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Regulatory Capture and the Continuous Despoilment of the Niger-Delta Environment in Nigeria

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Abstract

The commencement of oil exploration in commercial quantities in Oloibiri in the Niger Delta in 1956, came with great excitement and tall hopes for the rapid development and accelerated civilization of the region. But little was known of the pains associated with the exploration of oil such as oil spillages, gas flaring, deforestation, noise pollution, and other sundry ecological effects. The activities of the oil companies have been implicated in this malaise. However, there have been state laws to nip to the bud these untoward effects of oil exploration in the environment. Nevertheless, the status quo remains to the detriment of national security and survival. This paper espouses the idea that it was the inability of the state to effectively monitor and sanction these oil companies that has led to the despoilment of the Niger Delta environment by the activities of the later. We anchored our analysis on the regulatory capture theory. This will aid an understanding of the nexus between the state and oil companies in the persistent despoliation of the Niger Delta environment despite state laws to the contrary. We will be guided by the following question: why has, despite state laws against oil spillages and gas flaring in Nigeria, this activities has continued untrammeled in the Niger Delta environment.

Keywords: The State, Oil Companies, Despoilment, Niger Delta, Environment, Regulatory Capture.

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Introduction

The Niger Delta is a region in Nigeria with various ecological zones that mainly cut across the states of Akwa Ibom, Bayelsa, Delta, and Rivers with fringes in parts of Abia, Cross River, Edo, Imo, Ondo states and recently Anambara state. The region is of about 60% of Africa's largest mangrove forest and stretches over 20,000km^2 swamps of the littoral fringes of Nigeria. In the Niger Delta region of Nigeria, despite the abundance of oil in the region, about 60% of the population of these rural people depend on fishing and farming for their life sustenance and livelihood (Fund World Life, 2018). The region has a population of 31,224,577 million people with age structure that depicts a large segment of young people below 30 years of age comprising 62.1 percent of the population (Nigerian News Census, 2006). The region is the main area in Nigeria that is highly blessed with oil and gas. The highly blessed region is the geographical heart of crude oil exploitation where Nigeria earns her major income for economic development. Chete, et al (2016) in addressing the important role oil and oil products play in the economic development of Nigeria had asserted that: "oil and gas sector, in particular, continues to be a major driver of the economy, accounting for over 95 per cent of export earnings and about 85 per cent of government revenue between 2011 and 2012. Moreover, Onuba (2017) had reported that as at 2014 that oil still contributes 92% of Nigeria's earnings. Ajanaku (2008:3) corroborated this position when he asserted that "the hydrocarbon resources of the region have made Nigeria the largest oil producer in Africa and the seventh in the world". This is given the demand and place of oil in global economy.

The uncovering of oil in commercial quantities in Oloibiri a town in the Niger Delta region of Nigeria in 1956 by Anglo-Dutch group Shell D' Archy led to the exploration and exploitation of oil in that region (Ibeanu, 2005). However, the exploration and exploitation of oil in that region has led to dire consequences for the development and survival of the people of that region. As Oluduro and Oluduro (2012:48) posited "with the commencement of oil exploration in commercial quantities in Oloibiri in Niger Delta in 1956 came great excitement and tall hopes for the rapid development and accelerated civilization. But little was known of the pains

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associated with exploration of oil such as oil spillage, deforestation, noise pollution, and other sundry ecological effects". These adverse effects from oil exploration have been the lots of the Niger Delta area in Nigeria. Corroborating the above position Inokoba and Imbua (2010:101-102) pointed out that:

> The indisputable reality of the Niger Delta is that it is a region of stark contrast. The dilemma of the region is that its wealth and riches has become a source of poverty, squalor and curse to the people of the oil bearing communities. The truth is that despite its invaluable contribution to the sustenance of the Nigerian state, the Niger Delta is now home to some of Africa's poorest people and some of its worst cases of environmental destruction.

The negative impacts of crude oil mining and refining in the environment has been well documented by Ibeanu (2005:58) as he observed that:

> The pollution arising from oil spillages destroys marine life and crops, makes water unsuitable for fishing and renders farmland unusable. Brines from oil fields contaminate water formations and streams, making them unfit as a source of drinking water. At the same time, gases flaring in the vicinity of human dwellings and high pressure oil pipelines that form a mesh across farmlands are conducive to acid, deforestation and destruction of wildlife. In addition, dumping of toxic, non-biodegradable by-products of oil refining is dangerous to both flora and fauna, including man. Metals that at high concentration are known to cause metabolic malfunction in human beings, such as cadmium, chromium, mercury and lead, are contained in refinery effluents constantly discharged into fresh water and farmland. They enter indirectly through the consumption of sea food. Fish, for instance, is known to be able to store mercury in its brain without metabolizing it, and man runs the risk of eating such contaminated fish.

However, despite state laws to the contrary, environmental despoliation through oil spillages and gas flaring is still the lot of the Niger Delta people. Hence, this paper intends to explore the

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nexus between the capture of the state regulatory agencies by the oil companies and the despoliation of the Niger Delta environment.

