

A LEGAL APPRAISAL OF THE EMERGING OIL AND GAS INDUSTRY IN GHANA *

Abstract

The oil resource in Ghana is rightly viewed as a national natural resource, a critical attention however, ought to be paid to the indigenes in the oil mining areas and their environment. The lifestyles and basic livelihood of the ordinary man in these oil mining towns have been greatly affected if not altered. Living standards have soar at rocket rates overnight; adverse effects of mining activities have affected the farming community in these mining areas and caused huge unemployment issues. This has the potential of creating huge inequalities and instability among the ordinary Ghanaian in the mining areas and at the same time possess a major threat to business growth. Focus has been placed on commercial mining activities without considering the adverse social effects that these activities have on the people in the mining communities. These concerns are not receiving the necessary attention by the government. To address them, this research reviews literature on the role of Corporate Social Responsibility and posit it with the social effects of oil and gas mining activities. It proceeds to recommend how mining companies can deal directly with the mining communities to bridge this gap through sustainable responses to meet the social impact needs that has arisen as part of their activities.

Keywords: *Oil and Gas Industry, Social Effects, Corporate Social Responsibilities.*

1. Introduction

Ghana in 2007 struck oil in commercial quantities. These discoveries have generated interest around the world as it is the biggest finds in Africa in recent times¹. As a result, there has been the continual influx of International Oil Companies (IOC's) to augment the activities of Ghana National Petroleum Company (GNPC) in tapping this national resource to the wider benefit of the nation. The most crucial and critical question that bothers the minds of every Ghanaian is how best can this rich natural resource can be turned to positively affect the lives of Ghanaians? Living standard of the ordinary Ghanaian has remained in a marginal deplorable state for decades. Almost 80% of the population lives on less than \$2 a day². This increasing concern makes the question of how can the Oil and Gas wealth be effectively and equitably managed to touch the lives of the Ghanaian nationals more alarming.

The former president of Ghana, His Excellency John Agyekum Kuffour³ advised that the oil resources be effectively exploited with a view to achieving immediate national goals of poverty reduction if not alleviation and the attainment of a middle-income status by the year 2015. Realizing the vision requires every stakeholder in the Oil and Gas industry to keep the

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¹ R. Osei-Hwere; 'Oil Companies in Ghana and the Corporate Responsibility of Health, Safety and Environmental Protection' (2012) *Oil and Gas Energy Law*, <www.ogel.org> accessed 3 November 2017

² G Ian, 'Ghana's Big Test: Oils Challenge to Democratic Development', *Oxfam America (ISODEC Report)*, February 2009 p.7 Available at: <http://www.publishwhatyoupay.org> accessed 2 November 2017

³ The First National Oil and Gas Forum in Ghana Theme Turning Oil and Gas wealth into Sustainable and Equitable Development, Effective Management of the Oil and Gas Sector, Safeguarding Security and the Environment, Entrenching Transparency and Stakeholder Engagement (From 25-26 Feb 2008)

vision in constant focus. In almost all countries⁴ other than the U.S, the state owns the petroleum resources and therefore plays a vital role in the activities of oil and gas companies. On the part of the Ghana government, cogent legal framework for managing the upstream petroleum industry has been fortified in the Ghana National Petroleum Corporation Act,⁵ the Petroleum Exploration and Production Act,⁶ and Petroleum Income Tax Act,⁷ There is also a model petroleum agreement which is supposed to complement the existing legislative framework.⁸ It is obvious that these statutory regulations without more cannot solely control and manage the oil and gas resource for the much-envisioned sustainable development.

First of all, the main regulator of these statutes, receives the national share of the oil and gas revenue for equitable distribution, but unfortunately it has become evidently clear that most often than not, the government fails to deliver economic and social progress on behalf of the citizenry who are to be the ultimate beneficiaries of these natural resources. This inequality is a potent source of social discontent between the indigenes in the mining areas and the mining companies. This has the effect of propelling the indigenous people who are directly affected by the adverse consequences of the activities of oil and gas mining continually press for recognition of their claims to ownership and control over their traditional lands. The danger being that the quest for recognition from cogent examples can be destructive and bloody.

Can this outcry by the indigenous people be ignored in view of the fact that the petroleum resource is state owned? Any such action will surely serve as a major threat to the business growth of Oil and Gas mining companies and ultimately hamper sustainable development envisaged of this natural resource. The promotion and implementation of corporate social responsibility (herein after referred to as CSR) remains the fulcrum around which the growth of oil and gas companies and sustainability of the oil and gas resource can rotate effectively. Most researches on oil and gas has been limited to the upstream and downstream activities leaving out the social dimensions and impacts. This research therefore seeks to analyse from practical examples the essential contributions that Corporate Social Responsibility can play in avoiding backlashes that has been characterized by the oil and gas industry.

CSR remains a voluntary concept in most countries and international initiatives⁶ on CSR are also mandatory.⁹ Should CSR then be left to the ethical considerations of the Oil and Mining Companies or is it very vital that the government pay particular attention to CSR? In addressing these issues and their implications, the paper will be categorized into four major sections: First, a brief history of CSR and attempts at defining CSR in the light of the role it plays in corporate and social sustainability. Then the second section reviews literature on CSR and the driving force for present CSR awareness in the Oil and Gas Industry. The third section then unfolds to critically analyse the implications of the increased focus on CSR concepts. The fourth section then concludes the research by upholding the CSR concept in the quest for sustainability in the Oil and Gas Industry in Ghana. Attached to this section will be recommendations for the sustenance of the Oil and Gas Industry through the CSR concept.

