Just Transition

Reforming Oil Industry Divestment, Decommissioning & Abandonment in the Niger Delta, Nigeria

Rick Steiner, Professor
Anchorage Alaska (U.S.)
December 6, 2023

I. Executive Summary

As the world economy transitions from oil to low-carbon energy alternatives, how the oil industry closes and transitions its operations is becoming increasingly important. This transition needs to be done right, with the utmost attention to environmental and social justice. As currently practiced, oil industry Divestment, Decommissioning & Abandonment in Nigeria provides a cautionary tale to the world of how *not* to transition from oil. This report derives from a July 2023 fact-finding mission to the Niger Delta, and synthesizes the perspectives of hundreds of local citizens, community members, Councils of Chiefs, Paramount Rulers, Women's leaders, Youth leaders, Kings, Civil Society Organizations (CSOs), scientists, academics, industry officials, and senior federal and state government officials, as summarized below.

While International Oil Companies (IOCs) publicly signal their intention to reduce high-carbon holdings to meet climate goals, they are often just selling high-risk, marginal assets in politically unstable regions (e.g., onshore/nearshore Niger Delta) to Domestic Oil Companies (DOCs) with much lower environmental standards, to continue production, even "significantly increase production," resulting in even greater carbon emissions and environmental damage. In this way, what is presented as an environmental positive for one multinational oil company is actually a net environmental negative globally.

This trend is amplified and accelerated in Nigeria's Niger Delta for several reasons. By divesting (selling) onshore and nearshore assets in the Niger Delta, International Oil Companies hope to avoid: 1) the need to make costly investments to upgrade old, poorly maintained oil infrastructure; 2) properly decommissioning, abandoning, and removing derelict infrastructure; 3) ongoing security risks from sabotage and oil theft; 4) further demands from communities for social and economic support; and 5) liability for decades of

environmental, social, and economic damage they have caused. Instead of simply retiring these assets (which would clearly be in the interest of global climate security), the IOCs are selling them to small Domestic Oil Companies (DOCs) in Nigeria, many of which are new to the business, do not conduct due diligence on the acquired assets, lack the financial and technical capacity to safely manage these complex operations, and seek to maximize production with much lower environmental standards.

And oil industry divestment in Nigeria is being conducted without effective government oversight. The Federal Government of Nigeria (FGN) remains heavily dependent on oil revenue, non-transparent, plagued by corruption, and strategically dysfunctional, thus allowing the oil industry essentially free rein in its profit-taking and reckless corporate conduct. Federal and oil industry officials have normalized this dysfunctional dynamic. While adoption of the 2021 Petroleum Industry Act (PIA) is encouraging, absent significant reform within the FGN, it is likely the PIA (as with previous laws and regulations) will not be effectively implemented or enforced. The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and National Oil Spill Detection and Response Agency (NOSDRA) remain unable to effectively carry out their important regulatory and oversight functions.

In the past, IOCs including Royal Dutch Shell, ExxonMobil, Chevron, Total, ENI/Agip (Nigerian Agip Oil Company, Ltd.), along with their federally-owned Joint Venture (JV) partner, the Nigeria National Petroleum Corporation (NNPC) as majority owner, were the only oil and gas producers across the Niger Delta. With the 2010 passage of Nigeria's Local Content Bill, along with growing volatility of the region, IOCs began divesting (selling) marginal, high-risk onshore assets to smaller DOCs - including Seplat Petroleum Development Company (Seplat), Aiteo Group (Aiteo), Eroton Exploration and Production Company Ltd. (Eroton), Newcross Exploration and Production Limited (Newcross), Oando Oil Ltd. (Oando), Neconde Energy (Neconde), Belema Oil Producing Ltd. (Belema), West African Maroil & Energy Services Limited (West African), Sterling Oil Exploration and Energy Production Co. (SEEPCO), First Hydrocarbon Nigeria Ltd. (First Hydrocarbon), Shoreline Natural Resources (Shoreline), Heirs Holdings Oil & Gas Limited (Heirs Holdings), Sahara Energy (Sahara), Conoil PLC (Conoil), as well as NNPC and its subsidiary Nigerian Petroleum Development Company (NPDC)/NNPC Exploration and Production Ltd. (NEPL).