Theoretical Framework

The theoretical framework that will guide us in this paper is the regulatory capture theory. Some of the earliest proponents of this theory were George Stigler, Richard Posner, Joel Hellman, Daniel Kaufmann and Johan de Hertog. The theory is akin to the rent-seeking, client politics and political failure theories as well as the capture theory of politics explored by Onuoha (2008; 2009). Regulatory capture means the capture of regulators by the regulated (MacMahon, 2002). It occurs when special interests seize regulatory agencies to further their own ends. The theory assumes that government at federal, state, and local government levels create agencies to regulate industries for the benefit of society. Hertog, (2010) remarked that regulation refers to the employment of legal instruments for the implementation of socioeconomic policy objectives and this regulation increases social welfare. Governments create and enforce the rules that regulate the private sector. Regulation is then undertaken to prevent the industry from creating problems for the society by charging high prices or limiting production *or the despoliation of the environment* (Authours insertion). Hence, regulation is the manifestation of political pressure brought to bear by the public which demands that a market failure be corrected and government has the legal and coercive power to supply regulations.

The theory suggests that regulations are goaded by forces of supply and demand. The government represents the supply side while the industry and other interest groups represent the demand side of the argument. These groups require regulations for their survival in the market while the government is the only one which can provide such regulations (Benson, 2005). Though regulatory agencies are created with the intention of correcting market failures, as time goes by, the agencies are subject to capture by the firms they regulate. Stigler (1971) argued that an industry can benefit from regulations if it can capture the regulatory agency involved. Regulation is not about the public interest at all, but the process, by which interest groups seek to

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promote their private interest. Overtime, regulatory agencies come to be dominated by the industries regulated (Posner, 1974).

Regulatory capture theory suggests that public interest is the beginning of regulations. Of course, regulation is always associated with distribution. Politicians aim at maintaining political power in their efforts to design regulations for the industries but they also seek money, votes and resources from the group that are favoured by regulations. Frequently, the industries capture the state and make her agencies to act in the interest of the industry rather than the public. The theory states that regulations are manipulated to fit the requirements of those affected by them. Hence, regulations serve the interests of those concerned. Some of the notable industries subject to public sector regulation are communications, energy, quantity controls, production techniques, and even operating practices; *like in the oil and gas industry* (Authours insertion). This capture is achieved by constant romance, 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 agencies are likely to be captured by the industry if the members running the agency also happen to be former executives of the regulated firms and hope to be reemployed by the firms after a brief stint in the agency. While government regulatory agencies are supposed to protect the public from the actions of the industry, at sometimes, they act only in the best interests of the industry. These industries are able to capture regulatory agencies due to the great deal of specialized knowledge at their disposal and regulators require this knowledge to thrive. The personnel of regulatory agencies are usually former technical support staff and scientists of industries and these personnel tend to view the regulatory agencies as temporary employers. Hellman and Kaufmann (2000) noted that whosoever seizes the state seizes the day, business, property, rent and interest. Industries capture the legal, policy and regulatory environment by illegally purchasing the laws, policies and regulations of the state. For firms, capture is a strategy that started with insecure property rights they faced. It is possible to capture the regulatory agency in states with incomplete civil liberties and slow economic reforms. Capture also

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manifests in benefit/cost analysis. Capture occurs when most or all of the benefits of a programme go to some single, reasonably small interest but most or all of the cost will be borne by large number of people such as taxpayers (Wilson, 1989). The consistent outcomes arising from regulatory capture are that the regulated industry use regulation in ways to increase its benefits at the expense of consumers. Public interest agencies that come to be controlled by the industry they were charged with regulating are known as captured agencies. In fact, regulatory agency, created to act in the public interest, instead advances the commercial or special concerns of interest groups that dominate the industry or sector it is charged with regulating.

Kay and Vickers (1990) distinguished between *economic* and *social* regulation. Economic regulation consists of two types of regulation: structural regulation and conduct regulation. Structural regulation is used for regulating market structure. For instance, it is used to restrict entry, exit and rules for individuals supplying professional services in the absence of recognized qualifications while conduct regulation is used for regulating behaviour in the market such as price control, rules against advertising and minimum quality standards. Social regulation comprises regulation in the area of environment, labour conditions, consumer protection and labour. Instruments applied here include regulation dealing with the discharge of environmentally harmful substances, safety regulations in factories and workplaces, the obligation to include information on the packaging of goods or on labels, the prohibition of the supply of certain goods and services unless in the possession of a permit and banning discrimination on race, skin colour, religion, sex, or nationality in the recruitment of personnel (Hertog, 1999).

Application of the Theory to Study

In applying this theory to this study, it is pertinent to state that the despoliation of the Niger Delta environment by the activities of these oil companies was as a result of the capture of the state and its regulatory agencies by these oil companies. The theory had pointed out that “regulatory agencies are likely to be captured by the industry if the members running the agency also happen to be former executives of the regulated firms and hope to be reemployed by the firms after a

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brief stint in the agency"' This is exactly the situation in the Department of Petroleum Resources (DPR), the Nigerian Government agency that has the statutory responsibility of ensuring compliance to petroleum laws, regulations and guidelines in the Oil and Gas Industry, has had most of its directors drawn from NNPC and other Multinational Oil Companies operating in and outside of Nigeria whose activities are supposed to be regulated by the DPR. Thus, the regulatory agency has become an appendages/extensions of the regulated oil companies.