⁴Including Ghana.

⁵ PNDC Law 64), 1983

⁶ PNDC Law 84, 1984.

⁷ PNDC Law 188), 1987.

⁸ *Ibid*

⁶The UN Global Compact, the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles and Amnesty International Guidelines for Companies are some of the international initiatives on CSR are also not mandatory.

⁹ See n 5 above

2. What is CSR?

The concept CSR is not new but there has not been a single globally acceptable definition for it.¹⁰This is still evolving and perhaps gaining much momentum presently.CSR has over the years gained different descriptions, and is interchangeably referred to as Corporate Citizenship, Global Citizenship and Corporate Accountability. The World Economic Forum adopted a definition for CSR as “the contribution a company makes to society through its core business activities, its social investment and philanthropic programmes and its engagement in public policy.”¹¹The Annual Meeting of the New Champions in 2010 also adopted the definition given by Lorne Craner,¹² thus “Our definitions of corporate responsibility and corporate citizenship are broad. They do not just mean supporting human rights and labour standards. They also include promoting the rule of law, transparency and good governance, fighting corruption, responsible environmental practices, community development and support for public-private partnerships.”¹³.

Kim Kercher¹⁴ adopted a number of definitions for CSR including (one by the World Business Council on Sustainable Development) “The commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life”. All these are but just a few of the numerous definitions and descriptions given CSR by society over the years. It is apparent from the foregoing that CSR is multi-faced and thus encompasses various aspects of the society in which they find them. There is the economic responsibility which refers to society’s expectation that organizations will produce goods and services that are needed and desired by customers and sell those goods and services at a reasonable price. Organizations are expected to be efficient, profitable, and to keep shareholder interests in mind. The legal responsibilities relate to the expectation that organizations will comply with the laws set down by society to govern competition in the marketplace. Organizations have thousands of legal responsibilities governing almost every aspect of their operations, including consumer and product laws, environmental laws, and employment laws. The ethical responsibilities concern societal expectations that go beyond the law, such as the expectation that organizations will conduct their affairs in a fair and just way. This means that organizations are expected to do more than just comply with the law, but also make proactive efforts to anticipate and meet the norms of society even if those norms are not formally enacted in law. Finally, the discretionary responsibilities of corporations refer to society’s expectation that organizations be good citizens. This may involve such things as philanthropic support of programs benefiting a community or the nation.¹⁵

It is explicit from the foregoing that despite the existence of several definitions of CSR, they all point towards one core fundamental principle: that a company is responsible for providing more

¹⁰ K Kercher, ‘Corporate Social Responsibility:Impact of Globalization and International Business’ 2006 Bond University, Faculty of Law, p2. Available at: <http://www.epublications.bond.edu.au.cgei/4> accessed 12 July 2017

¹¹ www.weforum.org/issues/corporate-global-citizenship accessed 11 June 2018.

¹² Assistant Secretary, United Kingdom State Department.

¹³ *ibid* at p.2

¹⁴ See n 9 above K Kercher

¹⁵ Carroll and Buchholtz, ‘Corporate Social Responsibility’ (2003)<<http://www.referenceforbusiness.com>>accessed 4May, 2017

benefits than just profits for Shareholders.¹⁶How then or important is CSR in present Corporate Society¹⁷as against the core objectives of a company? In other words, why are business leaders giving increasing importance to this topic in the 21st century.?

2.1 The Driving Force (s) For CSR Awareness

David Birch describes¹⁸ some of the driving forces behind CSR as more companies worldwide are recognizing the importance (and imperatives) of effective CSR, traditional corporate philanthropy is increasingly being replaced by an ever-widening range of developments and imperatives of more strategic means of realizing good corporate citizenship. Some of these imperatives are being driven by a growing need for both mandatory and non-mandatory reporting of the social, environmental and economic impact of business activities. Others are driven externally by socially responsible and ethical investment funds and the growing importance of corporate and brand reputation. Also, others stem from stakeholder initiatives and dialogues (such as from consumers, environmental NGOs, etc.),or from growing societal demands of the republic at large for improvement of corporate governance and accountability.

Two important motives for CSR can be identified: creating new chances (market enlargement, better reputation) and better control of risk for the continuity of the organization.¹⁹ Increasing attention on CSR is also motivated by recent corporate mismanagement scandals and the growing demand for companies to be honest and open.²⁰Concerns about how reputation affects shareholders' perceptions have led many large companies to consider not only financial performance, but also their environmental and social performance.²¹In annual reports this is often called triple bottom line reporting.²²The most important driver of corporate interest in CSR is the argument that good corporate citizenship is also good business.²³ Oceans of the ink have flowed to support the claim that corporate virtue delivers financial rewards.²⁴ For example, a report for the Global Corporate Citizenship Initiative undertaken by the consulting firm Arthur D. Little concludes:

“Companies that take corporate citizenship seriously can improve their reputations and operational efficiency, while reducing their risk exposure and encouraging loyalty and innovation. Over all, they are more likely to be seen as a good investment and as a company of choice by investors, employees, customers, regulators and joint venture partners... The range of business benefits that can result should be efficient to make any forward-thinking organization see increasing corporate citizenship as an integral part of good business management.”²⁴

¹⁶ The Economist Intelligence Unit, “The Importance of Corporate Responsibility”, 2005. A white paper from the Economist Intelligence Unit, sponsored by the Oracle.