IOCs are divesting these assets primarily to reduce their financial risk, transferring this risk to smaller domestic companies that have neither the capacity or interest to manage such, thus ultimately passing this risk on to local people and the environment. In 2021, Shell's CEO echoed the sentiments of other IOCs on the Niger Delta issue:

> *We cannot solve community problems in the Niger Delta, that's for the Nigerian government perhaps to solve. We can do our best, but at some point in time, we also have to conclude that this is an exposure that doesn't fit with our risk appetite anymore.*

While local communities say that the International Oil Companies (IOCs) were bad, most now say Domestic Oil Companies (DOCs) purchasing these assets are even worse. Communities suspect that by divesting, IOCs are attempting to escape liability for their

decades of negligence. However, Nigerian and international law clearly holds that liability remains the responsibility of those causing the injury, regardless of any subsequent transfer of assets. Clearly, IOCs should remain liable for all damage caused under their ownership (pre-divestment), and potentially even for damage arising post-divestment if caused by undisclosed integrity issues with divested assets. As example, a 2023 U.S. court ruling found Shell liable for damage caused by a blowout of one of its wells in 1943, that it had subsequently divested. Communities also fear that Domestic Oil Companies purchasing these assets do not conduct due diligence on the assets being acquired, and lack the technical and financial capacity to operate the acquired assets safely and with best international standards (as required by Nigerian law). Such fears are well justified.

Given its concerns about risks of spills, in 2015 the Nembe (Bayelsa State) community placed a *caveat emptor* ("buyer beware") decree on the proposed Oil Mining License (OML) 29 sale from Shell to Aiteo. The 2015 decree was prophetic, as in 2019 and 2021 there were two major blowouts from a wellhead transferred in the sale. A necessary corollary to *caveat emptor* should be *venditor sit honestus* ("seller-be-honest"), and sellers should be legally required to fully disclose all integrity issues with assets to be divested.

After some divestment deals, companies and communities have been unclear about what oil assets were transferred, and who actually owns and operates the assets post-divestment, such as the ongoing dispute between Eroton and NNPC regarding OML 18 and OML 24 at Bille, Rivers State. Such confusion significantly increases risk of integrity failures and spills.

For the most part, details of divestment transactions remain obscure to the public. Some IOCs have reportedly loaned $ hundreds of millions to domestic buyers to facilitate these sales, such as Shell's reported 2014/2015 loan of $504 million to Aiteo for its purchase of OML 29 at Nembe. And some IOCs have been accused of selling assets that they actually do not own, as Aiteo has alleged in its 2021, $2.4 billion lawsuit against Shell for the OML 29 acquisition.

Several Nigerian banks, including Zenith, Fidelity, Guaranty Trust, etc., are invested in these DOC acquisitions, and many of these loans reportedly are now in default. Shell asserts that Aiteo owes over $2.6 billion in loans for its acquisition of OML 29, and lenders have notified Aiteo of its loan default. Such indebtedness raises concerns about the strength of these domestic companies, as well as the resilience of the Nigerian banking system. In 2022, the former Minister of Petroleum Resources declined a proposed $1.3 billion sale by ExxonMobil for its onshore holdings in OMLs 68, 69, and 70, citing concerns about the role of NNPC in the transaction.

As the current divestment trend continues, it is likely that by 2030 all onshore and nearshore oil and gas operations in the Niger Delta will be owned and operated by domestic companies, most with lower operating standards. Importers, investors, and insurers of Nigerian oil must pay closer attention to such divestment risks in Nigeria.