Since capture takes place through gift/bribe giving and taking from the oil companies to the state and its regulatory agencies, it could be posited that the oil companies have succeeded in capturing the state apparatus to work for their interest, hence the lack of political will by the state to prosecute the oil companies that has been implicated in environmental despoliation activities in the Niger Delta despite states laws to the contrary. Consequently, contrary to the avowal of the state in its desire and determined effort to put an end to gas flaring and oil spillages in the Niger Delta, it is actually complicit in these acts perpetrated by the oil companies in the Niger Delta environment. Rather than conduct regulation to assist the interests of the public, the state tend to pander to the interest of the oil companies who bribes their way and gets free with any illegal environmental practices. The state and its agencies having been captured by these oil companies pays lip service to the negative environmental practices perpetrated by the later to the detriment of the people.

Methodology

The study adopted the ex-post-facto research design. Cohen and Manion (1980) had defined the ex-post-facto design as those studies which investigate possible cause-and-effect relationships by observing an existing condition and searching back in time for plausible causal factors. Thus, the study sought to find out how the capture of the regulatory apparatus of the state in the oil and gas sector by the oil companies has resulted in the non-implementation of the legal frameworks for the safeguarding of the environment in Nigeria and the continuous oil spillages and gas flaring in the Niger-Delta region of the country.

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Data for the study was generated through secondary sources such as books, journals, and official documents of Shell BP, Nigeria National Petroleum Cooperation, Nigeria Bureau of Statistics and the Central Bank of Nigeria. Analysis was made through the use of tables, figures and graphs without vitiating the fact that content analysis were equally employed in relevant places.

The Despoilment of Niger Delta Environment

Oil pollution constitutes one of the sources of environmental despoilment in the Niger Delta. Decades of intense and gross oil spillages have resulted in massive pollution that has wrecked havoc on the environment. Some of the well-known oil spills include, Oshika oil spill in 1975 (5,000 to 10,000b); Forcados terminal oil spill of July 6, 1979 (570,000b); the Funiwa number 5 oil blow of January 1, 1980 (400,000b); Oyakama oil spill of May 10, 1980 (about 30, 000b) and NNPC oil spill of November 2, 1982 (18,000b) (Greenpeace, 1994). It was discovered that the main source of pollution is spillages from aged pipelines, some fifty years old criss-crossing the Niger Delta landscape. Emuedo (2013) had posited that most of these oil pipelines lie on the surface or barely below, thus, disposing them easily to damage. It has been observed that:

> This practice is at variance with practices and manner the oil companies operate in other climes. Shell, for instance, commissioned 17 different environmental surveys before a single turf was cut during the construction of the pipeline from Stanlow in Cheshire to Mossimoran in Scotland. Detailed environmental impact assessment (EIA) covered every length of the (pipeline) routes. In addition, elaborate measures were taken to avoid lasting disfigurement as the route was diverted in several places to accommodate environmental concerns (Greenpeace, 1994).

It has been noted that in the Niger Delta, the oil companies besides laying pipelines on the surface, also, do not carry out Environmental Impact Assessments (EIAs) before pipelines are laid (Emuedo, 2013). Shell admitted to spilling 1,626,000 gallons of oil into the environment from 1982 to 1992 in 27 separate incidents but attributed most of these spills to sabotage. However, the Department of Petroleum Reaoursces (DPR) had stated that of the 2,676 spills recorded between 1976 and 1990, only 18% was due to sabotage, while equipment failure and

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corrosion accounted for 38% and 21% respectively (Emuedo, 2013). Furthermore, figure obtained from DPR showed that between 1976 and 2005, 3,121, barrels of oil were spilled into the Niger Delta environment in about 9,107 incidents. Most of the spills were lost to the environment. The table below is illustrative of the continuous and pervasive oil spillage in the Niger Delta from 1976 to 2005.

Table 1: Records of oil spills in Nigeria, 1976-2005

Year	No of spills	Quantity spilled (Barrels)	Quantity Recovered (Barrels)
1976	128	26,157.00	7,135.00
1977	104	32,879.00	1,703.01
1978	154	489.294.00	391,445.00
1979	157	694,170.00	63,481.20
1980	241	600,511.00	42,416.83
1981	238	42,722.00	5,470.20
1982	252	42,841.00	2,171.40
1983	173	48,351.30	6,355.90
1984	151	40,209.00	1,644.80
1985	187	11,876.60	1,719.30
1986	155	12,905.00	552
1987	129	31,866.00	6,109.00
1988	208	9,172.00	1,955.00
1989	195	7,628.16	2,153.00
1990	160	14,940.82	2,092.55

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Year	No of spills	Quantity spilled (Barrels)	Quantity Recovered (Barrels
1991	201	106,827.98	2,785.06
1992	378	51,187.96	1,476.70
1993	428	9,752.22	2,937.08
1994	515	30,282.67	2,335.93
1995	417	63,677.17	3,110.02
1996	430	46,353.12	1,183.02
1997	339	81,727.85	
1998	339	99,885.35	
1999	225	16,903.96	
2000	637	84,071.91	
2001	412	120.976.16	
2002	446	241,617.55	
2003	609	35,284.43	
2004	543	17,104.00	
2005	496	10,734.59	
Total	9,107	3,121,909.80	550,232.90

Source: *Egberongbe, etal. (2006), cited in Emuedo, (2013).*

Furthermore, the figures below is an indication of the uninhibited despoliation of the Niger Delta environment from 2007 to 2013 by the activities of the oil companies despite states policies to the contrary.