¹⁷ The Emerging Oil and Gas Industry in Ghana.

¹⁸ See n 5 above. David Birch is an Australian professor

¹⁹ R Atuguba, & C Dowouna-Hammond, ‘Corporate Social Responsibility in Ghana, Friedrich Ebert Foundation’ (FEF) Report, June 2003, p.15

²⁰ *Ibid* 17 Atuguba & Dowuouna- Hammond

²¹ *Ibid* 17 Atuguba & Dowuouna- Hammond

²² European Agency for Safety and Health at work,2001

²³ D Vogel ‘*The Market for Virtue; the Potential and Limits of Corporate Social Responsibility*’, Washington D.C. Bookings Int. Press. 2005.

²⁴ *Ibid* 21 D Vogel

²⁴ *Ibid* 21 D Vogel

All these driving forces among others bring out the clear relevance of CSR. But how can CRS impact the direct social consequences of the Oil and Gas mining activities in the realm of the Environment, Health and Safety at work and Human Rights issues.

2.1.1 Environmental Impact

Oil and gas mining activities affect the environment. The extent of their effect mostly depends on the stage and size of the field. The effect occurs at all levels- local, regional, national, and international.²⁵ The local and regional impacts are primarily related to the physical facilities involved in the production and development of oil and gas fields in the host country. From exploration and production through to final consumption, oil and gas are significant sources of environmental pollution.²⁶ Their operations affect air quality from flaring, venting, or purging gases; from combustion in diesel engines and gas turbines; and from dust disposed due to road traffic.²⁷ Again, oil spoilage, gas flaring and abandonment of offshore installations are sources of environmental pollution. For instance, gas flaring contributes to the global warming phenomenon which is a direct consequence of the accumulation of greenhouse gases.²⁸

Seismic survey is characterized by the firing of air guns as hose acoustic effect has the potential of harming marine mammals.²⁹ Oil spills also cause extensive damage to ocean depths, sea creatures and coastal fishing.³⁰ The Exxon Valdez oil spill for example contaminated 1,990 kilometers of shoreline.³¹ Some 2,000 sea otters, 302 harbour seals and about 250,000 seabirds died in the days immediately following the spill.³² The Deepwater Horizon oil spill of April, 2010 in the Gulf of Mexico also comes to mind when we think about environmental protection failure within the oil and gas industry.³³ Impacts on groundwater and surface waters include possible contamination from product water (bring water brought up with the oil and gas), drilling and well treatment fluids, process and drainage water and sewage and domestic waste.³⁴ Evacuation and infill for roads and infrastructure can alter existing water courses and drainage patterns with marked effects on vegetation and wildlife.³⁵ When habitat is disturbed, wildlife is affected and this may significantly impact the livelihood of indigenous peoples.

²⁵ The national and international impacts are related primarily to the long-distance transportation of oil and gas (both through pipelines and on tankers) and to the emissions generated from their use in the consuming countries.

²⁶ N Nwankwo and C N Ifeadi, 'Case studies on the environmental impact of the oil and gas production and Marketing in Nigeria' in P O Sada, and F O Odemerho, (eds.), *Environmental Issues and Management in Nigeria Development*, Ibadan, (Evans Bros Nigeria Pub., 1998) p 208.

²⁷ *Ibid* at p.25

²⁸ See n 5 R. Osei-Hwere

²⁹ JNCC, Seismic Survey available at: <<http://www.jncc.gov.uk/page-1534> (10 July 2009)> accessed 3 June 2015. It must however be noted that the extent to which the acoustic disturbance from the air guns affects cetaceans is not well known due to limited research.

³⁰ P Kaushik, Oil Spill and Environmental Effect available at: <<http://www.brighthub.com/environmental/science-environment/articles/30193.aspx>>. accessed 12 July 2015.

³¹ S Graham, 'Environmental Effects of Exxon Valdez Spill Still Being Felt', *Scientific American*, 19 December 2003. Available at <www.scientificamerican.com/article/environment-effects-of/> accessed 1 October 2015

³² *Ibid* 30 S Graham

³³ See n 1, On April 20, 2010 the Deepwater Horizon rig licensed to BP for the Maconda Prospect exploded resulting in the death of eleven workers. Subsequently, the rig worth in excess of US \$ 560 million collapsed into the sea, spilling oil

³⁴ See n 29 P Kaushik

³⁵ See n 29 P Kaushik

In the UK for example, the operators are required to have or undertake to develop an Environmental Management System (EMS)³⁶ and Environmental Impact Assessment (EIA).³⁷ This measure in conjunction with other environmental legislations such as the Greenhouse Gas Emissions Trading Scheme Regulations 2005³⁸ and the offshore Petroleum Activities (Conservation of habitats) Regulations 2001³⁹ tends to tighten environmental regulations of the oil and gas sector in the UK⁴⁰ Companies have whole heartedly embraced these regulations and are complying with them in their bid to protect the environment and be seen as responsible corporate citizens.⁴¹ A notable example is BP's strategy "to create value for shareholders by producing energy in a way that is affordable, secure and does not damage the environment".⁴²