And Host Communities continue to raise serious concerns about unused, derelict oil facilities in their region (wellheads, manifolds, flow stations, and pipelines) in need of proper Decommissioning & Abandonment, saying that many of these old facilities are like timebombs or landmines strewn across the Niger Delta, ready to explode at any time (such as the Oct. 2023 explosion of an abandoned NPDC wellhead at OML 66 in Bayelsa State). These improperly abandoned wells present considerable risk of groundwater contamination, ecosystem impacts, and human health issues. While Nigerian law and regulation clearly requires proper Decommissioning & Abandonment and removal of all unused oil facilities to best international standards, these requirements are rarely enforced. IOCs/NNPC are mostly abandoning derelict assets they can't sell, while ignoring Decommissioning & Abandonment requirements in Nigerian law. This is a widespread and growing problem across the global oil industry that needs to be addressed with urgency. Globally, there are an estimated 29 million abandoned oil & gas wells that will cost $ hundreds of billions to properly secure.

IOC divestments in Nigeria must be understood within the broad context of recent mega-mergers of several multinationals, including ExxonMobil's recent purchase of Pioneer Natural Resources for $60 billion, and Chevron's recent purchase of Hess for $53 billion, both with the intent of increasing production in less risky areas of the world. These recent mega-mergers come amidst speculation that the U.S. majors had been interested in acquiring European majors such as BP and Shell, as the European majors had underperformed financially by pivoting toward less profitable renewables, while U.S. majors seek to capitalize on high oil prices by increasing production of oil and gas. The current trend for IOCs is to divest from high-risk, politically volatile regions, and to consolidate and increase production in politically stable regions elsewhere.

To counter this trend, Nigeria is trying to increase oil and gas production by lowering taxes and royalties to incentivize investment, and by establishing a *Frontier Exploration Fund* to stimulate new oil and gas production in non-traditional areas of the country. As with other petrostates (OPEC and non-OPEC alike), Nigeria is resisting the need to transition from oil. Rather than the *progressive* energy transition urgently needed, Nigeria today represents a *regressive* transition that must be recognized. From a global climate perspective, Decommissioning & Abandoning these oil and gas reserves would clearly be preferable to Divesting them in order to continue production.

Instead of Divesting and continuing to produce these Nigeria reserves, the Federal Government of Nigeria (FGN) should explore opportunities to monetize oil and gas reserves left in the ground and seabed as carbon offsets, such as the newly emerging efforts by former oil industry executives (*ZeroSix* and *CarbonPath*), stating:

> *In a net-zero world, the most valuable barrels of oil and cubic feet of natural gas are those that remain in the ground—never extracted and never burned. We're tapping into the power of voluntary carbon markets to permanently close wells and convert their shut-in reserves into carbon credits.*

In addition to carbon markets, the FGN and National Assembly should explore potential use of the Green Climate Fund, Global Environment Facility, or other financial instruments with which to monetize oil and gas reserves left in the ground/seabed. As well, the FGN should explore simply prohibiting further oil industry Divestment, and accelerating the Decommissioning and Abandonment of onshore/nearshore oil and gas reserves.

The report proposes recommendations to reform the process of Divestment, Decommissioning & Abandonment (DD&A) in Nigeria. The recommendations were vetted at a Civil Society Organization (CSO) workshop in Port Harcourt, Oct. 31, 2023, and are endorsed by the following Niger Delta organizations – Ijaw Elders Forum; Ijaw Nation Forum; Ijaw Professionals Association; Embasara Foundation; Stakeholder Democracy Network (SDN); Centre for Environment, Human Rights, and Development (CEHRD); Social Action; ERA/Friends of the Earth Nigeria; Youth and Environment Advocacy Centre (YEAC); Society for Women and Youth Affairs (SWAYA); We the People (WTP); and Natural Resource Governance Institute (NRGI).