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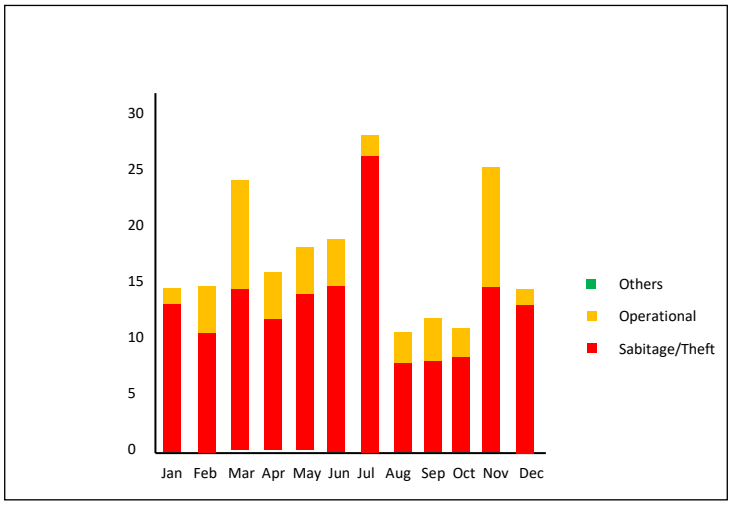
Figure 1

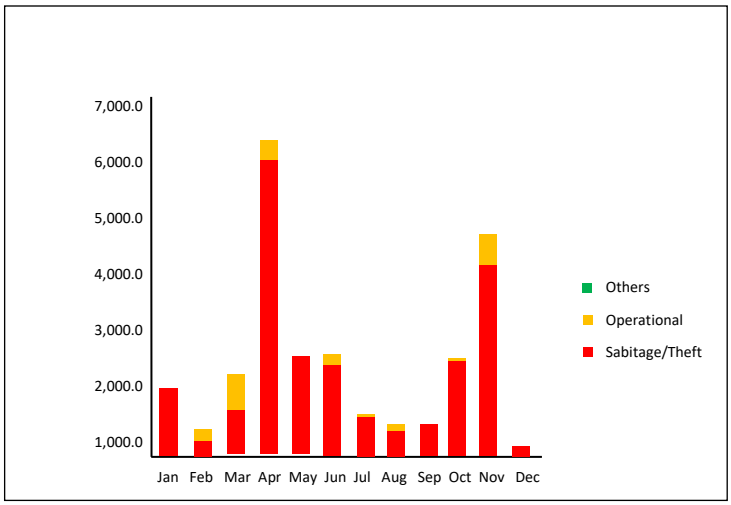
2014 Monthly oil Spill



Source: Shell oil spill data http://www.shell.com.ng/environment-society/environment

Figure 2

2014 Volume of Spill per Month



Source: Shell oil spill data http://www.shell.com.ng/environment-society/environment

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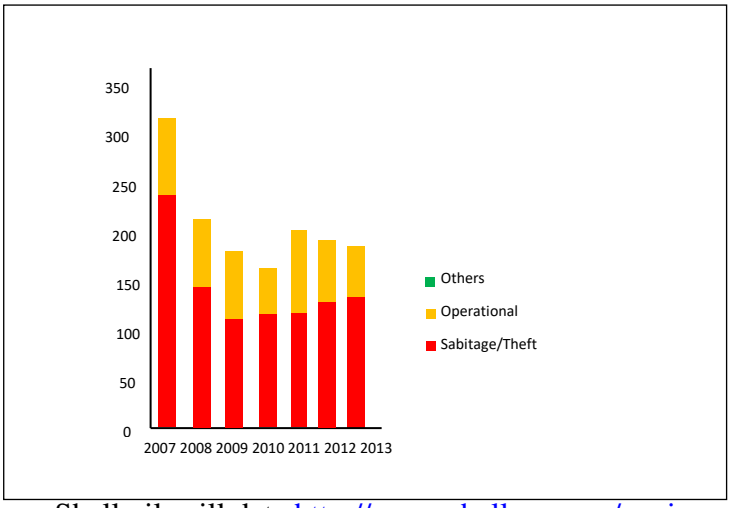
Figure 3

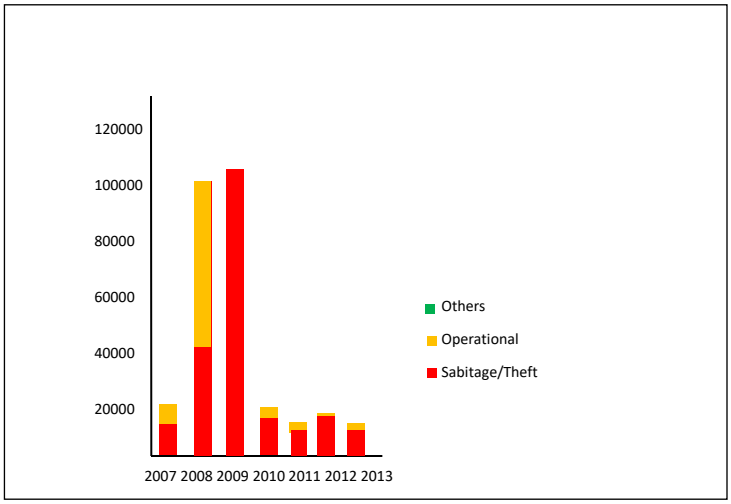
Number of oil Spills/year for 2007 - 2013