In Ghana, the Petroleum Law empowers the minister to make regulations for the prevention of pollution and the taking of remedial action in respect of any pollution which may occur in connection with petroleum operations.⁴³ The law requires an operator to conform to the Environmental Protection Agency Act,⁴⁴ and the Environmental Assessment Regulations,⁴⁵ The model Petroleum Agreement for Ghana insists on a strict adherence to best international oil environmental practices.⁴⁶ The Development Plan in the Petroleum Agreement requires the investor to clearly spell out how he intends to develop the field so as to have the minimum negative impact on the environment.⁴⁷ From the foregoing it is very apparent that Ghana does not have adequate legislative protection of our environment from the adverse effects of the oil and gas mining activities. There are no specific rules governing environmental issues such as gas flaring, oil spoilage and seismic surveys. It is certain that most of the environmental effects appear to be anachronistic, but looking into the future and from examples of other Oil and Gas Mining Nations, a comprehensive legislation to tackle almost every aspect of environmental impact is very much desired. It is said that a stitch in time saves nine. Consider for example, 2010 when an US oil producer KOSMOS Energy spilled over 700 barrels of low toxicity oil substance at its drilling fields in west cape three points.⁴⁸ According to Domfe,⁴⁹ the reporter, the committee that looked into the environmental infraction recommended that the company pay a fine of \$35 million to the government of Ghana but KOSMOS managed to negotiate this figure down in Ghana's oil and gas legal regime. The impact of this toxic substance stares in the face of the host

³⁶ See the Convention for the Protection of the Marine Environment of the North-East Atlantic ("O SPAR Convention"), Article 3.2.

³⁷ See n1 R Osei- Hwere

³⁸ Under the regulation oil and gas companies are enjoined to reduce CO2 from their installations for the purpose of combating climate change.

³⁹ The purpose of the regulation is to protect marine mammals against physical harm and to conserve their natural habitats from the effect of seismic activities and other oil and gas activities on the UKCS.

⁴⁰ See n 1 R Osei- Hwere

⁴¹ ECC Report par 100.

⁴² BP, "This is BP," Sustainability Review 2008.

⁴³ PNDC Law 84 s.32

⁴⁴ 1994 (Act 490)

⁴⁵ LI 1652; GNPC, the Upstream Petroleum Industry in Ghana-Oil and Gas Exploration, Development and Production (Tema, 2008) (hereinafter referred to as GNPC Report). Available at <www.modernghana.com> accessed 10 October 2015

⁴⁶ The Model Petroleum Agreement of Ghana, Article 7.

⁴⁷ See n 43 GNPC

⁴⁸ K Domfeh, 'Local communities engage to tracks infarctions in oil productions' *Joy Online* report for 5th July 2013.<<http://myjoyonline.com>> accessed 4 October 2015

⁴⁹ K Domfeh *supra*

community which may never access any figure out of this downwards negotiated sum of compensation.

In the meantime, the most effective and globally recognized means of filling such legislative gaps and more is the intense embankment on CSR initiatives in business decisions. Beyond national legislation and even international efforts at reducing petroleum activities negative impact on the environment, CSR plays a vital role if upheld to stand in the gap to address this national and global issue.

2.2.2 Impact on The Local Communities:

The grant of mining licenses to investors or mining companies to mine oil and gas invariably bring the indigenous people into direct contact with the foreign miners and their activities in the oil and gas industry on lands that indigenous people traditionally occupy or customarily use. They are increasingly insistent that their rights to land and land use be respected. Their claims which are often at odds with formal rights established by the recognized state/government have far-ranging implications for mineral development.⁵⁰The indigenous people in offshore mining areas often have subsistence livelihoods dependent on certain plants and animals. In Ghana for example, the indigenes in the Western Region survive basically on the agriculture and fishing, yet it is this same soil and water bodies that are greatly hampered through oil and gas mining activities. For example, the marine clay soils in mangrove areas can generate acid sulphate which, when exposed from dredging cause sulfuric acid which may have a serious effect on fish and irrigation.⁵¹The activities of oil and gas mining companies such as soil compaction and erosion adversely affect and dramatically reshape farming lands. When habitat is disturbed, wildlife is affected and this can significantly impact the livelihoods of indigenous peoples.⁵²

In the light of these obvious inevitable negative impacts of oil and gas mining activities in the lives of indigenes operating responsibly in the areas of the indigenes is a genuine act that ought to be embraced by all mining companies. Although oil and gas companies need to consider all social groups and communities who are situated close to, and are impacted by their operations, indigenous people are distinct social groups that warrant special considerations.⁵³This is because the local people in the oil and gas exploring areas virtually lose their right and access to a vast portion of their land or natural resource⁵⁴ as the case may be.⁵⁵

2.2.3 Health and Safety at Work In The Mining Sector

Offshore production of oil and gas is undertaken in a very hostile environment.⁵⁶ The volatility of the substance produced coupled with harsh climate conditions expose oil workers to health and safety problems. Safe working conditions and the good health of workers offshore belong to

⁵⁰ P Kushark *op.cit* at p 23

⁵¹ *ibid*

⁵² P Kushark *ibid*.