Recommendations include the following: adoption of a new code of conduct for responsible divestment of oil and gas assets, the *National Principles for Responsible Petroleum Industry Divestment*; a comprehensive, accelerated Decommissioning & Abandonment plan; involvement of Host Communities, Local Governments, and State Governments in all Divestment, Decommissioning & Abandonment (DD&A) decisions; a U.N. Multilateral Environmental Agreement on DD&A; an annual independent Compliance Audit of oil company compliance with Nigerian federal law; reforming/improving Nigeria's oil industry regulatory agencies; commissioning a delta-wide *Niger Delta Cleanup and Restoration Program*, initiated with a $25 billion USD down payment from IOCs and NNPC; an arbitrated settlement of all legacy liabilities, with a $25 billion USD down payment by IOCs and NNPC; establishing a *Litigation Support Network*; expanding Nigeria's *Sovereign Wealth Fund* to help avert a catastrophic collapse of the Nigerian economy as hydrocarbon revenues inevitably decline; and convening an Abuja 2024 Conference to adopt the proposed *National Principles* and a Decommissioning & Abandonment plan.

Transitions can be difficult. The current global transition to a sustainable, low-carbon energy economy is one of the most difficult challenges that humanity has ever faced. Many who profit from the current unsustainable fossil fuel economy continue to resist the transition, resulting in perverse, self-destructive policy choices by industry and government. It is obvious that oil majors and their host governments currently have no intention of reducing production to support global climate security. Their greed may be humanity's ultimate undoing. Such perverse choices must be recognized as contrary to the long-term interest of civil society and managed accordingly, as this energy transition is both necessary and inevitable.

In this context, it is imperative that Nigeria's leaders make different choices, and reform the nation's approach to oil industry Divestment, Decommissioning & Abandonment into a positive model for a Just Transition. The 30 million people of the Niger Delta, who have suffered 65 years of reckless oil extraction, deserve no less.

II. Introduction

The project team, consisting of the author of this report and his colleague Dr. Festus Odubo (a Nigerian/American energy specialist), conducted an independent, fact-finding mission to Nigeria in July 2023, to investigate the status of oil industry Divestment, Decommissioning & Abandonment. The mission received financial support from the Centre for Research on Multinational Corporations (SOMO), however this independent research report is the responsibility of the author, and does not necessarily represent the views of SOMO or others. The project team met with federal agencies in Abuja, and conducted site visits to Niger Delta communities in Rivers State and Bayelsa State. In the Delta, meetings were held with Host Communities, State Governments, Civil Society Organizations impacted by IOC divestments. Results and recommendations are discussed below.

III. Background: The Ongoing Oil Disaster in the Niger Delta

The Niger Delta's legendary oil disaster has persisted for over 65 years, and is well known to the world. Oil in the Niger Delta has fueled a dangerous mix of environmental devastation, endemic conflict that has killed thousands, human rights abuses, corporate greed and exploitation, government corruption, oil theft, sabotage, repression, poverty, anger and despair.

The 70,000 km^2 Niger Delta, the largest river delta in Africa and third largest in the world -- including rich coastal waters, islands, mangroves swamps, farmlands, and rainforests -- was once one of the most productive and diverse ecological habitats on Earth. The Niger Delta today has some 5,000 oil wells, 275 collecting flow stations, and 21,000 km of oil pipelines transporting oil to five onshore export terminals.[1] To date, the Niger Delta has reportedly produced approximately 56 billion barrels of oil (bboe), with another 37 billion (bboe) remaining in proven reserves.[2] But after more than 65 years of oil and gas extraction, the region's environment and civil society are devastated -- a textbook example of the "oil curse."[3] According to Nigeria's Ministry of Budget and National Planning, Nigeria's oil sector provides 70% of government revenue and 95% of export revenue.[4] But despite more than $2 trillion USD reportedly earned in the country from oil since 1956, today Nigeria has more people living in extreme poverty (87 million) than any other nation on Earth.[5]

The Federal Government of Nigeria (FGN) today remains heavily dependent on oil revenue, non-transparent, plagued by corruption, and strategically dysfunctional, thus allowing the oil industry essentially free rein in its profit-taking and reckless corporate conduct in the Niger Delta. Federal and oil industry officials have normalized this dysfunctional dynamic.

