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**Research Paper**

# A Legal Appraisal of the Local Content Act 2010 In Light Of Host Community Concerns in Nigeria

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***Abstract***
*The passage into law of the Nigerian local content bill is one of the significant developments for domesticating the oil and gas industry through local value additions to the local economy. The bill received presidential assent on 22 April 2010 and created a law to provide for the development of indigenous content in the Nigerian oil and gas industry. The law also establishes the Nigerian Content Monitoring Board (board), which is charged with the responsibility to manage the coordination, monitoring and implementation of the local content law. Previous acts of the government had made feeble attempts at developing a local content framework for the industry and the fanfare associated with the recent enactment into law of the Nigerian local content bill very understandable. Nigeria is the world's eighth biggest oil exporter and relies on crude as its main foreign exchange earner. The industry accounts for over 40 per cent of Nigeria's gross domestic product and is associated with over a billion dollars' worth of investments annually. There is a marked absence of indigenous players involved in these transactions, where about 90 per cent of goods and services used in the industry are imported from overseas. The local content law seeks to increase indigenous participation by prescribing minimum thresholds for the use of local services and to promote the employment of Nigerian staff in the industry. In this article, the writer makes a succinct analysis of the provisions of the Nigerian Local Content Act and argues that an antidote has been found for local participation in the vibrant Nigerian oil and gas sector. The writer concludes that, similar to Saudi Arabia, Venezuela and Kuwait, the local content law will go a long way in empowering indigenous oil and gas companies and assist Nigeria in developing the technical capacity for the industry.*
***Keywords:*** *Local Content, Host Communities, Petroleum Industry, Niger Delta*

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## I. INTRODUCTION

Resource-rich developing countries can increase the value of contribution from their resources (oil and gas, minerals etc.) to stimulate socio-economic growth and development through the two main routes- fiscal policy and non-fiscal policy measures.[2] The former has been the usual means of generating revenue to a host country. It consists mostly of payment of tax and royalties. On the other hand, non-fiscal policy measures come in the form of what is called Local Content Policy.[3] The policy aims to leverage the petroleum value chain to generate sustained and inclusive economic growth through economic diversification and employment opportunities.[4]

The local content subject is of utmost relevance in developing countries and is to be used as a ladder for economic development. Developing African countries have recently introduced a host of local content requirements and policies throughout their extractive industries.[5] Local content is not only seen as a mechanism

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[2] Amoako-Tuffour J, Augynn T, Atta-Quayson A., Local content and value addition in Ghana's mineral, oil and gas sectors: Is Ghana getting it right? Washington DC: African Center for Economic Transformation; 2015.

[3] Ibid.
[4] World bank. Local Content in Oil, Gas and Mining; 2016
[5] UE Hansen, I Nygaard, M Morris and G Robbins, The effects of Local content requirements in auction schemes for renewable energy in developing countries: A literature review.

for local job and income generation but also progressively as a mechanism of industrial development and socio-economic transformation.[6]

The Local Content policy introduction in Nigeria seeks to promote value-addition and job creation via the use of domestic goods and services and develop local capacities in the industry's value chain through education, skills transfer and technology transfer. Prior to the enactment of the Nigerian Oil and Gas Industry Content Development (NOGICD) Act 2010, most operations in the nation's oil and gas space were executed by International Oil Companies (IOCs). The obvious lack of technical know-how led to the importation of skills, with the affected expatriates being remunerated in United Stated Dollar. There are several arguments in favor of Local Content Policies; they can help to correct market failures which arise when there is a distortion that keeps the market from allocating resources efficiently and adjusting to a steady-state, with the result that domestic industries cannot gain the necessary technology and capacity to compete in the open market without outside intervention and protection. The market fails from a domestic perspective because the lack of domestic skills to serve the needs of the industry results in an inefficient allocation of resources in the market. By requiring companies to invest in the development of particular local skills, Local Content policies can help to correct this market failure because such requirements help to ensure that skills are available to meet the demands of the market[7].

However, the level of achievement of Local Content policies with respect to value creation in Nigeria is yet to be determined. This study is conducted to measure the effectiveness of Local Content policies in Nigeria's oil and gas sector.

## II. HISTORICAL DEVELOPMENT OF LOCAL CONTENT POLICY IN NIGERIA

The local content push in Nigeria began as far back as 1962 with the enactment of the Immigration Act.[8] The Act established an expatriate quota system by specifying the ratio of Nigeria-to-non-Nigerians that could be employed by foreign business organizations located in Nigeria. Later in 1966, the government established an Expatriate Quota Allocation Board, with the responsibility of ensuring indigenous participation in the control, development and management of strategic economic sectors of Nigerian Society.

The Petroleum Act[9] also made provisions to enhance local content development through the development of a huge manpower base in the industry. Under the Act, owners of oil mining leases are under a legal obligation to employ 75% of Nigerians in managerial, professional and supervisory grades within 10 years of the grant of the lease.[10] Furthermore, the Act states that each of these cadres should consist of at least 60% Nigerians.[11] To enhance the transfer of technologies, the government also established the Industrial Training Fund Decree in 1971. The aim of the Decree was to encourage the acquisition of relevant skills that would support the development of indigenous manpower to meet the needs of the Nigerian economy, including the oil and gas industry.

It can be argued that Nigeria's efforts towards increasing local control of the industry arose from its membership of the Organization of Petroleum Exporting Countries (OPEC). For example, after joining OPEC in 1971, Nigeria signed various participation agreements with several multinational oil companies that gave the country a minimum of 35% participation in all concessions and a projected 51 percent by 1981 with prospects that Nigeria would achieve a 100 percent control of all oil concessions in the industry. By 1973, Nigeria had acquired an average of 60 percent of participating interests in the operation of the oil companies.[12] This action was in line with OPEC Resolution[13], which required all member countries to undertake, as far as was feasible, the direct exploration for, and development of hydrocarbon resources and to acquire majority participation in the operation of the oil companies.

Another step that also appeared to enhance indigenization efforts in the industry was that the Nigerian Government began to participate in oil concessions through joint-venture arrangements with multinational oil companies. This also led to the establishment of the Nigerian National Oil Corporation (NNOC) as a vehicle for promoting indigenization programmes in the industry. It later became NNPC in 1977 through NNOC's merger with the Ministry of Petroleum. To further enhance the achievement of local content in the Industry, the NNPC was re-organized to pursue commercial objectives in 1988 and subsequently 11 subsidiary companies were

[6] Ibid.
7 Tordo S, Warner M, Manzano O, Anouti Y. Local content policies in the oil and gas sector

[8] Cap. 84 1962
[9] 1969
[10] Paragraph 38 (a)(i) First Schedule to the Petroleum Act 1969
[11] Paragraph 38(a)(ii) First Schedule to the Petroleum Act 1969
[12] Dr. Uwem Udok. Dr. Mary Udofia and Olusola Okunbolade, Local Content Development in the Oil and Gas Industry in Nigeria: Problems and prospects
[13] XVI.90 of June 1968

established under the NNPC. NNPC flagged off the actual local content initiative through acquisition of interests in the operations of the International Oil Companies (IOCs).[14] These interests grew to about 70%, with the responsibility of controlling all acreages and other activities.

