctant in responding to oil spill areas regardless of the security threats and serious health implications such oil site poses

to the indigenous people. Sadly, the more the delay the more the damage to the environment expands disastrously.

For instance, this is exactly what happened in Bodo oil spill. At the start of the spill, NOSDRA was first informed of the spill on 28th August 2008, no site visit was done till 7th of November 2008, which is about 72 days after the incident. In Yorla oil well spill in Rivers state of Nigeria, it was reported that the oil spill continued burning for over a month. Again, in Nembe Obama South Flowline⁴, operated by Eni- one of the oil corporations in Bayelsa state of Nigeria, a spill was reported on the 8th October 2015, no JIV until 11 December 2018. This is about 430 days after the incident occurred (Amnesty International, 2018).

Amnesty International also reported that in 2016, it took SPDC 113 days to turn off a spill in Kolocreek to Rumuekpe Pipeline Riser at Aminigboko. In 2017, oil spill at Imo River – Ogale Pipeline at Umuololo was turned off after 121 days (Amnesty International, 2018). Further, this is also the case of the spill at Otumara-Escravos Pipeline at Ogidigben, where it took 180 days to stop the spill. Explanations to these negative developments can be situated within the context of weak capacity of government agencies to regulate; oil company exploitation of weak government regulation; obsolete technology; paucity of funds; and official corruption. The rentier state status of the Nigerian economy has been blamed to be responsible for poor regulation of the activities of the oil companies. Oil has been the mainstay of the Nigerian economy, thus, exercise of strong ‘political will’ by successive governments to impose strict regulations on oil companies have remained a mirage. Regulatory capture, rent-seeking, client politics and political failure theories have explained this scenario (Onuoha, 2008 cited in Ezeibe, 2015). It is this regard that the Federal government of Nigeria is usually accused of treating MNOCs as sacred cows. Further, the Nigerian National Petroleum Corporation (NNPC) has a very large stake in all oil producing companies, hence, the capacity to regulate and sanction oil firms is found apparently wanting.

NOSDRA and Environmental Management Legislations

According to the Act that established NOSDRA in 2006, the Agency shall carryout the following functions relating to oil spill management:

- i. In the event of a major or disastrous oil spill, in collaboration with other Agencies, NOSDRA co-opts, undertakes and supervises, all those provisions as set out in the Second Schedule to this Act;
- ii. Inspect oil and gas facilities with a view to ensuring full compliance with existing environmental legislation on oil pollution;
- iii. Assess the extent of damage to the ecology by matching conditions for allowing the spill against what existed before (reference baseline data and ESI maps);
- iv. Undertake a post-spill impact assessment to determine the extent and intensity of damage and long term effects;
- v. Advise the Federal and State Governments on possible effects on the health of the people and ensure that appropriate remedial action is taken for the restoration and compensation of the environment;
- vi. Assist in mediating between affected communities and the MNOCs;
- vii. Monitor the response effort during an emergency, with a view to ensuring full compliance with existing legislation on such matters;
- viii. Assess any damage caused by an oil spillage;
- ix. Expeditiously process and grant approval for any request made to it by an oil spiller for the use of approved dispersant or the application of any other technology considered vital in ameliorating the effect of an oil spill;
- x. Advise and guide the response efforts as to ensure the protection of highly sensitive areas, habitats and the salvation of endangered or threatened wild life; and
- xi. Monitor the clean-up operations to ensure full rehabilitation of the affected areas.

These ambitious functions of NOSDRA are meant to ensure effective management of oil spilled areas. What remains critical is the ability of NOSDRA to carry out these responsibilities in a most effective way. Ogbodo (2009) therefore maintains that effective monitoring and enforcement by a regulator is very crucial to the efficacy of any regulatory system. In other words, laws that are comprehensive and consistent with a range of sanctions as well as mechanisms to enforce compliance are also critical to compliance levels. In light of this, NOSDRA has the responsibility, as provided by the law to sanction defaulted oil companies regarding inadequate compensation to the affected communities whose environments are destroyed as a result of oil exploration. Beyond compensation, NOSDRA is empowered to impose sanctions on any multinational oil company in a situation of failure to officially report or cleanup/remediate spills (Maitland & Chapman, 2014).

Although NOSDRA has claimed to assess and impose sanctions on MNOCs in recent years, there seems to be a general perception that the agency lacks the power to enforce these penalties commendably (Premium Times, 2014).

There are existing rules relating to liability and compensation for harms arising from oil spills. They include:

- i. Oil Pipelines Act (OPA);
- ii. The Petroleum Act;
- iii. National Oil Spills Detection and Response Act;
- iv. and the National Oil Spill Contingency Plan (NOSCP).