The mismanagement of the oil industry in Nigeria is legendary, and has been extensively publicized. The Niger Delta is arguably the most severely oil-damaged environment and human community anywhere in the world. Each year, thousands of barrels of oil are spilled, and the oil industry has also caused extensive habitat degradation from road building, forest clearing, dredging and filling, thousands of miles of pipelines, and chronic pollution from gas flaring and dumping of drilling wastes. International Oil Companies (IOCs) have employed a double standard for their operations in Nigeria – they operate with best

international practice elsewhere, but in Nigeria, they know they can get away with much lower, less costly standards, and do so.[6] Many of the oil pipelines crossing the Niger Delta are old, have not been adequately maintained, and need to be removed and/or replaced as required by Nigerian law, but the federal government does not enforce these requirements. The four state-owned refineries in Nigeria, operated by NNPC, function at less than 20% of capacity, and thus most of this oil-rich nation's refined petroleum products continue to be imported.[7]

In the first environmental damage assessment of oil damage in the Niger Delta (for which this author served as technical expert), conducted in 2006 in collaboration with the Federal Ministry of Environment, the International Union for the Conservation of Nature (IUCN), and the Nigerian Conservation Foundation, our team qualitatively estimated, based on available spill records at the time, that the amount of oil spilled across the Niger Delta from all sources was on the order of 250,000 barrels per year, an amount equivalent to the official estimate of the 1989 Exxon Valdez oil spill in Alaska – every year.[8]

Government and industry habitually underestimate oil spill volumes in Nigeria, often by orders of magnitude. Government regulators rarely have the capacity to independently assess spill volumes, and often just endorse oil company claims. For instance, although the official government/industry estimate by the Joint Investigation Visit (JIV) of the two 2008 Trans Niger Pipeline spills at Bodo, Ogoniland, was only 4,413 barrels, expert evidence before the Court in the Bodo claims estimated the combined volume of the two spills at 490,000 barrels, more than 100 times the official JIV estimate.

Similarly, while the official government/industry estimate of the amount spilled by the 2021 blowout at Nembe/Santa Barbara Well-1 in the Santa Barbara River in OML 29 (Bayelsa State), which continued for 39 days, was less than 5,000 barrels,[9] the author's independent estimate from video evidence of the plume velocity and volume is that well over 500,000 barrels of hydrocarbon fluids, gas and oil, were released.[10] Again, the government/industry estimate was approximately 100 times lower than objective, independent estimates. Such government and industry underestimation of spill size (and impact) is standard practice in Nigeria.

And while the Bayelsa State Ministry of Environment, Nembe Local Government Council, and the Host Community concluded that the 2021 Nembe spill was due to equipment failure, as usual the industry/federal JIV contended, without evidence, that the blowout had been caused by sabotage.[11] This is a perpetual dispute in virtually all oil spill JIV processes in the Niger Delta.

Laws and regulatory requirements are habitually ignored by the oil industry, knowing they face no consequence for non-compliance from their federal partners. For instance, while post-spill damage assessments and remediation programs are required in Nigerian law, a 2016 analysis of 6,300 oil spills between 2010-2015 done by *Stakeholder Democracy Network* found that Post Spill Impact Assessments (PSIAs), as required by Nigerian law, were only done on 10% of the spills, and remediation (also required by Nigerian law), was

conducted on only 4% of spills.[12] There are few, if any, punitive consequences for this extraordinary lack of industry compliance.