Later in 1991, the Nigerian Government established the Indigenous Concession Policy, which was aimed at expanding the scope of indigenous participation in the industry and diversifying the sources of investment and funds inflow into the industry. This resulted in the award of onshore and offshore oil blocks to Nigerian entrepreneurs and gave birth to the emergence of indigenous oil companies in oil exploration and production. However, it was observed in most cases that the award of oil blocks to indigenous oil companies was based largely on the connection the shareholders had to the government rather than on technical competence and expertise.[15]

In 2001, a workshop titled "National Workshop on Improvement of Local Content and Indigenous Participation in the Upstream Sector of the Petroleum Industry," was organized by the National Petroleum Investment and Management Services (NAPIMS). The workshop recommended the establishment of a National Committee on Local Content Development (NCLCD). The NCLCD then produced a report in 2002 highlighting their finding that the local content of goods and services in the upstream sector of the oil and gas industry in Nigeria was less than 5%, meaning that 95% of the yearly expenditure of about $8 billion flows out of the country.[16] The proposed initial targets for aggregate local content value in the oil and gas industry increased from 40% in 2005 to 60% in 2010. The NCLCD also recommended the drafting of a Nigerian Content Development Bill, which became the NOGICD Act.

Shortly after, the Nigerian Content Policy was envisioned by the NNPC to serve as the basis for measuring local participation and job creation for Nigerians in the oil and gas industry. The objective of the policy was to increase the quantum of composite value added to, or created in the Nigerian economy through the systematic development of capacity and capabilities and the deliberate utilization of Nigerian human and material resources and services in the oil and gas industry. In an effort to realize the ideals of the policy, the Nigerian Content Division (NCD) was established within the NNPC to ensure the effective implementation of the policy in the oil and gas industry with the objective of 45% implementation in 2006 and 70% implementation in 2010. Its immediate focus was on core industry activities and support services with the greatest impact on Nigerian content. These key support industry areas include: fabrication, engineering, well and drilling services, refining, logistics, shipping, banking and insurance, manufacturing, materials as well as professional services.

In April 2010, President Goodluck Jonathan signed the NOGICD Act into law. This Act gives first consideration for awards of oil blocks, oil fields, and oil lifting to Nigerian Independent operators and gives exclusive consideration to Nigerian Indigenous service companies that meet certain stipulated conditions.[17] By passage of the NOGICD Act in 2010, Nigerian content was, by most estimates, around 35 to 40%. However, there is no defined way to measure local content in Nigeria.

## III. LEGAL AND INSTITUTIONAL FRAMEWORK

Laying a solid foundation for the implementation of local content policies through appropriate and regulatory framework is imperative if the desired outcomes are to be achieved. To achieve the objective of local content policies, Nigeria has introduced local content requirements in local content policy frameworks, mostly through legislation, regulations, contracts and bidding processes. Various laws and regulatory institutions have been established in Nigeria for the sole purpose of enhancing local content development in Nigeria. The various policies, legislation and regulatory frameworks for local content in Nigeria will be examined.

### 3.1. NOGICD ACT 2010

This Act was enacted in 2010 by the Federal Government of Nigeria. The objective of the Act as set out in the preamble is:

*"...to provide for the development of Nigeria in content in the Nigerian oil and gas industry for Nigerian Content Plan; for supervision, coordination, monitoring and implementation of Nigerian content and for matters incidental thereto."*

[14] Jean Balouga, Nigeria Local Content: Challenges and Prospects

[15] O Uchenna, "Towards Sustainable Local Content Development in the Nigeria Oil and Gas Industry: An Appraisal of the Legal Framework and Challenges"

[16] Ovadia JS. The dual nature of local content in Angola's oil and gas industry: Development vs. elite accumulation. Journal of Contemporary African Studies. 2012;30(3):395-417.

[17] Section 3(1)(2)(3) NOGCID Act 2010

The Act seeks to increase indigenous participation in the oil and gas industry by prescribing minimum thresholds for the use of local services and materials to promote transfer of technology and skill to Nigerian staff and labor in the industry.

The Act has 107 sections and applies to all subsequent oil and gas arrangements, agreements, contracts or memoranda of understanding relating to any operation or transaction in the Nigerian oil and gas industry[18]. The Act defines Nigerian Content as the "quantum of composite value added to or created in Nigeria through the utilization of Nigerian resources and services in the petroleum industry resulting in the development of indigenous capability without compromising quality, health, safety and environmental standards."[19]

As provided in Section 1, the Act takes precedence over all the other existing enactments and laws in respect of all matters pertaining to Nigerian content in all operations and transaction in the petroleum industry.

The Act further provides that Nigerian Independent operators shall have first consideration in the award of oil blocks, lifting licenses etc and in all projects for which contracts are to be awarded in the Nigerian oil and gas industry.[20] Also, Nigerian indigenous service companies which demonstrate ownership of equipment, Nigerian personnel and capacity shall be given exclusive consideration in the allocation process.[21] Compliance with the Act is necessary for the award of all necessary licenses and permits in the industry.[22]

Below is a review of the structure of the Act. The provisions of the Act can be divided into several segments as set out below:

**i. The Nigerian Content Monitoring Board (NCMB)**

To fulfil its objectives, Section 4 of the Act established the Nigerian Content Development and Monitoring Board (hereinafter referred to as 'the Board' or 'NCDMB'. This board is vested with the role to make procedures to guide, coordinate and implement the provisions of the law. The board's role as the ombudsman for the local content policy was strengthened with the requirement that it exercises its functions with a view to ensuring a measurable and continuous growth in Nigerian content in all oil and gas arrangements. The Board is empowered to execute its duties under the Act to ensure that all provisions contained in the Act are complied with.

Every operator under any petroleum arrangement in the Nigerian oil and gas industry is required to submit to the board a Nigerian Content plan in bidding for a license, permit or interest and before carrying out any project. The Board is empowered to issue a certificate of authorization within 30 days of its review or assessment of the plan, where it is fully satisfied that the plan satisfies the provision of the Act. The Board is also to give first consideration to goods manufactured in Nigeria and services provided within Nigeria.

**ii. Nigerian Content Plan**

Section 7 of the Act makes it mandatory for operators to submit a Nigerian Content Plan to the Board in the bidding stage and prior to executing any project in the oil and gas industry. There is no definition of project in the Act. A literal interpretation of this provision can only lead to absurdity because every single activity undertaken by an operator will be caught by this provision. Upon a favorable review and assessment of the plan, the Board issues to the operator a Certificate of Authorization to proceed with the project. The plan shall show how the first consideration principles to be applied to goods, services, employment and training.[23] It shall also contain research and development plans, legal services plan and financial services plan. The plan also needs to show how the minimum Nigerian content levels are to be achieved.