⁵³ The global oil and gas industry association for environmental and social issues. Available at:<www.ipieca.org>

⁵⁴ Including water bodies

⁵⁵ Sometimes even their main source of livelihood (every natural mineral resource in Ghana is state owned and is thus compulsorily acquired upon its find)

⁵⁶ See n 1 R. Osei-Hwere

the social responsibilities of companies and form an integral part of the CSR concept.⁵⁷ This can be best achieved through stringent health and safety programmes and regulations.⁵⁸

It is normally the case that oil companies' mission statements explicitly capture their sensitivity to health, safety and environmental issues. The viability of these statements depends on how companies are willing and able to walk the talk by investing heavily in health, safety and environmental projects.⁵⁹ A good safety record is not just about costing but translates directly to predictable solid production. As soon as one sees unstable production, chances become very real for the operations safety record to be dismal.⁶⁰ 'Safety measured through production performance' remains one of the best indications of whether one's strategies are working.

The unrest that hit the platinum mines in Johannesburg South Africa is a classic example of the impact felt on production when continuous attention is not paid to the health and safety of employees in the oil and gas mining sector. In this unrest, protestors of about 3,000 workers who were striking worker of the Anglo-American Platinum Ltd., Lonmin PLC and Goldfields Ltd. Mines put down their tools to call for better pay and conditions. At the heart of the strikes was frustration by workers over pay and living conditions.⁶¹ As a result of the Lonmin strike alone there was a loss of 2,500 ounces of platinum production a day.

Ghana's emerging oil and gas industry does not have a comprehensive Health and Safety regulatory instrument for the oil and gas industry. The framework that is in place mainly intertwined with the Environmental regulatory framework.⁶² The law requires the Environmental Protection Agency (EPA) and Ghana National Petroleum Corporation (GNPC) to audit the Environmental, Health and safety operations of investors.⁶³ Prior to the commencement of operations, an operator is required to submit a comprehensive Health, Safety and Environmental (HSE) Manual, detailing out how his company intends to handle health, safety and environmental issues for approval by GNPC.⁶⁴ It is clearly that the nation as an emerging oil and gas mining country does not have a comprehensive legislation or framework on Health and Safety specifically for the oil and gas sector. The Factories Shops and Offices Act which was handed down in is certainly not robust enough to cater for present health and safety issues at work.

As OseiHwere⁶⁵ puts it "can GNPC which is a commercial partner in the oil industry effectively regulate health and safety in the same industry? Can EPA perform the added function of offshore health and safety regulation effectively? Rhetorical as these questions may be, they need serious attention through legislation in the shortest possible time".

⁵⁷ See n 43 GNPC

⁵⁸ Senior V.P. Goldcorp. Available at: <www.miningweekly.com> Farrow said "Safety is critically important, but people are more important. Safety can only happen through people, and that is what we are trying to achieve through continuous interaction with our employees".

⁵⁹ 1 R. Osei- Hwere *ibid*

⁶⁰ See n 56 V. P. Goldcorp

⁶¹ D Maylie, 'Unrest Hits Platinum Mines' *Wall Street Journal* availableonline at <www.wsj.com> accessed 12July 2015 also at <http://www.repository.Law.indiana.edulilj/vol185/9>

⁶² See n 1 R Osei-Hwere

⁶³ GNPC, *The Upstream Petroleum Industry in Ghana – Oil and Gas Exploitation, Development and Production*; Tema 2008.

⁶⁴ See n 1 R Osei-Hwere

⁶⁵ See n 1 R. Osei-Hwere

While we all wait and look forward to such legislation, it is expected that as responsible corporate citizens, oil and gas companies must embrace and comply with all the relevant occupational health and safety regulations and standards leading practices starting from ILO Codes of Practices on Health and Safety at work.⁶⁶ AngloGold Ashanti for example has in the presence of legislation adopted to implement widely acceptance health and safety standards that are favorable and beneficial to its working forces in Ghana by giving formal training to its workers, equipping and upgrading Hospital, supervising commitment of workers to Health and Safety regulations through their supervisors and most importantly, seriously considering the negative impact that budgetary constraints can hinder the provision of personal protective equipment and safety facilities.⁶⁷

2.2.4 Human Rights Issues

Human rights abuses have been associated with Oil and Gas Mining Operations for years. This is because the activities of the mining industry impact on the rights of employees and the community as a whole.⁶⁸ Employees desire for dignity of labour, safe working conditions and appropriate remunerations. The community also craves for a safe environment and sustenance of livelihoods.⁶⁹ All these can be undermined by undesirable acts such as anti-green ways, unfair labour practices and complicities in the rule of law of an oil and gas company. It is therefore glaring that human rights and social responsibilities of corporations are inextricably linked.⁷⁰ The Universal Declaration of Human Rights⁷¹ is the foundation of international human rights law. The UN Working Group on Business and Human Rights has rightly cautioned that Ghana needs to be ready for the big challenges rapid economic growth poses for human rights protection.⁷² This convention is not a legally binding document but an inspirational statement of standards and principles which has influenced domestic laws and regional instruments such as the European Convention on Human Rights and Peoples' Rights.⁷³

In addition, multilateral and bilateral arguments often oblige transnational corporations to protect the Human Rights of workers and other citizens.⁷⁴ Some of these corporations also adopt codes of conduct which make the protection of human rights an important corporate objective.⁷⁵ In Nigeria, it has been reported of Shell's deep financial links to human right abuses in the Delta. As a result of these continuous human right abuses, sixty two Shell employees or contractors were kidnapped in 2008 and three (3) killed, many Shell-operated pipelines, well heads and offshore oil platforms were attacked and the company was forced to halt oil exports for several