Our initial 2006 environmental assessment of the Niger Delta estimated financial damage from 50 years of oil production in the Niger Delta to be in the tens of billions of USD, and we recommended full compensation, upgrade of all oil pipelines and facilities to global Best Available Technology standards (as required by Nigeria law), and a comprehensive assessment, cleanup and restoration program across the entire Niger Delta (also as required by Nigerian law).[13] Based on the 2006 assessment, the author of this report proposed to U.N. Secretary General Ban ki-Moon the establishment of a *U.N. Niger Delta Reconciliation and Restoration Commission*, to which the U.N. Under Secretary General replied that this "would be a matter for the national government to decide."[14]

In 2005, the author of this report had proposed a comprehensive *Niger Delta Oil Spill Damage Assessment and Restoration Program* to the U.N. Environment Program (UNEP) in Nairobi and IUCN in Switzerland. UNEP agreed to the need for the environmental assessment, but in 2007 UNEP entered into an agreement with Shell and the FGN to limit the assessment to just the 1,000 km^2 area of Ogoniland (Rivers State), effectively ignoring the remainder of the impacted Niger Delta ecosystem. Many in the Niger Delta believe that this decision to limit the assessment was a fundamental mistake, and that it has contributed to widespread resentment across the region today, with many feeling that other areas and communities remain ignored. Regardless, the final 2011 UNEP *Ogoniland Environmental Assessment* further confirmed our initial 2006 qualitative conclusions and recommendations.[15] Based on the 2011 UNEP OEA, in 2016 the FGN initiated its $1 billion Ogoniland *Hydrocarbon Pollution Remediation Project* (HYPREP), which although was slow getting started, is now under competent management of Prof. Nenibarini Zabbey.

However, it must be underscored that HYPREP only addresses a small portion (~ 2%) of the greater Niger Delta ecosystem, much of which has been similarly impacted by decades of oil spills and gas flaring. A 2023 assessment of oil damage in Bayelsa State estimates that oil cleanup and restoration in Bayelsa State alone will cost $12 billion and take 12 years.[16] And a 2017 scientific assessment concluded that a cleanup of the more than 2,500 spill sites across the entire Niger Delta would cost on the order of $50 billion USD, and take 50 years.[17] Clearly, the magnitude of the Niger Delta oil cleanup and restoration task is enormous, and just as clearly, it must be done.

Despite $ trillions earned from oil in the region since the 1950s, the region's 30 million residents, mostly subsistence fishermen and women, and farmers, remain some of the most impoverished people in the world. They consume oil-contaminated food, drink oil-contaminated water, breathe polluted air, and are chronically unhealthy, with average life expectancy under 50 years.[18] Oil pollution has seriously impacted the physical and psychological health of people across the Niger Delta.[19]

Along with chronic environmental devastation, the lack of any significant financial benefit to local people has fueled a violent conflict, involving militants and Nigerian security forces,

over the past two decades, killing thousands, destabilizing the region, and preventing sustainable development.

A substantial amount of oil (an estimated 20%-30% of daily production) is reportedly lost to theft directly from pipelines, illegal refining ("bunkering"), offshore loading on illegal tankers, and "excess lifting" by oil companies. While a 2013 estimate reported that the amount of oil stolen at 100,000 – 250,000 barrels per day,[20] a more recent 2022 estimate puts the amount of oil theft at 437,000 barrels per day.[21] Some report that the largest share of oil theft in the region is actually done by the oil companies themselves, underreporting production ("excess oil lifting"), to avoid paying royalties and taxes.[22]