**iii. Minimum Nigerian Content Specification and Bid Evaluation**

Section 11(1) of the Act provides for minimum percentage specifications of Nigerian content in any project to be executed in the Nigerian oil and gas industry as listed in Schedule A to the Act. These range from 45% to 100% for the majority of service categories, with the exception of four marine service categories ranging between 30% and 40%. Section 11(4) of the Act gives the Minister of Petroleum the power to grant waivers where there is insufficient capacity to meet the targets set by the Act. The Board is charged with the responsibility of setting minimum content levels for project descriptions not specified in Schedule A.[24]

Until now, the principle of the lowest bidder had been the criteria for award of contracts in the Nigerian oil and gas industry. However, under the Act, this is no longer the sole consideration for determining which company

[18] Section 6 NOGICD Act 2010
[19] Section 106
[20] Section 3(1)
[21] Ibid. (2)
[22] Ibid. (3)
[23] Section 12
[24] Section 11(2)

will be awarded contracts to execute projects. The Nigerian contractor is reserved the right of full and fair opportunity provided it has the capacity to execute the job.[25] An indigenous company which has the capacity to execute a project will not be disqualified in the bidding process as long as its quoted value is not 10% higher than the lowest bid.[26] The Act also provides that priority shall be given to bids containing the highest level of Nigerian content where the bids are within 1% of each other at commercial stage, provided the Nigerian content in the selected bid is at least 5% higher than its closest competitor.[27]

**iv. Project Offices**

Sections 25-27 of the Act requires that prior to carrying out any project in Nigeria, an operator is required to establish a project office in the catchment area of the project where project management and procurement decisions are taken and such office shall be managed by approved personnel with decision-making authority. 'Catchment area' is not defined for the purposes of the Act and this portends an issue likely to present a 'black hole' for the abuse of the local content policy. However, the board is given the power to mandate the operator to maintain office in areas that it has significant operations.

**v. Employment & Training**

The employment and training of Nigerians as an aspect of Nigerian content is dealt with in Section 28 to 35 of the Act. Section 28(1) of the Act stipulated that Nigerians will be given first consideration for employment and training in any project executed by any operator or project promoter. The Act also requires that the Nigerian Content Plan mentioned in Section 7 shall include an Employment and Training Plan which complies with Section 29 of the Act. Section 30 and 31 also make it an obligation on operators to provide training to Nigerians where Nigerians are not employed because of lack of training and to provide a succession plan for a Nigerian to understudy an expatriate for a maximum period of 4 years after which the position will be localised.

By Section 32 the expatriate workforce for an operator is limited to a maximum of 5% of its management positions as may be approved by the Board. Furthermore, section 33 requires that all applications for expatriate quota must first be referred to the Board. The Act also provides in Section 34 that a "Labour Clause" be inserted in projects or contracts with an implementation cost of over $100 million mandating the use of a minimum percentage of Nigerian workers as may be stipulated by the Board. Additionally, all operators and companies operating in the Nigeria oil and gas industry shall employ only Nigerians in their junior and intermediate cadre.

**vi. Research & Development**

Section 37, 38 and 39 deal with the R&D requirements of the Act and requires operators to submit a programme for the 'promotion of education, attachments, training, research and development in Nigeria.'

**vii. Regulations**

Section 40, 41 and 42 of the Act empowers the Minister to make regulations in respect of training, growth of indigenous companies in various areas such as exploration, engineering design etc and for ensuring that professional employees are registered with Nigerian professional bodies. This is another avenue to check the surreptitious importation of foreign expertise when the skill is available locally. Section 47 also permits the Minister to make regulations which requires operators to invest in or set up facilities, factories etc for the purpose of carrying out any production or manufacturing in Nigeria.

**viii. Technology Transfer**

Another commendable effort of the Act is in the area of technology transfer which has been the bane of previous laws on the oil and gas industry in Nigeria. Section 43 provides that an operator must have a programme for the purpose of promoting the transfer of technology into Nigeria in relation to oil and gas. By virtue of Section 44, the operator is required to submit to the Board annually a plan setting out a programme of planned initiatives aimed at promoting the effective transfer of technologies from the operator and alliance partners to Nigerian individuals and companies. The plan must show an appropriate programme of the operator in encouraging joint ventures, partnering and licensing agreements with Nigerian contractors and there shall be a technology transfer report for which the operator shall submit annually to the Board showing its initiatives in this regard and the results.

[25] Section 15
[26] Section 16
[27] Section 14

**ix. Professional & Technical Services**

Section 49 of the Act requires that all investors in the oil and gas industry insure all its insurable risks with an insurance company registered Nigeria. Section 51 provides that the operators must only retain the legal services of a Nigerian law firm with offices located in Nigeria. Additionally, Section 52 stipulates that all operators in need of financial services can only retain the services for Nigerian financial institutions except in situations to the satisfaction of the Board it is impracticable to do so. The operators are also required to maintain a bank accounts within Nigeria retaining a minimum of 10% of the revenue accruing from the Nigeria operations.

Section 53 of the Act prescribes that all fabrication and welding activities of the operators and contractors must be engaged in the country.

**x. Petroleum e-Market & Joint Qualification System (JQS)**

The Nigerian Petroleum exchange (NIPEX) managed by the National Petroleum Investment Management Services as a virtual community that links buyers and sellers in the industry gained legal support under the Act. The Act compelled the board to create an oil and gas marketplace as a virtual platform to facilitate transactions in the industry, provide interface with the JQS and monitor the Nigerian content performance of the operators, suppliers and service providers.[28]

**3.2. PETROLEUM INDUSTRY ACT 2021**

The Petroleum Industry Act 2021was recently assented and signed into law by the President of the Federal Republic of Nigeria on August 16th, 2021 to repeal the extant Petroleum Act 2004 and some other legislations. This Act has created an array of provisions and innovations that will affect the private, public sector and stakeholders in the oil and gas industry. The Act was enacted to provide for the legal, governance, the regulatory, and fiscal framework for the Nigerian Petroleum industry, the establishment and development of host communities and other related matters in the upstream, midstream and downstream sectors of the petroleum industry.

The Act is categorized into 5 Chapters, 319 Sections, and 8 Schedules. Chapter 1 of the Act provides for the governance and institution of the petroleum industry. It lays emphasis on the fact that the ownership and control of petroleum within Nigeria and its territorial waters are vested in the Federal Government of Nigeria.[29] One of the objectives of Chapter 1 is to deepen local content practice in Nigeria oil and gas industry.[30] The Act establishes dual regulators for the petroleum industry. One of the regulators is called The Nigerian Upstream Petroleum Regulatory Commission (the "Commission"), which is a body corporate whose functions are limited to only the upstream petroleum activities as provided for in Section 4 of the Act. The other regulatory agency under Section 29 of the Act is the Nigerian Midstream and Downstream Petroleum Authority (the "Authority") which is responsible for the technical and commercial regulation of the midstream and downstream petroleum operations in the petroleum industry as provided under Section 29(3) of the Act.

Additionally, the Act also established the Nigerian National Petroleum Company Limited (NNPC Limited) under Section 53 of the Act. The NNPC Limited is established to be an agent of the Nigerian National Petroleum Corporation (NNPC) for the purpose of managing the winding down of assets, interest, and liabilities of the NNPC. The ownership of NNPC Limited is vested in the Federal Government and held by Ministry of Finance and the Ministry of Petroleum incorporated in equal portions.

Chapter 2 of the Act provides for the general administration of the petroleum industry. The main objective of this chapter is the management, promotion, exploration and exploitation of petroleum resources in Nigeria for the benefit of all Nigerians. The Commission is expected to provide a model licence and model lease to include provisions allowing NNPC Limited the right to participate up to 60% in a contract. Section 70 makes provision for the following licences and lease:

a. Petroleum exploration licence to carry out petroleum exploration on a non-exclusive basis

b. Petroleum prospecting licence to carry out petroleum exploration on a non-exclusive basis and drill wells, do corresponding test production on an exclusive basis

c. Petroleum mining lease to carry out petroleum exploration on a non-exclusive basis, drill wells, carry out test production, win, work and dispose of crude oil, condensates and natural gas on an exclusive basis.