⁶⁶ <www.ilo.org> accessed 10 June 2018

⁶⁷ "Occupational Health and Safety". Available at: <www.anglogold.com/subwebs/.../pdf/Health and Safety.pdf> accessed 10 June 2018

⁶⁸ See n 1 R Osei-Hwere

⁶⁹ See n 1 R Osei-Hwere

⁷⁰ I Khan, 'Taking Stock: Corporate social responsibilities and human rights' Statement delivered at 'PUBLIC EYEON DAVOS', 24 January 2003. Available at: <www.amnesty.org.> accessed 02 JNov. 2017

⁷¹ Available at www.un.org/Depts/dhl/udhr/docs_1948_3rd_3c_ga.shtml. accessed 11 June 2018

⁷² "Ghana urged to step up rights protection amid economic boom". Available at: www.ohchr.org.

⁷³ BP, Human Rights: A Guidance Notes (2005) available at <https://www.bp.com> accessed 9 March 2014

⁷⁴ B Steinhardt, *Non-State Actors and human rights*, (Philip Alston (ed) (Oxford University Press, 2005) p 178.

⁷⁵ Steinhardt *Ibid* at page 17

weeks after attacks by groups including the Movement for the Emancipation of the Niger Delta. All these greatly affected its business.⁷⁶

The Ghanaian constitution guarantees the economic rights of citizens which includes right to work under safe and healthy conditions.⁷⁷ Again, Chapter five of the constitution also upholds the Fundamental Human Rights of all citizens. These laws among others are made bearing in mind expectations of corporations to champion the rights of the individual.

Needless to say, there still appears to be gross disregard at these rights as mining companies continue to perpetrate human⁷⁸ rights abuses on the individual. According to news report, Eric, a suspected illegal miner, was shot in the back of the South Tailing, Storage Facility of Anglo Gold Ashanti's Obuasi mine. The shooting follows other human rights abuses by security forces hired by the same mining company. In 2005, Awudu Mohammed, another alleged illegal miner, was also shot in the back near Obuasi. In 2009, Anthony Baidoo from Ghana's Tebrebie community was shot and maimed when he along with other farmers cued through a rock waste dump that blocked access to their farms. The activities of these so called illegal minners has been the result being deprived of daily livelihood of these people because of the sudden change in use of their land. Majority of the ordinary Ghanaian in the Western region depended on fishing and farming but they can no longer freely engage in these activities due to restrictions and safety concerns. Again, there has been a sudden upturn of living standards in these same communities making living standards high for the ordinary community members in these mining activities due to the influx of foreigners into the community. These invariably has influenced them community to find alternative means of survival and others may go to the extent of undercutting mining activities. Without supporting illegal activities, the plights of these people must be critically assessed before any enforcement measure is meted out in order not to abuse the very human right of these people forcing to survive. In the absence of a firm robust enforcement agencies to reprimand perpetrators of these human rights abuses, oil and gas mining companies must step in the gap and fill it. This calls for stringent CSR principles to play the critical role of addressing any form of human rights abuses that may emerge within the oil and gas mining sector.

3. Role of CSR In Managing The Oil And Gas Wealth

CSR has proven to widely benefit every corporate institution that puts it at the heart of its business in rendering a competitive advantage over other companies, enabling a stable working environment and enhancing relationship with customers.

3.1 Competitive Advantage on The Market

Corporate Social Responsibility contributes to the reputation and brand equity of a company.⁷ The Webster Dictionary defines reputation as "overall quality or character as seen or judged by people in general". A company's reputation rests on the estimation of its Stakeholders.⁷⁹ No company can afford to incur the displeasure of customers as they can vote with their feet by boycotting the products of the company. Disgruntled suppliers can also disrupt the supply chain

⁷⁶ Shell spending millions of dollars on security in Nigeria, leaked data show available at www.guardian.co.uk.

⁷⁷ Constitution of the Peoples Republic of Ghana, 1992, Article 24 of the n

⁷⁸ Human rights violations continue in Ghana's mining sector. Available at: <www.oxfamamerica.org> accessed 2 November 2017

⁷ See n 1 R Osei-Hwere

⁷⁹ See n 1 R Osei-Hwere

of a company by refusing to deal with the company. Governments may not entertain unscrupulous companies to do business in their jurisdiction. In addition, investors may offload their shares if they are not happy with the reputation of the company.⁸ The reality is that no organization operates in isolation; there is interaction with employees, customers, suppliers and stakeholders.⁸⁰

CSR plays the effective tool of managing these relationships to produce an overall positive impact on society, whilst making money. Reputation is therefore a significant fact in the performance of a company.⁸¹ Research conducted by Aon, an insurance company, shows that the top 2000 private and public-sectors organizations regard damage to reputation as the biggest risk.⁸² In the oil and gas mining sector, reputation is more important as the industry is characterized by high risk and high expense with heavy front loading of costs⁸³ and these have encouraged joint operations.