The Oil Pipeline Act (OPA) seems to be the most applicable law which requires oil pipeline licensees to adequately pay compensation in two oil spill-related scenarios. (i) For damages resulting from leakages or breakages in crude oil pipelines (not in a situation of “malicious third party interference”). Section II (5)(c) of the Oil Pipeline Act 1965 prohibits oil companies payment of compensation for oil spills if it is as a result of default of the aggrieved/affected persons or by a malicious act of a third party. Malicious acts perhaps are attributed to pipeline vandalism. (ii) For damages due to neglect “to protect, maintain or repair any work, structure or thing executed under the licence (Maitland & Chapman, 2014). The latter provision seemingly envisions the possibility of licensee liability for neglect to protect pipelines from malicious third party interference. The clauses that provide exceptional cases are perceived by oil communities directly affected as being unfavourable. The reason for this is that multinational oil companies who are expected to be responsible for oil spill are accused of cashing in on the ‘exceptional cases clause’ as an escape route (Abgonifo, 2016). It seems controversial to accurately ascertain that oil spills perpetrated through vandalism or other malicious acts. Barry (2010) expressly stated the position of this Act: if oil from the pipelines were bunkered by a third party and this led to a spill, the MNOCs would no longer be legally responsible for remediation of the site. Therefore, it is argued that the implementation of this Act in its spirit seems malicious, as oil companies negate the claim for compensation. Often, the intervention of NOSDRA in some spill-related cases is constrained by this act, and the claims for compensation by community people in court are denied. This scenario often explains why people in the region resort to self-help by escalating activity sabotage. It must be noted that the prevailing conflict situation in the Niger Delta region leading to constant battles with great dimension between MNOCs and their host communities has created a sense of sabotage, including deliberate attacks on oil and gas pipelines with severe environmental consequences (Odoemene, 2011). Despite litigations against oil companies for lack of or inadequate compensation of communities affected by oil spills, the Nigerian government through NOSDRA seems to lack political ‘will’ to exercise control over oil companies.

III. Conclusion

The study examined how the Nigerian government through NOSDRA had responded to oil spill incidents in the Niger Delta region of Nigeria. The study found out that effective performance of NOSDRA in terms of efficient execution of its statutory roles as provided in the Act is low. For instance, it is discovered based on available data that NOSDRA has been found to always delay response to oil spills in the Niger Delta region. There are explanations to this: (i) Multinational oil corporations such Shell, Elf and others are often in control of the monitoring and response processes. This is because NOSDRA largely depends on the oil companies in terms of equipment, expertise, vehicles and other logistics before visiting oil spill sites. This dependent relationship is one way NOSDRA succumbs to the capture by the MNOCs. (ii) The regulatory agency has largely been classified as a captured institution by the oil companies with no commanding authority. Nigeria as a rent seeking state that depends on rents from oil firms appears incapable of controlling the activities of MNOCs that are against the public interest. This scenario, therefore, raises a serious question regarding the credibility of the operations of foreign oil exploring companies in the Niger Delta region. Responding to oil spilled areas has continued to be a serious contested issue that leads to legal battle between the oil communities and oil companies, and the Nigerian state appears to be unconcerned, leaving the environmentally damaged communities to determine their fate. There are evidences pointing to the ineffective and untimely mitigation of oil spill incidents in the region. The case of Bodo oil spill illustrates this. At the start of the spill, NOSDRA was first informed of the spill on 28th August 2008, no site visit was done till 7th of November 2008, which is about 72 days after the incident. Another case was the Nembe Obama South Flowline², operated by Eni in Bayelsa state, where a spill was reported on the 8th October 2015, no response until 11 December 2018. This development has often been the case as NOSDRA is usually dependent on the company (the spiller) both to take NOSDRA staff to oil spill sites and to supply technical data about spills (Rim-Rukeh, 2015). By and large, NOSDRA works according to the dictates of oil companies that allegedly caused the oil spills.

IV. Recommendations

One of the major problems faced by NOSDRA is the multi-agency approach to environmental protection especially oil spill detection and clean-up. This usually leads to unnecessary delay, clash of duties among the agencies especially NOSDRA and Department of Petroleum Resources (DPR). DPR is responsible for supervising the Nigerian petroleum industry operations, including safety and environmental regulations. In this regard, it is recommended that, there is need to amend the Act that established the agencies, provide a single agency that can be entrusted with the responsibility to handle all matters relating to oil spills. The Nigerian government should strategically widen the jurisdictional operation of NOSDRA by amending the 2006 NOSDRA Act in order to strengthen the agency and expand its instruments of capability to monitor, regulate and impose sanctions either directly or by recourse to the courts. The capture of NOSDRA is most cases a manifestation of paucity of funds as well as mismanagement of available funds. By this very circumstance, it is suggested that the Nigerian government should invest enormous funds that can guarantee the independence of the NOSDRA.

Evidences have shown that there are existing communication gaps between the oil companies and host communities. Poor communication channels have often led to hostilities between the former and the latter. In most cases, the host communities accuse the oil companies of being insensitive to their plight, while oil firms point accusing fingers to the host communities of leadership corruption and malicious destruction of oil installations and pipelines. It is in view of this that the study also recommended that there is the need for the oil corporations to increase their level of interaction with the host communities. The oil operators should improve their presence in the host communities. They should provide more infrastructural facilities that can contribute human development as well as have sustainable economic values. This recommendation is advanced based on the fact that one of the main justifications for illegal destruction of oil facilities in the region has been blamed on the poor state of the Niger Delta. The communities have often accused the multi-national oil companies of giving inadequate attention to the deplorable to the region's deplorable condition, as well as the capture of the leaderships by the oil companies both in the region and at the national levels.

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