Chapter 3 of the Act is focused on the development of Host Communities in Nigeria. Section 234 of the Act provides for the introduction of the Petroleum Host Community Development (PHCD). The objectives of the PHCD include fostering sustainable prosperity within host communities; providing direct social and economic benefits from petroleum operations to host communities; creating a framework to support the development of

[28] Sections 54, 55, 56

[29] Section 1 of the Petroleum Industry Act 2021

[30] Section 2(e)

host communities etc. Section 235 provides for the incorporation of Host Communities Development Trust for the benefit of host communities which the settler is responsible for. Section 240 and 244 provide for the source and allocation of the host communities' development trust. The funds are to distributed by the Board of Trustees to host communities using a matrix as provided by the settler.

Chapter 4 of the Act introduces the Petroleum Industry Fiscal Framework which encourages investment in the Nigerian petroleum industry, provides clarity, and enhances revenue for the government while ensuring a fair return for investors. Section 260 of the Act makes introduces the Hydrocarbon Tax which replaces the Petroleum Profits Tax at the rate of 15%-30% along with the application of Companies Income Tax at the rate of 30% at the maximum This reduces the tax rate for companies in the upstream sector as the highest headline rate of tax will be 60% as opposed to the 85% rate of tax obtainable under the Petroleum Profit Tax. The Hydrocarbon Tax is applicable and levied upon the profits of companies engaged in the upstream petroleum operation, payable during each accounting period. The Commission also collects rents, royalties, and production shares as applicable while the Authority will collect gas flare penalty from midstream operations. Late filing of tax returns will attract N10,000,000 on the first day and N2,000,000 for each subsequent day the failure continues.

In conclusion, Chapter 5 of the Act provides for miscellaneous provisions which deal with legal proceedings in relation to any suit instituted by the Commission or Authority or any of its employees. The Act imposes an obligation on the Nigerian government to promote indigenous oil firms in the sector. The Petroleum Industry Act is a step towards the significant improvement and indigenization of the Nigerian oil and gas industry.

### 3.3. THE IMMIGRATION ACT[31]

The Act provides that no person, other than a citizen of Nigeria, shall accept employment (not being employment with the Federal Government or a State Government) without the consent in writing of the Director of Immigration; or on his own account or in partnership with any other person, practice a profession or establish or take over any trade or business whatsoever or register or take over any company for any such purpose, without the consent in writing of the Minister given on such conditions as to the locality of operation and persons to be employed by or on behalf of such person, as the Minister may prescribe.[32] Any person desirous of entering into Nigeria for any of the above-mentioned purposes must produce the consent to an immigration officer; and the failure to do so shall be an offence under the Act. The essence of the above provision is to prevent the indiscriminate engagement of expatriates in positions where there are suitable Nigerian alternatives. These provisions are applicable in the oil and gas industry.

The Act also imposes the requirement of Expatriate Quota (EQ) and other permits before a foreigner can undertake such engagements in Nigeria and where same is to be granted, it may be coupled with such conditions as to the development of local expertise as the Minister may prescribe.[33] Such permits are meant to last for a limited period of time and though may be renewed upon expiration, the application for renewal must show inter alia, a detailed training programme for Nigerians in the field, list of Nigerians understudying the expatriate on a prescribed format. Apart from the Nigerian Immigration Service, other agencies charged with the task of overseeing the EQ regime include the Nigerian Investment Promotion Commission, the Nigerian Content Monitoring Board amongst others.

### 3.4. PETROLEUM TECHNOLOGY DEVELOPMENT FUND ACT[34]

The Act was enacted for the purpose of establishing an agency, the Petroleum Technology Development Fund.[35] This agency was established for the purposes for training and education of Nigerians in the petroleum industry. The Fund's mandate is dedicated to building local capacities and capabilities in Nigeria's oil and gas industry through the development of human capacities, institutional capacity development as well as the promotion of research and acquisition of relevant technologies. The money contained in the Fund together with interest (if any) payable in respect thereof shall be applied for the purpose of training Nigerians to qualify as graduates, professionals, technicians and craftsmen, in the fields of engineering, geology, science and management in the petroleum industry in Nigeria or abroad.[36]

[31] Cap. 11 Laws of the Federation of Nigeria 2004
[32] Section 8(1) of the Immigration Act, Awolowo v Minister of Internal Affairs
[33] Ibid (b)
[34] Cap. P15 Laws of the Federation of Nigeria 2004
[35] Section 1 of Petroleum Technology Development Fund Act
[36] Ibid.

### 3.5. NATIONAL OFFICE FOR TECHNOLOGY ACQUISITION AND PROMOTION ACT[37]

The Act established the National Office for Technology Acquisition and Promotion (NOTAP). The principal function of NOTAP is to monitor the transfer of foreign technology to Nigeria. Specifically, NOTAP systematically tracks the inflow of technology into Nigeria and strategizes for its adaptation and domestication. Section 4(d) of the Act makes it mandatory to register all contracts or agreements for the transfer of foreign technology entered into by any person in Nigeria with NOTAP as well as registration of every contract or agreement entered into by any person in Nigeria with another person outside Nigeria within 60 days from the execution or conclusion of the contract.[38]

## IV. THE HOST COMMUNITIES

A host community can be defined as a contingent community where extraction of hydrocarbon takes place. It is a community where the oil is extracted from, and houses the facilities for the exploration and extraction of oil. For the purpose of this study, host communities refer to Niger Delta. The term "Niger Delta" refers to the oil-producing region of Nigeria, which includes Bayelsa, Delta, Rivers, Abia, Akwa Ibom, Cross River, Edo, Imo and Ondo States, that is, nine out of the total 36 states and the federal capital territory in Nigeria. The Niger Delta is an oil-rich region dominated by rural communities whose primary occupations are farming and fishing. In the last four decades the Niger Delta has witnesses a high level of petroleum sector activities. Subsequent to the first successful drilling at Oloibiri in 1956, the Nigerian government's legislations and concessions to various oil prospecting companies set the stage for large scale explosion in exploration and production activities from 1970 to date. The Niger Delta has nearly 200 oil fields with well over 400 oil production and storage facilities scattered within its swamps and creeks.

### 4.1. MAJOR PROBLEMS FACING HOST COMMUNITIES IN NIGERIA

#### 4.1.1. ENVIRONMENTAL POLLUTION

The increased prominence of the petroleum industry in Nigeria since the 1960s has given rise to an upsurge of ecological disturbances, especially in the oil producing areas of the country. This is mainly caused by oil spillage and gas flaring.

#### 4.1.2. GAS FLARING

Gas flaring is the burning of unwanted natural gas in oil wells. Nigeria is a leading offender in gas flaring despite it being declared illegal since 2005. The toxic fumes emitted from gas flaring cause many environmental and health problems, and the practice increases the risk of global warming. Gas flaring occurs due to poor regulation and commitment to tackle the problem. Both characterize Niger Delta region. Recent gas flaring data reveals that Nigeria has remained one of the top seven countries since 2012 (Seven countries account for two-thirds of global gas flaring by world oil). These states produce 40% of the world's oil each year and account for 65% of global gas flaring. Between 2016 and 2020, Nigeria flared 1,252.26 trillion cubic feet of natural gas into the atmosphere, according to the Nigerian National Petroleum Corporation's monthly oil and gas reports.[39]

Several legislative and judicial efforts have been made to combat gas flaring in Nigeria. In 2009, the Gas Flaring (Prohibition and Punishment) Act 2009 was enacted with a gas flaring time limit fixed for 31 December 2010. In addition, the Flare Gas Regulations (Prevention of Waste and Pollution 2018) are intended to combat greenhouse gas emissions via the flaring and venting of natural gas in Nigeria. The regulation adopts that the polluter pays principle with a carbon tax. It increased the penalty from N10 per thousand standard cubic feet for gals flaring to $2 per thousand standard cubic feet of gas. Furthermore, in the case of *Gbemre v Shell Petroleum Development Company and others*[40], Jonah Gbemre, a representative of the Iwherekan community in the Niger Delta filed suit against the Nigerian government and Shell challenging the practice of gas flaring in the Niger Delta by oil and gas companies. The court held that oil companies must stop flaring gas in the Niger Delta. It further held the practice of gas flaring to be unconstitutional as it violates the guaranteed fundamental rights of life and dignity of human persons as provided in the Constitution of Federal Republic of Nigeria and the African Charter on Human and Peoples Rights.