An oil company's ineptitude in dealing with environmental concerns, human rights, occupational health and safety and other social issues may lead to a bad reputation and inevitably affect relationships with other players and its performance as a whole. A company's reputational risk is mitigated through enhanced CSR standards.⁸⁴ Shell Oil Company's image was seriously dented in the 1990's as a result of serious environmental and human rights abuses issues. Shell was severely criticized by human rights organizations such as Human Rights Watch for not using its influence on the Nigerian government to avert the said executions and was accused of complicity in human rights abuses in Nigeria.⁸⁵

Shell's poor public image was worsened when the decision to dump the Brent Spar oil rig into the sea was met with a well-publicized resistance by Greenpeace.⁸⁶ The Greenpeace campaign period was accompanied by violent attacks on Shell filling stations and Shell workers across Europe⁸⁶boycotted shell products. The Shell brand became synonymous with greed and environmental insensitivity and Human Rights Abuses. On the other hand, Chevron Texaco in Angola appears to have used its social investments strategically in its attempt to renew its stake in Block O, Angola's most priced oil asset with an output of 400,000 barrels a day.⁸⁷ This is because naturally any government that seeks developments for its people would favour socially responsive oil companies in the award of oil and gas concessions. In early 2004, Chevron Texaco's concession was finally extended from 2010 to 2030, and the company pledged, a further \$80 million to a social fund.⁸⁸

⁸ See n 1 R Osei-Hwere

⁸⁰ R Fenn, 'Benefits of Corporate Social Responsibility'. Available at: <<http://sustainablebusinessforum.com>> accessed on 2 December 2018

⁸¹ See n 1 R Osei-Hwere

⁸² Aon insurance group, 2000, reported in *Sustainability, the Changing Landscape of Liability* (London, 2004), p 17.

⁸³ Styles in Gordon and Peterson (eds. 2006) par 11.1.

⁸⁴ See n 1R Osei-Hwere

⁸⁵ B Steinhardt, *Non-State Actors and Human Rights*, (Phillip Alston (ed.) (Oxford University Press, 2005) p.13

⁸⁶ D McBarnet, 'Corporate Social Responsibility beyond Law, through Law, for Law', Edinburg School of Law Working Paper Series 2009/03 p.8

⁸⁶ See n 1 R Osei-Hwere

⁸⁷ J G Frynas, "The false developmental promise of Corporate Social Responsibility: evidence from multinational oil companies". Available at: <<http://www.people.fas.harvard.edu>> accessed 9 December 2018

⁸⁸ See n 88 J G Frynas

3.2 Enhanced Stable Working Environment

A good reputation makes it easier to recruit employees. A company that is adept with its social responsibilities tends to uphold workers' right through practices that promote dignity of labour including investing in human capital and the health and safety of workers.⁸⁹ Upholding social responsibilities can motivate employees to stay longer, reducing the cost and disruption of recruitment and retraining.⁹⁰

In the UK, a **MORI** poll conducted in August 2006 suggests that 92 percent of employees considered it important that their employees be socially responsible and 60 percent felt strongly about it.⁹¹ Employees of a company that is up to date with its corporate social responsibilities, tends to be more productive. This is because, they are better motivated by the respect and attention given to their individual and collective rights.

CSR plays a significant role in the sustenance of industrial peace as workers are less likely to embark on any form of agitation when their socio-economic needs are met by their employers.⁹² A classic example is the recent unrest that Hit Platinum Mines in South Africa. If the mining companies have kept a good cordial relationship and listened to the needs of its workers and not fail them the much-heated strike would have been avoided, lives would have been saved. When the working environment is not conducive, it equally affects workers attitude to work and a conducive working environment include a commensurate remuneration for work done by employees.

3.3. Enhanced Relationship with Customers

CRS undoubtedly is a capital-intensive venture and that has turned many companies from indulging actively in CSR activities as part of their corporate goals. In spite of the concern that CSR activities are costly, research has shown the practice to attract a significant return for companies that embark on CSR activities than those that do not.⁹³

Consumer groups are becoming more passionate about environmental problems and social concerns.⁹⁴ Through research and public education, these groups have encouraged individual consumers to patronize environmentally friendly products and services.⁹⁵ In 1995 when Shell planned to sink Brent Spar 6,000 feet down on to a spot called the North Feni Ridge in the North Scotland, there was a spontaneous reaction from its consumers.⁹⁶

United Kingdom when Greenpeace took out advertisements in the National newspapers on June 19th demanding that Shell accept its corporate responsibility to the public at large. "The day Shell sinks the Brent Spar, Shell's reputation sinks with it" the ads stated.⁹⁷ This instance and many more shows that there is a direct relationship between CSR and consumer behaviour

⁸⁹ See n 1 R Osei-Hwere

⁹⁰ Turin, "The Business Benefits of Corporate Social Responsibilities". ⁹ See n 4

⁹¹ Attitudes to corporate responsibility, *The Guardian Newspaper*, 5 November 2007.

⁹² McBarnet, D, "Corporate Social Responsibility beyond Law, through Law, for Law," Edinburg School of Law Working Paper Series 2009/03 p.8 See n 1 R Osei-Hwere

⁹³ See n 1 R Osei- Hwere

⁹⁴ See S Sanjay and H Vredenburg 'Environmental response in the Canadian oil & gas industry: An exploratory study' (1994) In *Proceedings of the International Association for Business and Society* July 1 Vol. 5 pp. 897-890

⁹⁵ See n 1 R Osei-Hwere

⁹⁶ M Watkins, S Pascow, 'Sunk Cost: The Plan to Dump the Brent Spar' (2002) *Harvard Business School* <<http://www.kent.ac.uk>> accessed 2 November 2015

⁹⁷ *ibid*

towards companies.⁹⁸ There is always a greater consumer loyalty for companies which wholly embrace CSR practices. The more consumers view their purchasing power as influential on a firm's behaviour, the more likely they are to use their power to influence CSR. Therefore, a company which ignores CSR principles in business decisions does so at its own peril.⁹⁹

4. Conclusion and Recommendations

Our discussions reveal, that CSR has come to stay and it deserves a better attention today for favourable operations of oil and gas mining companies in the future.