Source: Shell oil spill data http://www.shell.com.ng/environment-society/environment

Figure 4

Volume of oil Spills (barrels)/year for 2007 - 2013



Source: Shell oil spill data http://www.shell.com.ng/environment-society/environment

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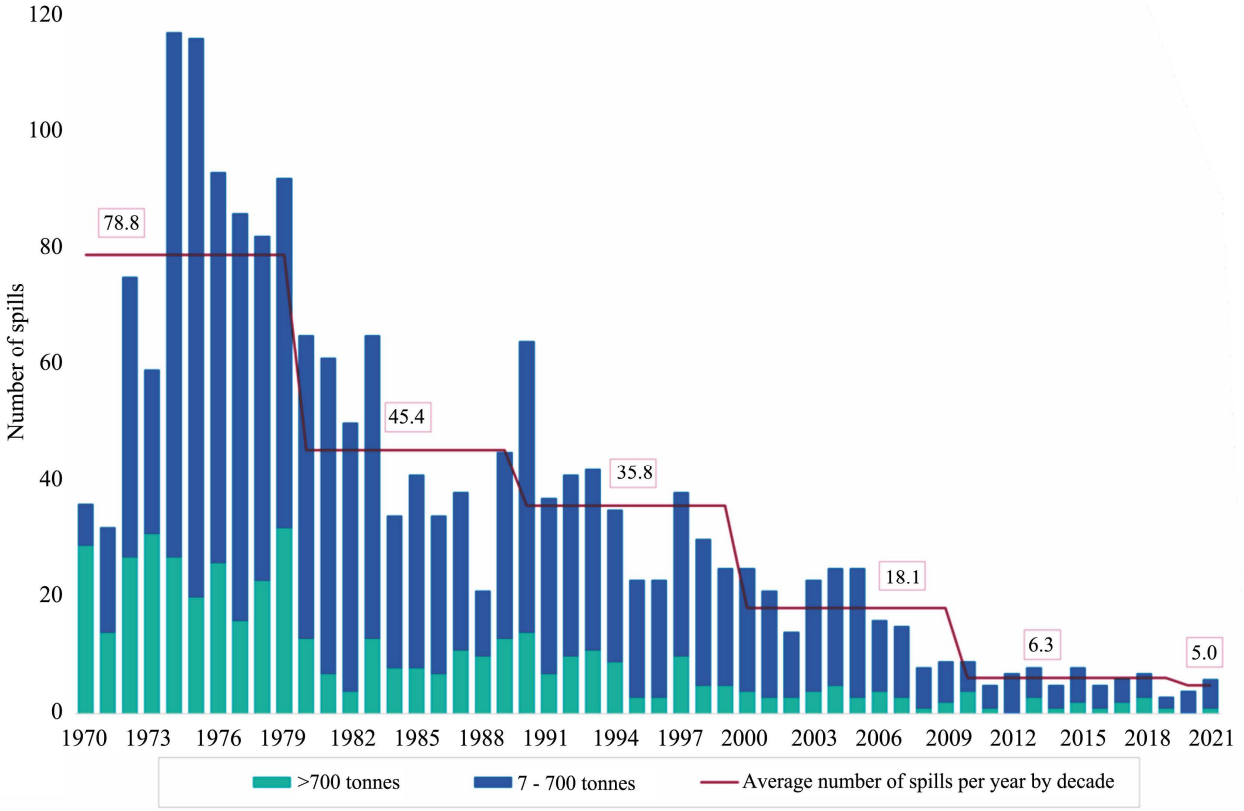
Moreover, to illustrate the continuous despoliation of the Niger-Delta environment through oil spillages by the activities of the oil companies despite states laws to the contrary, below is a graphical presentation of oil spillages in Nigeria from 1970 to 2021.

Figure 5: Number of oil spills in Nigeria from 1970-2021.



Source: Bello & Nwaeke (2023).

More recently, there are around 612 publicly available oil spill records in 2022. 25 of these oil spill sites were not visited by a Joint Investigation team, 213 of these had no estimated quantity of oil spilled provided by the company as it is customary to do. However based on reports available 45,091.992 barrels of oil (7,124,534.814 litres) were spilled. That is around 225 oil tanker trucks full. There were 4 Major oil spills (over 250 barrels spilled into waters, or over 2,500 barrels spilled on land, swamp, shoreline and open sea, 7 Medium oil spills (25-250 barrels spilled into inland waters, or 250-2,500 barrels spilled on land swamp, shoreline and open sea) and 366 minor oil spills (up to 25 barrels spilled into inland waters, or 250 barrels spilled on

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land, swamp, shoreline and open sea). 273 of these were under 10 barrels in size while 226 oil spills could not be categorized (Nigerian Oil Monitor, 2023) retrieved from https://nosdra.oilspillmonitor.ng/ on 21 October 2023.