The Petroleum Industry Act also penalizes companies for gas flaring and provides that the revenue from the penalties will be used for environmental remediation and relief of the impacted host communities.

[37] Cap N62 Laws of the Federation 2004
[38] Section 5(2)
[39] "Are Nigeria's promises to end gas flaring merely hot air?" by Institute for Security Studies
[40] (2005) AHRLR 151

However, the penalty must be steep enough to achieve its intended purpose otherwise oil companies will continue to flare gas if doing so minimizes their cost more than the penalty adds to it.

**4.1.3. OIL SPILLAGE**

This is the accidental, natural or deliberate discharge of crude oil or oil products on land, lakes, ponds, creeks, streams, rivers and sea during drilling and transportation of crude oil by the multinational oil companies. In Niger Delta, communities have faced an environmental catastrophe. About 40 million liters of oil are spilled every year across the Niger Delta according to the Rise for Bayelsa Campaign. Oil spills are caused by pipeline and tanker accidents, sabotage, oil production operations or inadequate production equipment. Thousands of barrels of oil have been spilt into the environment through our oil pipelines and tanks in the country. This spillage is as a result of lack of regular maintenance of the pipelines and storage tanks. Some of these facilities have been in use for decades without replacement. Sabotage is another major cause of oil spillage in the country. Some of the citizens of this country in collaboration with people from other countries engage in oil bunkering. They damage and destroy oil pipelines in their effort to steal oil from them. SPDC claimed in 1996 that sabotage accounted for more than 60% of all oil spilled at its facilities in Nigeria, stating that the percentage has increased over the years both because the number of sabotage incidents have increased and because spills due to corrosion have decreased with programs to replace oil pipelines.[41]

Major oil spills in the coastal zone include the Forcados tank 6 Terminal in Delta state incident that spilled 570,000 barrels of oil into the Forcados estuary in July 1979, polluting the aquatic environment and surrounding swamp forest; the Funiwa No.5 Well in Funiwa Field that spilled an estimated 421,000 barrels of oil into the ocean form January 17 to January 30, 1980, destroying 836 acres of mangrove forest; and the Oshika village spillages in River state that spilled 5,000 barrels of oil in 1983, flooding the lake and swamp forest and causing high mortality in crabs, fish and embryonic shrimp. These are just to mention a few. These spills have contaminated the Niger Delta regions water, air and plants with trace metals that have accumulated in crops and harmful, potentially carcinogenic hydrocarbons such as polycyclic aromatic hydrocarbon and benxo (a) pyrene, and naturally occurring radioactive materials.[42]

The harmful effects of oil spill on the environment are many. Oil kills plants and animals in the estuarine zone. Oil settles on beaches and kills organisms that live there, it also settles on ocean floors and kills bottom dwelling organisms such as crabs. Oil poisons algae, disrupts major food chains and decreases the yield of edible crustaceans. Oil endangers fish hatcheries in coastal waters and as well contaminates the flesh of commercially valuable fish. Along with the various effects of oil pollution has had on the Niger Deltas vegetation and agricultural land, oil pollution has also impacted the health of the local residents. The ingestion, contact and inhalation of constituents of spilled crude oil may have acute and long-term health implications.[43]

Although the acute manifestations of the exposures are often transient, severe exposures can result in acute renal failure, hepatoxicity and chemotoxicity, and even infertility and cancer[44]. Oil pollution has not only affected the health of the people of Niger Delta, it has also affected their sources of income. Residents of Niger Delta consist mostly of fishermen. However, due to the pollution, most aquatic animals in the region have reduced significantly, thus causing a gap in their economy. Additionally, the spills have affected land which in turn have substantially reduced the agricultural activities in the region.

In *Akpan v Royal Dutch Shell and another*[45], the plaintiffs who depend on farming and fishing for their livelihoods made three demands from Shell. First, to stop and prevent future oil spills from its pipelines. Second, to clean up the wide spread environmental pollution resulting from the oil spills. Third, to take responsibility for the actions of its subsidiary in Nigeria and pay damages as appropriate. The plaintiffs instituted actions in Netherland, The Hague Court of Appeal against Royal Dutch Shell. Although Shell disclaimed liability for the actions of its subsidiary arguing that the oil spills in Goi and Oruma between 2004 and 2005 were caused by third party sabotage, the court of appeal held Shell liable for the spills according to the Nigerian laws, following Shell's inability to prove the sabotage beyond any reasonable doubt.

Efforts have been made by the Nigerian government to address the issue of oil pollution in Niger Delta. The National Assembly enacted the Oil in Navigable Waters Act[46] to implement the terms of International Convention for the Prevention of Pollution of the Sea by Oil (1952-1962). The purpose of the Act was to

[41] SPDC Report, 1996

[42] A. A. Kadafa, "Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria"

[43] B. Ordinioha and S. Brisibe, "The Human Health Implications of Crude Oil Spills in the Niger Delta, Nigeria: An Interpretation of Published Studies"

[44] Ibid

[45] District Court of The Hague, 30 January 2013, LJN BY9854/HA ZA 09-1580 50-59

[46] 1968, Cap O6 LFN 2004

circumvent marine pollution hazards in the navigable waters. The Act did not make provision for compensation rather it employed only penal techniques against deviants of its provisions. Subsequently, the National Oil Spill Detection and Response Agency Act 2006 was enacted to regulate issues of oil spillage, its management, response, remediation, and clean-up operations in Nigeria. The Act provides for the establishment of National Oil Spill Detection and Response Agency with the responsibility for preparedness, detection and response to all oil spillages in Nigeria as set out in Section 5 NOSDRA. In accordance with the provisions of the Act, oil spillers are duty bound to report any incident of oil spillage to the Agency in writing not later than 24 hours after its occurrence and failure to report same attracts penalty of Five Hundred Thousand Naira (N500,000) only for each day the incident of the spillage is not reported reckoning from the day of its occurrence.[47] The agency is statutorily positioned to punish spillers, protect the environment and also to collaborate with other sister institutions in the event of disastrous spills. The Act did not make provisions for the payment of compensation to the victims of oil spillage but rather concerned itself with the punishment of oil spillers and generation of revenue for the Federal Government by way of imposition of fines on oil spillers.