In Ghana, CSR in the oil and gas mining sector remains an effective tool for peaceful and safe operation. This is because the concept as discussed anchors a duty of providing social benefit inters alia to host community. Naturally, if these are effectively managed, it will serve as an interactive means of supporting and appeasing the host communities whose lives are being impacted by their activities. This must be done through community leaders in order to render support that meets targeted and most needs. When the indigenes are content with the activities of these companies, there would be a drastic reduction in crime rates. Mayhem in the host community Disturbances in the Niger Delta Region¹⁰⁰ of Nigeria and its negative impact on oil production are a reminder of the usefulness of CSR.¹⁰¹

Recommendations

It has been shown from our discussions that Ghana as an emerging oil and gas mining sector does not have in place a robust exploration and production legal measures to influence and regulate the effective management of the oil and gas resource. This goes to say that, Ghana as an emerging oil and gas mining sector need to enact more robust regulatory framework on - exploration and production laws, which would protect the economy against resource curse.

Before that is done and even when it is done, oil and gas mining activities ought to embark on sustained CSR activities to protect the environment and host community.

Oil and Gas companies can effectively use CSR as a tool to keep social gains at par with private gains. This is so because oil and gas mining companies are among the few private entities that have the resources to do so. Big corporations including oil and gas mining sector have over the years made significant contribution to the promotion of social welfare activities like building of schools, colleges, charitable hospitals, etc.¹⁰² This step must be taking holistically.

⁹⁸ See n 91 Turin

⁹⁹ See n 1 R Osei-Hwere

¹⁰⁰ Ogoni land in the Niger Delta

¹⁰¹ *Ibid* 5 R Osei-Hwere

¹⁰² Analysis of the Arguments for and against corporate social responsibilities in Nigeria, Sunday C. Nwite and Dr. Titus Okey Enudu. Enugu State University of Science and Technology, Esut-Enugu. Recently, the Jubilee partners namely, Tullow Ghana Limited, Anadarko WCTP Company, Kosmos Energy, Ghana National Petroleum Company and Sabre Oil/Gas Holding Limited, co-sponsored the "Jubilee Technical Training Centre" in the western region and the facility is to give practical training to Ghanaians to improve their chance of gaining employment in the oil and gas industry. "Jubilee Technical Training Centre Inaugurated" <<http://www.dailyguideghana.com>> accessed on 6 July 2015

The mining sector mostly show little or no concern for environmental and water pollution and the safety of human life. Government should take up the task of setting up a regulatory body to oversee the total compliance of body corporate including oil and gas mining companies and commitments to social responsibilities.

Ghanaian environmental laws also ought to be seriously reviewed in the light of the impacts of the emerging oil and gas mining activities to take specific environmental issues like oil spill, gas flaring etcetera. We are much fortunate to have lots of examples and precedents of such laws of other oil and gas mining companies to serve as a guide to us and we must make use of them.

It is also recommended that corporations put up their best to keep a high-profile staff welfare. Workers should not be earning wages lesser that their productivity. A happier staff does not only mean bonuses and pay rise, there should be stringent commitment to health and safety laws and regulations. And where there is none, internationally accepted principles should be adopted to fill the gap. Again, there should be active employee involvement in the day to day activities of the business where it matters. This may involve keeping staff updated regularly of vital decisions and inviting their opinions. This will keep them motivated, have a sense of belonging and remain loyal to the object and purpose of the corporation.

It is further recommended that special attention be paid to the indigenes in these mining communities. This is because the local people predominantly survive through agriculture and fishing. And as the saying goes, a hungry man is an angry man. Oil and gas companies should take up their social responsibilities and provide employments as much as they can to the host community in which they operate. Where they are unemployable due to lack of adequate skills, they should set up some educational institutions or give scholarships to help them acquire the requisite skills to make them employable. For example, indigenous fishermen who have no formal education should be compensated for the abrupt loss of their livelihoods. This could be through the provision of an attentive source of livelihood which can last to sustain those years to come. When the indigenes are not made to feel foreign in their own land but made a part of the oil and gas mining activities, there would be little or few revolts against the activities of the oil and gas sector. Again, due to the direct health hazards resulting from the activities from the oil and gas mining easy and affordable if possible free access to healthcare delivery should be put at the disposal of the poor indigenes.

All these could help appease the indigenes whose life has been damaged over night to one that they cannot afford. It would build a mutual trust and acceptance between them and oil companies. It is needless at this point to say that the effective implementation of these recommendations would begin with a wide consultation with the affected indigenes particularly with those affected adversely through their influential men or chiefs to understand their concerns and help meet it directly. These are by no means exhaustible of what could be done to sustain the oil and gas mining socially but as a stepping, if CSR is taken seriously. CSR, is not the panacea to the problems of the Oil and Gas industry buy when properly implemented, would foster good relationship between host communities and the mining companies and Ghana stands a greater chance of turning the oil and gas find into a savior rather than a slayer.