Moreover, independent researchers have inclined themselves to believe that the volume of spills is much higher. According to Banfield (1998:30-31), 56m gallon of oil were spilled into farmland and water bodies while Dubli-Green, etal, (1998) had stated that 2.8 million barrels were spilled into the environment in 5334 incidents from 1976-1978. As Greenpeace (1994) had stated, "it is difficult to estimate the exact figure of oil spills as many go unreported". A major problem associated with oil spills is that under the DPR guidelines, spills are classified into categories; small, medium and large and it is only mandatory for the oil companies to report medium and large oil spills based on their own assessment". This constant despoilment of the ecosystem had severely impacted on biodiversities and marine lives in the region. In many villages near oil installations, even when there has been no recent spill an oily shen can be seen on the water, which in fresh water areas is usually the same water that the people living there use for drinking and washing (Oluwaniyi, 2011).

Furthermore, of the environmental problems associated with the oil sector, the worst is gas flaring. Since Nigeria's oil is associated with gas, natural gas is often produced as a by-product of oil drilling. In most cases in oil-producing regions of the world, gas is captured and sold but in Nigeria, the reverse is the case as gas is routinely flared in the oil fields since the discovery of crude oil in Nigeria. In 1993, Nigeria flared more natural gas than any oil-producing country, consisting 12 percent of world flaring (down from more than 20 percent in the late 1990s) (lubeck, Watts & Lipschutz, 2007:3). It has also impacted negatively on the health of the communities. Flared gas contains large amount of methane and carbon dioxide, which are major contributors to ozone layer depletion. It has led to noise pollution, steady temperature rise, acid rain, corrosion of roofs and respiratory diseases among other health issues (Oluwaniyi, 2011:14). The tables below shows gas production, utilization and the quantity flared into the environment of the Niger Delta.

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Table 2
Gas Production and Utilization in Nigeria (Million Cubic Metres) 1970-2006

Year	Production	Utilization	Flared
1970	8,029.0	72.0	7,957.0
1971	12,975.0	185.0	12,790.0
1972	17,122.0	274.0	16,848.0
1973	21,882.0	395.0	21,487.0
1974	27,170.0	394.0	26,776.0
1975	18,656.0	323.0	18,333.0
1976	21,276.0	659.0	20,617.0
1977	21,924.0	972.0	20,952.0
1978	21,306.0	1,866.0	19,440.0
1979	27,619.0	1,546.0	26,073.0
1980	24,551.0	1,647.0	22,904.0
1981	17,113.0	2,951.0	14,162.0
1982	15,382.0	3,442.0	11,940.0
1983	15,192.0	3,244.0	11,948.0
1984	16,255.0	3,438.0	12,817.0
1985	18,569.0	3,723.0	14,846.0
1986	18,739.0	4,822.0	13,917.0
1987	17,085.0	4,794.0	12,921.0
1988	20,253.0	5,516.0	14,727.0
1989	25,053.0	6,323.0	18,730.0
1990	28,163.0	6,343.0	21,820.0
1991	31,588.0	7,000.0	24,588.0
1992	32,464.0	7,058.0	25,496.0
1993	33,444.0	7,536.2	25,908.0
1994	32,793.0	6,557.0	26,216.0
1995	32,980.0	6,910.0	26,070.0
1996	36,970.0	10,150.0	26,820.0
1997	36,754.8	10,207.0	26,547.0
1998	36,036.6	10,886.5	25,150.0
1999	35,856.6	12,664.6	23,191.0
2000	47,537.0	21,945.0	25,592.0
2001	57,530.0	29,639.7	27,890.0
2002	101,976.0	26,203.4	75,772.7
1st Quarter	12,448.3	66,98.0	57,50.3
2nd Quarter	11,210.8	63,40.5	4,870.3
3rd Quarter	12,243.6	7,084.7	5,158.9
4th Quarter	66,073.3	6,080.2	59,993.2

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2003	53,379.0	30,583.0	22,796.0
1st Quarter	13,406.0	7,533.0	5,873.0
2nd Quarter	13,511.0	7,661.0	5,850.0
3rd Quarter	13,175.0	7,755.0	5,420.0
4th Quarter	13,175.0	7,634.0	5,653.0
2004	69,748.0	4,5156.0	2,4592.0
1st Quarter	23,125.0	16,683.0	6,442.0
2nd Quarter	15,447.0	9,499.0	5,948.0
3rd Quarter	16,034.0	9,596.0	6,438.0
4th Quarter	15,142.0	9,378.0	5,764.0
2005	58,247.0	23,429.0	23,429.0
2006	57,753,7	18,378.0	18,378.9

Source: *CBN (2007:175)*

Table 3
Gas Production and Utilization in Nigeria (mscf) 2007-2015

Year	Production	Utilized	Flared	% Flared
2007	2415649041	1655960315	759688726	31.45
2008	2287547344	1668148489	619398854	27.08
2009	1837278307	1327926402	509351905	27.72
2010	2392838898	1811270545	581568354	24.30
2011	2400402880	1781370022	619032858	25.79
2012	2580165626	1991498902	588666724	22.82
2013	2325137449	1916531001	409311430	17.60

Source: *NNPC (2013:63).*

To indicate the continuous depletion of the Niger-Delta environment through gas flaring and the cost implications to Nigeria, the World Bank had observed that between 2012 and 2022 that Nigeria flared an estimated 80 billion standard cubic metres of gas worth about N9tn as part of its oil production process. The breakdown showed that in 2012, about 9.6 billion standard cubic metres worth N460m ($1,100m) of gas was wasted. In 2013, 9.3 billion standard cubic feet of gas were flared into the environment. Other years are, 2014, 8.4 billion, 2016, 7.3 billion, 2017, 7.7 billion, 2018, 7.5 billion, 2019, 7.9 billion, 2020, 7.2 billion, and in 2021, 6.6 billion cubic metres of gas was flared (Akintayo, 2023).