Till date, environmental pollution still poses a great challenge to the people of Niger Delta. Various regulations have been enacted to curb the act of the Multinational oil companies or third parties (sabotage) which inadvertently or intentionally lead to pollution. However, despite these numerous legislations, pollution is still a major concern. Why? These legislations lack application and enforcement. One could say most of their provisions are of no effect due to their lack of enforcement by the Nigerian government. Does it mean that the Nigerian government is okay with the pollution acts as it is? The Nigerian government has continuously failed to regulate the continued pollution within the Nigerian territorial environment. The Nigerian government has a statutory duty to protect the Nigerian environment. In the case of *SERAC v Nigeria*[48], African Commission on Human and Peoples Rights) before the African Commission on Human and People's Rights, the plaintiff, a non-governmental organization representing the people of Ogoni alleged that the Nigerian government has colluded with Shell in its joint venture to cause environmental degradation and health problems for the Ogoni people. The plaintiff based its rationale for this allegation on the failure of the Nigerian government to regulate the operations of oil companies against environmental damage. To this effect, the oil consortium disposed of toxic wastes, contaminating Ogoni waterways in violation of applicable international environmental standards.

The plaintiff further alleged that unlike the allegations of sabotage by the SPDC, the consortium rather neglected to properly maintain oil facilities which in turn resulted to several oil spills close to the villages. These spills had serious short- and long-term health impacts, including skin infection, gastrointestinal and respiratory ailments, and increased the risk of cancers and neurological and reproductive problems. The plaintiff further accused the Nigerian government of failing to produce basic environmental impact studies relating to the hazardous effects of oil production in Ogoni land and even refusing to allow scientists from environmental organizations to conduct assessments. The trial commission held that the proven conducts of the Nigerian government were in clear breach of the obligations to respect, protect, and fulfil the right to health and the right to a healthy environment under the African Charter. Therefore, it can be said that the Nigerian government owes a duty to the people of Niger Delta to ensure that the environment is healthy. Continuous breach of this duty ought to make the Nigerian government liable. The continuous environmental degradation of the Niger Delta community and the failure of the government to tackle this issue poses a major concern for the people of Niger Delta.

### 4.2. COMPENSATION FOR ENVIRONMENTAL POLLUTION

This is another major concern facing host communities. The legal basis for entitlement to compensation and damages comes from Sections 11(5) and 20 of the Oil Pipelines Act 1965, Sections 125 (b) of the Minerals Act and to some extent section 19 of NOSDRA Act. Section 11 (5) of the Oil Pipelines Act 1965 provides that the holder of a licence shall pay compensation to any person whose land or interest in land is injuriously affected by the exercise of the right conferred by the licence, and to any person suffering damage because of neglect on their part and to any person suffering as a consequence of any breakage of or leakage from the pipeline or an ancillary installation. Section 19 empowers NOSDRA to assist in mediating between affected communities and the oil spiller and ensure appropriate remedial action and compensation is paid. It is however curious to know that the compensations mentioned in these laws are mostly not standardized by any law or rules. So practically, it may be based on the bargaining power of those involved. The DPR in 1998 attempted to standardize compensation, however, but it was never passed into law.

Research shows that the process of claiming compensation for damage caused by oil pollution is dominated by the courts[49]. This obviously comes with lots of problems which include delays, wide-ranging rates

[47] Section 6(2) NOSDRA Act
[48] May 27, 2002 ACHPR/COMM/A044/1
[49] Adebowale, 2008

of compensation, high legal costs, long distance from the court, dearth of core professionals on environmental law and adjudication among others. Though NOSDRA Act provides for involvement of NOSDRA in compensation negotiation, there is no proven involvement of either NOSDRA or any other agency in resolving compensation disputes nor is there a mechanism to help the claimants to seek damages similar to the National Pollution Fund Centre in the USA.

In actual practice, compensations are being paid on the terms of the oil companies. The limitations for compensation are wide, including damage done to buildings, crops and trees, disturbance to the user, damage suffered by neglect, leaking pipelines and loss in the value of the land. The current system is largely led by the companies through Oil Producers Trading Section (OPTS) of the Lagos State Chamber of Commerce where they agree to compensate, many times after long delay and possible litigation. OPTS is the organ representing the interests of petroleum producers in the Lagos Chamber of Commerce and Industry (LCCI) and OPTS's recommendations were guided by government rates used when its 'public interest' projects encroached on private 'surface rights'. The OPTS compensation rates is not a neutral umpire, it also lacks legal force and enforceability, being unrelated to any legislation in Nigeria. In our opinion, the OPTS recommendation is also far below what is universally accepted as fair. Akpan gives an insight to how much compensation Niger Deltans received in terms of damages to crops and sources of livelihood[50]. In 1997, compensation for maize was $58.84, Beans was $82, Yam, $369.23, sweet potato: $50 amongst others. These compensations were not negotiated by the people affected or their chosen representatives. Besides, the rates were not contemplative of the aggravated inflation rate in Nigeria. Unfortunately, that standard is still being used today. This is a typical unequal distribution of burden and liabilities that constitute environmental injustice.

Basically, payment of compensation is something not even clear. The compensation process lacks transparency which has resulted in problems of selective exclusion of some people. Research by Essential Action and Global Exchange in 2000 showed an unsatisfactory compensation system adopted by Mobil during the oil spills of January 1998 near Mobil's primary facility in Eket, Akwa Ibom State. This spill actually spread as far as the shores of Lagos, about 500 km to the west; devastating the entire west coastal areas. Although, Mobil agreed to pay compensation, it was only to people who were able to submit claims. Incidentally, many potential claimants were either not informed about the exercise or simply unable to travel as far as Eket, in Akwa Ibom State because of the cost of transportation, therefore they were excluded. Of course, one understands why they may not even borrow money and travel to submit claims; the compensation may not be paid, even if it will be paid, it may not be in good time and even if it is paid in good time, it may likely be a peanut, not worth all the troubles.

Oftentimes, litigations result from these, which in most cases do not help so much because of cost, delays in court and other political and legal technicalities. The calculation of compensation is further confused by the issue of damage done; usually, this varies depending on the judges, the court or cause of pollution. Nigerian law recognizes four types of damages; special, general, exemplary and aggravated[51] with different levels of proof. Besides, damages are awarded at the court's discretion without standard. The quantum of damages is judged based on the volume of oil spill; the size of the affected area, the population affected and future effect on the environment and its people, regardless of whether the effect is continuous and perhaps there is no remediation plan available. The attitude of the polluters may also be taken into account. Aggravated damages are awarded where the conduct of the polluter is deemed to be malicious, while exemplary damages can be awarded if the conduct of the polluter has been shown to be outrageous or scandalous and must be done with guilty knowledge of the economic advantage of the defendant. High standard of proof is needed for aggravated and exemplary damages.

Also, the time lag before affected people get compensated contributes to environmental injustice. In many cases, years are spent in court to get oil companies to accept responsibility and even when they do, it takes another phase and time to agree on the amount. It took the people of Ebubu Community of Ogoni 40 years to get judgement to be compensated for the massive oil spills that affected about 255.369 hectares of their land in 1970.[52] This is not justice in our opinion as "justice delayed is justice denied". Also, Bodo Community that got judgement against SPDC in 2011 in London court is yet to be compensated for oil spill of 2008. According to Ogoni news, Bodo rejected the offer of compensation by the Royal Dutch Shell on Friday 13 September 2013. Oil companies are not bothered about this time lag as they lose nothing. Because of this delay, cost and the problems with the judicial system in Nigeria, People many times will not sue and may not get compensated. To buttress the point is a study covering the period between 1981 and 1986, which showed that of 1,081 claims for

[50] NS Akpan, EM Akpabio, "Youth restiveness and violence in the Niger Delta Region of Nigeria: Implications and suggested solutions,"

[51] "Erosion-corrosion in Oil and Gas Industry: A Review," PC Okonkwo

[52] Vanguard newspaper, July 6, 2010.

compensation, only 124 claims were settled, 24 of the remaining unsettled claims went to court, others without record.[53]

To claim compensation in Nigeria, claimant will notify the concerned company and a joint investigation visit involving the claimants, their counsel, representatives of the oil company and representatives of local government, with DPR and NOSDRA will be conducted round the site of the spills to agree on liability. The next step is negotiation which may start with arbitration from experts, however, OPTS rates is still being used till date. Noteworthy is the fact that compensation will not be paid if there is sabotage, theft, intentional damage or where the company did not cause the spill. When compared with the United States Oil Pollution Act, 1990 (OPA) which deals with compensation for oil spill, the responsible party pays removal cost and damages in addition to compensation. With OPA, damage claims cover natural resources, real and personal property, and loss of natural resources, loss of revenues to Government, loss of profit or impairment of earning capacity, damages for net costs of providing increased or additional public services during removal. Natural resources include amongst others land; fish and drinking water supplies and claimant do not need to be the owner of natural resources. The claimant only needs to prove that he relies on the polluted environment for living. Compensation has been defined in the US by comparing income before and after the spill using insurance loss adjusters.

Also, the USA has Oil Spill Liability Trust Fund as a kind of intervention funds in case a responsible party denies a claim or fails to settle a claim within ninety (90) days or where claims exceed liability limits. The OSLTF pays for prompt oil removal and uncompensated damages up to $1 billion per incident. There is a similar provision in the UK as the Minister may instruct Licensee to ensure that availability of funds to discharge any liability for damage in the event of release or escape of Petroleum. There is also a provision for joint and several liabilities making it easy to hold one party wholly liable if other licensees are incapable in both the USA and the UK. These provisions are to make sure that victims of oil pollution get compensated and on time. The question then is: what happens to victims of oil pollution in Nigeria if oil companies deny a claim or fails to settle a claim or if claims exceed liability limits? There is virtually no contingency arrangement in place to take care of such situation. The affected communities will only resign to fate or resort to court, and with all the environmental injustices abounding the end result is predictable.

However, the provisions of the newly enacted Petroleum Industry Act 2021 appear to steer issues of compensation in the right direction. Whereas, the responsibilities for oil spill recovery, clean up and remediation belong to the operators of licenses and leases under the National Oil Spill Detection and Response Agency (NOSDRA) Act and its Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations, the PIA provides a more enforceable framework by creating not just administrative but also fiscal provisions. The Act creates environmental remediation fund for the rehabilitation or management of negative environmental impacts arising from the operations of licenses and leases. The fund is financed by contributions charged as part of the conditions precedent to the grant of a licence or lease. The contribution to be paid is determined by the size of the operations and the level of environmental risk that may exist. This fund is to be applied where a licensee or lessee fails to rehabilitate or manage any negative impact on the environment arising from its operations.

Despite the promises of the PIA, one is still compelled to believe that the compensation regime for oil and gas pollution in Nigeria is at a low-ebb. It is one thing to enact a legislation and it is another to enforce the legislation.

### 4.3. FAILURE OF CORPORATE SOCIAL RESPONSIBILITY (CSR)

#### 4.3.1. Meaning of Corporate Social Responsibility

Corporate social responsibility is a world view which holds that companies in a locality should become part of the locality where they operate and contribute towards the development of that locality. The earliest and most prominent definition ascribed to CSR is the one given by Howard Bowen in 1953, "the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society."[54] Companies have to consider whether the action is likely to promote the public good, to advance the basic society, to contribute to its stability, strength and harmony. It is very necessary and inevitable for companies to understand that social responsibility must be part of their policies in host communities due to issues of ethics, past misbehaviours of corporate organizations and the ever-rising government failure in meeting their fundamental responsibility to society. Business recognition of social responsibility consistently results in mutual gains for both companies and their stakeholders.[55]

[53] Ibid

[54] Caroll AB, "Corporate social responsibility: Evolution of a definitional construct"

[55] GC Odemene, "Crises management in the oil and gas industry: The Niger Delta experience"

**4.3.2. Corporate Social Responsibilities of Oil Companies in Niger Delta Using Shell as a Case Study**

Shell developed General Business Principles in 1976 with the current edition revised in 2014 which determines standards for its operations and relationships with its host countries and communities. As part of the Business Principles, Shell claims that it balances short- and long-term interests, integrating economic, environmental and social considerations into business decision-making. To this effect, Shell says that it is her responsibility to give proper regard to health, safety, security and quality environment to society where it operates. In addition to this, Shell developed a Social Investment Scheme through which it intervenes in the provision of infrastructure and services to uplift and better the lives of people in the region. The scheme focuses on enterprise development (Shell LiveWIRE which is Shell's flagship youth enterprise development programme that provides training and finance to young people between the ages of 18-35 to start or expand their own businesses); education (cradle-to-career scholarships, university scholarships, school infrastructural development, centres of excellence and internship programmes); health, access to energy and provision of social infrastructure. Shell in its various reports states that it spent $60.2 million on social investment projects in 2017. Shell's 2017 Sustainability Report reveals that Shell contributed $109.9million to Niger Delta Development Commission in 2017.

**4.3.3. Critique and Failure of CSR Projects in Niger Delta**

All the funds released by Shell for social investment scheme and other community development programmes should translate into extensive development of the host communities. It is disheartening to know that despite the huge amounts released by Shell, these impacts are not felt in the region rather the region is characterized with people in penury, degraded environment, insecurity, illegal oil bunkering and refining, unemployment, high illiteracy rate, poor healthcare services etc. This made the region to be seen as a clear definition of the paradox of poverty in the midst of plenty. This paradox generates allegations of various degrees against Shell and other multinational oil companies over the implementation of their various socially responsible development initiatives.

Sunny Awhefeada discredited the content of Shell corporate social responsibilities as published in one of the national newspapers. According to him, "What Shell published as its corporate social responsibility deserves to be pooh-poohed for it is a mere sham to hoodwink the public. Shell has raked in uncountable trillion in dollars since it struck oil in the Niger Delta six decades ago. Shell should lead the remediation of the Niger Delta environment, build schools and hospitals and roads and provide electricity and give the people all the things that make life worth living as oil producing people as Shell has done in the Western world."[56]

Naanen and Tolani revealed in their study that development projects in the oil-producing communities in the Niger Delta region have either been diverted or abandoned, often as a result of corruption.[57] They went further to reveal that 581 CSR projects undertaken by Shell between 1992 and 2006 which represent more than 22 percent of the projects they surveyed either failed or were not completed.[58]

**4.4.4. POSSIBLE SOLUTIONS TO PROBLEMS FACING THE NIGER DELTA**

There can never be a solution to the Niger Delta problem unless the people are made whole first. The first objective in finding a permanent solution should be to clean up every inch of land and every drop of oil that has been spilled for the last 50 years. A thorough and planned clean-up will provide immediate employments for thousands of disaffected youths that are currently taking up arms, kidnapping and disrupting the lives of the people of Niger Delta. Obviously, this will cost a lot of money, but failure to clean up and find a permanent solution to the underdevelopment of Niger Delta will be even more costly in the long run. Once the clean-up has started, this will immediately create thousands of jobs for the inhabitants of Niger Delta area.