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Even recently, the World Bank had pointed out that data from the National Oil Spill Detection and Response Agency had shown that from January to November 2022, that Nigeria had flared an estimated 5.6 billion standard cubic metres of gas valued at $685m (Akintayo (2023)). let now look at the legal frameworks that had been adopted to safeguard the environment in Nigeria.

Legal Framework for the Safeguard of the Environment in Nigeria

In 1963, the government of Nigeria started creating the legal framework (principal and subsidiary legislation for the control and mitigation of oil pollution which include.

a. Mineral Oil Safety Regulation 1963

b. Oil in Navigable Waters Regulation 1968

c. Oil in Navigable Waters Act No 34 of 1968

d. Petroleum Regulations 1967

e. Petroleum Decree 1969

f. Petroleum (Drilling and Production) Regulation 1969

g. Petroleum (Drilling and Production) Regulation 1973

h. Petroleum Refining Regulation 1974

i. Federal Environmental Protection Agency Act- 30th December 1988

j. Mineral Oils (Safety) Regulations 1997

(Source: www.dprnigeria.com).

There have also been some amendments to some of these laws, which is aimed at ensuring a more effective control and protection of the environment from oil spills and gas flaring.

Amendments:

a. Petroleum (Drilling and Production) (Amendment) Regulations 1990

b. Petroleum (Amendment) Decree 1996

c. Petroleum (Amendment) Decree No.23, 1998

d. Petroleum (Drilling and Production) (Amendment) Regulation 1996

(Source: dprnigeria.com)

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Apart from these, there are relevant National and International Agreements in place such as:

a. Endangered species Decree Cap 108 LFN 1990.

b. Federal Environmental Protection Agency Act Cap 131 LFN 1990.

c. Harmful Waste Cap 165 LFN 1990.

d. International Convention on the Establishment of an International Fund for Compensation for oil Pollution Damage, 1971.

e. Convention on the Prevention of Marine Pollution Damage, 1972.

f. African Convention on the Conservation of the Nature and Natural Resources, 1968.

g. International Convention on the Establishment of an International Fund for the Compensation for Oil Pollution Damage, 1971.

h. Oil Pollution Act (OPC) 1990.

i. Environmental Guidelines and Standards for the Petroleum Industry in Nigeria issued by the Ministry of Petroleum Resources 1991.

j. National Environmental Protection Management of Solid and Hazardous Waste Regulation 1991 (FEPA) among others.

The State Connection in Environmental Despoliation in the Niger Delta

In spite of all these myriads of environmental laws put up by the federal government, it has not prosecuted any of the oil companies. The effect of oil spills and gas flared on the environment have been devastating in economic terms to the oil-rich communities who rely on the ecosystem for economic livelihood (Oluwaniyi, 2011:14). As at 2015 a total of 1068.1 bbl of oil was spilled in January in eight incident sites , 289.1 bbl in February in nine incident sites and 89.61 in March in four incident sites (http://www.shell.com.ng/environment-society/environment). Thou Shell adduced the causes of these spills to theft and sabotage. However, the report from the Amnesty International and Center for Environment, Human Rights and Development points to the contrary. They had stated that Shell has manipulated oil spill investigations in Nigeria with the company's claims on oil pollution in the Niger Delta region deeply suspect and often untrue. To

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buttress this point, an instance was given were in one incident, secretly filmed video of an investigation shows how officials from Shell and the regulator tried to subvert the evidence by persuading community members and the investigation team not to attribute the cause to equipment failure. (http://www.thejournal.ie/amnesty-shell-oil-bodo-creek). Thus, if the regulatory agencies could connive with the companies they are meant to regulate in concealing the companies deleterious environmental practices, then capture of the regulator by these companies has taken place. Moreover, regulatory agencies are likely to be captured by the industry if the members running the agency also happen to be former executives of the regulated firms and hope to be reemployed by the firms after a brief stint in the agency. The table below indicates the list of former Chief executives that has ran the Department of Petroleum Resources DPR) , the agency entrusted with the responsibility of regulating oil and gas activities in Nigeria by both foreign and local oil industries, including that of Nigerian National Petroleum Cooperation (NNPC), the Nigerian oil giant.