Various laws have been enacted to attempt protect the Niger Delta community from the toxicity surrounding the exploitation and exploration of oil and gas since 1956. However, most of these legislations barely have any effect for two reasons. Reasons being most of the laws have no 'teeth' and they are not being implemented. It is one thing to enact a law and it is another to implement the law. Most legislative objectives remain unachieved because enforcement is superficial. Most of the agencies created to ensure the enforcement of these laws are either being compromised through bribes or do not have enough resources at their disposal to ensure the effective adherence to the laws by the oil companies. Stricter laws should be created because the punishment for non-compliance with the laws is inadequate. We need new laws that have stricter penalties for non-compliance. The oil companies should be told "If you spill, you clean and if you fail to clean, you go to jail." The penalties stipulated in these laws should outweigh the benefit accruable to the oil operator for failing

[56] "How Shell steals from Hoodwinks Niger Delta," by Sunny Awhefeada

[57] B. Naanen and P. Tolani, "Private Gain, Public Disaster: Social Context of Illegal Oil Bunkering and Artisanal Refining in Niger Delta"

[58] Ibid

to adhere to the provisions of the law. Most oil operators find it cheaper to ignore the stipulated laws because the penalties are not harsh enough to have any impact on their business. They find it cheaper to break the laws. In addition, the agencies charged with the implementation of the laws should be allocated enough resources to ensure they carry out their duties.

Furthermore, there is need to hold the oil operators operating in Niger Delta accountable for their actions and policies. In the past, conversations about the proper role of oil companies in the regions have been regarded as "polemical" with the corporations maintaining that "corporate social responsibility cannot replace effective governance."[59] Yet corporate policies and procedures are vitally important in the region, since it is the corporations that is doing the drilling. Corporate responsibility should be comprehensively practiced to ensure that past failures are not repeated. Due to the importance of the region for corporate revenues, the first step should be to recognize the importance of development initiatives to regional stability.

## V. CONCLUSION/RECOMMENDATIONS

This article addressed the economic implications of the Local Content Act on the Nigerian oil and gas industry in the last 10 years. It also discussed the major challenges facing oil and gas host communities in Nigeria (using Niger Delta as a case study).

Additionally, the article critically examined the Local Content Act, the currently enacted Petroleum Industry Act, the Immigration Act and other legislations directly affecting local content in the oil and gas industry in Nigeria. The Local Content Act was thoroughly appraised with a view to answering the research questions. From this work, it can be said that the Local Content Act has had positive economic implications on the Nigerian oil and gas industry and Nigeria as a whole. Governments of many nations oil-producing nations are adopting local content law as an instrument to drive economic development. The Nigerian Oil and Gas (Industry Content and Development) Act 2010 is specific law aims to tackle lopsided, foreign-dominated oil and gas industry to protect and develop indigenous human resources to participate favorably with transcontinental oil companies in the sector by mainstreaming indigenous oil firm into the oil and gas industry for full operations through the local content development programme. This will reduce capital flight abroad, generate employment opportunities, create more social infrastructure in society, and value the country's economy by enhancing local skills and capacity.

Nigeria's existing international obligations notwithstanding the necessity of local content measures cannot be overemphasized. It should be encouraged in all sector to promote rapid economic development and to build indigenous capacities. For the successful execution of the aims of the Nigerian Local Content Act, there is the need for amendments of the legislation regulating the sector, and strong political will must be demonstrated for effective implementation and monitoring of the law for maximum impacts on Nigerians, including the present and future generations, through sound enabling environment and social infrastructure to encourage vibrant local oil firms and entrepreneurs to invest and participate in oil and gas operations actively.

There is a need for the amendment of the Act in technology transfer and funding to enhance the Local Content Act. Ambiguous provisions in the Act should be amended to grow the country's oil and gas sector. The Local Content Act aims to enhance Nigerians' quality of life and living conditions; however, multinational oil firms' investments cannot be ignored to guarantee their contractual obligations. Henceforth, there is the need to inserts Nigerian Content Policy Clauses on the various concession agreements to ensure that Nigerians are strategically and gainfully employed in the exploration and production of oil and gas in Nigeria to promote the objectives of the Act.

Adopting Technical Assistance Agreements by the Federal Government in the oil and gas sector operations where the government is responsible for financing oil projects, owns the crude oil, equipment and facilities relating to the projects. The multinational is mere contractors who only offer technical services, devoid of any interest in the oil but an agreement to train and equip Nigerians. This will guarantee the development of viable indigenous oil industry.

Provisions of essential infrastructure and facilities such as steady power supply, safe and reliable means of transportation and social security will ensure successful implementation of the Nigerian Local Content Act with stringent sanctions against any contractor for non- compliance. It is pertinent to note that the local content policy's execution will not create conflict between the multinational oil firms and the government as some of the firms have similar legislation in their respective home countries and other locations where they operate. However, they should not be exposed to extreme severe business conditions.

There is the need for an investment-friendly environment to make the local content act a viable legal instrument for propelling economic development in Nigeria through the establishment and funding of the Nigerian Content Fund to make funds available to local oil firms at affordable rates to build capacity. Facilities, infrastructure for research and development must be put in place for the Nigerian Local Content Act to thrive;

[59] "The Swamps of Insurgency: Nigeria's Delta Unrest." Crisis Group Africa Report 115, 3 August 2006, 12.

all hands must be on the deck. Though there are challenges against the enforcement of the Act, there is also an antidote to them.

Furthermore, there is a need for consistency and transparency in the implementation of the Local Content Act. This is essential to achieve energy security and sustainability. Total institutional reform of the Nigerian Content Development and Monitoring Board is overdue. All relevant policies and institutional arrangements should be enacted to eliminate all constraints against the Act's successful enforcement.

The Local Content Act should have serious and unambiguous sanctions for non-compliance among all stakeholders in the sector. Confidentiality clause may sometimes encourage corruption in the sector, hence removing confidentiality Clauses in all contracts and leaseholds to encourage transparency and public disclosure of all contracts, transactions, and cooperation rather than discrimination with the foreign oil firms promote healthy competition in the sector. As petroleum industry reform is the key to unlock development in Nigeria, energy access is the basic requirement for Nigeria and Nigerians' development. The law should evolve to satisfy the everchanging oil and gas situations, which are often influenced by economic, social and political circumstances[60].

The country should diversify its national revenue base to decline extreme reliance on crude oil revenues by mainstreaming other revenue sources, such as direct tax and improving other nation's wealth segments. Expanding the nation's wealth sources will combat rent-seeking activities in the country and guarantee the local content law's execution. There is a need to overhaul the existing Bilateral Investment Treaties (BITs) and other investment agreements in conformity with the terms in its Local Content Act.

Finally, there is the need to enrich the Nigerian Content Development and Monitoring Board (NCDMB) administrative and institutional capacity to scrutinize compliance with the Act efficiently through efficient equipping and financing of the Board to enhance its capacity to bridge the identified gaps. Appealing fiscal policy measures, such as discount in import duties and other consumables besides tax incentives for local oil and gas firms, will promote investment and economic growth in the country by giving incentives for higher compliance.

[60] Pereira, E. G., Mathews, C., & Trischmann, H., Local Content Policies in The Petroleum Industry: Lessons Learned. (2019), ONE J: Oil and Gas, Natural Resources, and Energy Journal, 4(5), 631-674.