Table 4: List of Former Directors of DPR and their Places of Redeployment

S/N	**Name of Director**	**Places of Redeployment**
1	Benson Osuno	Shell bp upstream,
2	Jubrin Oyekan	African petroleum producus associate
3	Dublin Green	Gulf oil company, Philip oil company
4	Peter Achebe	NNPC
5	Mac Ofunle	NNPC
6	Tony Chukwueke	Shell BP
7	Aliyu Sabonbimi	NNPC
8	Billy Agha	NNPC
9	Andrew Obaje	NNPC
10	Osten Olorunsola	Agip, shell PDC
11	Gerage Osahon	NNPC
12	Mordecai Ladan	DPR (has worked since 1987)

Source: *International center for investigative reporting (2019) and authours compilations from various sources.*

Akanni (2019) had pointed out that "a key challenge of regulatory agencies in Nigeria is the difficulty of civil servants to escape regulatory capture and the DPR is not immune". Nevertheless, Yakubu Gowon had in 1969 ordered the oil companies to end gas flaring by 1974,

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however, following the failure of the oil companies to act, the date was shifted to 1979. The date was also shifted to 1984, nonetheless, when the oil companies failed to act, a fine was imposed on defaulters. Moreover, the oil companies were mandated to furnish the state with their detailed gas utilization plan. What is more, by 1983, at the bidding of the oil companies the date was again shifted to 2008, but by November 17, 2007, the 2008 date was at the dictation of the oil companies again shifted to 2011 (Emuedo, 2011). CDD, (2007:6) had pointed out that:

> The oil companies may have failed to comply for two reasons; first, the fine (₦10/100 cubic feet of gas flared) is cheaper to pay by the oil companies compared to the amount required to acquire gas re-injection plants. Secondly, gas flare fines have become source of revenue for the state, which earn over $800 million from flare fines in 2007, hence, the state's lack of will to enforce the law.

However, the kernel of the narrative is that the state and its agencies have been captured by these oil companies. Thus, they conduct regulations in a manner that will favour the oil companies. If there is a serious commitment from the state and its regulatory agencies in eradicating these untoward effects of the activities of the oil companies in the environment, why can't the licenses of any oil company found in dereliction of good environmental practices be revoked? Why has the state kept shifting the date for the end of these deleterious practices in the environment? Unless one is making a limited assumption, there are no way these shifts in dates in favour of these oil companies will not be accompanied by kickbacks, gifts and bribes.

Moreover, another pointer to capture of the state and its apparatuses by these oil companies could be gleaned from the light penalties imposed on these defaulting oil companies. Konne (2014:196) had pointed out that:

> Shell's persistent violations of Nigerian environmental laws and international legal standards are due to the government's light penalties. Imposing sufficient punishment for violations of environmental laws is an important part of the Nigerian government's obligation to

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protect under international law. Without real consequences for environmental violations, there is no incentive for multinational corporations to respect the environment in which they operate.

Meanwhile, Steiner (2010:16) had noted that "Nigeria's environmental laws require that oil operators adopt all practicable precautions to prevent land and water pollution and falling to comply with good oil field practices can result in revocation of a company's license". However, "while some oil licenses and leases have been revoked, as far as Amnesty International could discern revocation has never been done on grounds of environmental damage".

Worrisome is the fact that there is no independent body to monitor the activities of these oil companies. Amnesty Report (2009) had pointed out that although Nigeria imposes regulations on the oil industry, it does not properly enforce them due to a lack of independent oversight by environmental agencies. This is as a result of the fact that the federal government is both a partner in the oil industry as well as the party responsible for enforcing environmental laws and standards. The oil industry is comprised of a number of joint ventures between the Nigerian government, which owns the Nigerian National Petroleum Corporation (NNPC), and subsidiaries of multinational oil companies like shell. The Nigerian government holds a 55% stake in its joint venture with Shell (Shell, 2014). Here there is a lack of independent regulation and oversight of the industry. In Nigeria, the Nigerian Department of Petroleum Resources (DPR) has the authourity to regulate and enforce environmental laws. However, the DPR is closely aligned with the Ministry of Energy, whose role is to develop Nigeria's energy resources. Hence, the DPR cannot adequately regulate oil pollution while at the same time being aligned with the Ministry responsible for oil production.

Conclusion and Recommendations

This paper tried to interrogate the despoliation of the Niger Delta environment by the oil companies through the capture of the regulatory apparatus of the state. It found out that it was the inability of the state to put in place an effective and efficient regulatory framework for the

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regulation of oil spillages and gas flaring that is responsible for the continued despoliation of the Niger Delta environment by the activities of the oil companies. Moreover, the government has not exhibited the political while to tackle this menace in that has been a cog in the wheel of development in the Niger Delta and has been generating tensions and agitations. Thus we recommend as follows:

- The government should as a matter of urgency implant an independent agency that will be responsible for the monitoring and regulation of the activities of these oil firms.
- To this effect, government should as a matter of urgency demerge the Department of Petroleum Resources (DPR) from the energy ministry for effective and independent regulation and monitoring.
- The regulatory agencies should try to show some level of patriotism by not conniving with the oil firms in concealing cases of oil spillages as this compounds the problem.
- The government must bring out stringent punishment for any of the oil firms that breaches the regulatory framework.
- Finally, in any case of breach that involves the regulatory agencies, adequate punishment and sanction must be meted out to such individuals or groups as this will make them face the business for which they were being paid for.

Conflict of interest: I Ikechukwu Charles Akor hereby declare on behalf of my co-authors that there has not been any conflict of interests among the authors

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