In 2021, the Nigerian military's Joint Task Force (JTF), a combined force of the Nigerian Army, Navy, and Police deployed to secure oil facilities across the Niger Delta, reported that in the two preceding years, 2019 and 2020, some 1,603 sabotage incidents had been attempted on the three major export pipelines operated by Shell (SPDC) under JTF protection – Trans Niger Pipeline (TNP), Trans Ramos Pipeline (TRP), and Trans Escravos Pipeline (TEP) – with 1,291 of those attempts having been prevented by JTF intervention.[23] The JTF also reported that over the same two-year period, it had destroyed 2,859 illegal refineries, 4,812 illegal storage facilities, 297 militant camps, and 905 illegal bunkering boats; safely recovered/removed over 350,000 barrels of stolen oil; and arrested 681 suspected oil thieves.[24] It is not clear how many of these reported arrests resulted in convictions. And it is well-established that the JTF itself has been extensively involved in illegal bunkering and theft of oil, with JTF members often turning a blind-eye to such illegal practices to obtain their own corrupt gains.[25]

Some estimate that as much as a third of all revenues from oil in Nigeria have been stolen.[26] A recent estimate puts the value of oil stolen from Nigeria between 1960 and 1999 at approximately $400 billion USD,[27] while another report estimates that, just in the two years from 2016 - 2017, approximately $105 billion USD in oil was stolen in Nigeria.[28] In 2013, the former Governor of the Central Bank of Nigeria (CBN) reported to a Senate committee that, out of $67 billion of oil sold by NNPC between Jan. 2012 – July 2013, $20 billion had not been accounted for - the CBN Governor was then fired.[29]

Nigeria's oil disaster first came to international attention in 1995 when the military government executed the "Ogoni Nine," a group of nine tribal activists protesting the damage and inequities from oil in Ogoniland, including noted writer/activist Ken Saro-Wiwa. In 2009, Shell paid $15.5 million to settle claims brought by the families of the Ogoni Nine, who asserted that Shell had conspired in the executions. In its efforts to provide security to oil operations in the Delta, the Nigerian military has reportedly killed thousands of local people, including notably the 1999 Nigerian military invasion of the community of Odi (Bayelsa State), in which an estimated 2,500 local people were killed.[30]

The business model for oil companies in the Niger Delta is consistent and simple (and consistently denied by the IOCs): produce and export as much oil as quickly and as cheaply as possible; exploit inadequate government oversight; cut corners and costs on safety, monitoring, maintenance of infrastructure; ignore or blame others for environmental

damage claiming it is mainly due to oil theft, illegal refining ("bunkering"), and sabotage; pay bribes to government, military, police, and selected community members when necessary; habitually underestimate spill sizes and damage and overstate response effectiveness; and continue making huge profits as long as possible.[31] A 2019 Annual Report from Shell states that it makes a higher per-barrel profit with lower costs on oil from Nigeria than anywhere else it operates around the world.[32]

In the past several years, the International Oil Companies (IOCs) have opted to begin selling their onshore assets to smaller Domestic Oil Companies (DOCs) that have neither the financial nor technical capacity to operate them effectively – a primary focus of this investigation and report. As the Federal Government of Nigeria (FGN) is majority owner of the oil projects, and relies on oil for much of its revenue, it habitually turns a blind-eye to the ongoing crisis. Clearly, the dysfunction in the FGN has been a major contributor to the Niger Delta crisis.

Asked why they don't clean up their mess or upgrade their infrastructure, companies habitually blame pushback from Nigerian government joint venture partner (Nigeria National Petroleum Corporation, or NNPC), as well as security risks from militants. As for the hundreds of spills each year, companies habitually blame most on illegal oil theft and bunkering by local people, rather than the company's refusal to maintain, upgrade, or secure its aging pipelines and facilities.

Despite many government-imposed deadlines over past decades to end gas flaring in the Delta, flaring continues today, releasing an estimated 75 million tons of CO^2 e/year to the atmosphere,[33] and causing significant health impacts to local people. The "blood oil" keeps flowing, keeps spilling and the region remains stuck in chaos and despair.

Today, local people see little hope of breaking this spiral of poverty, environmental destruction, corruption and violence. Corrupt government officials, oil companies, and militants are simply making too much money from the current crisis to want to resolve it. But clearly the region cannot stabilize and begin to recover until these intersecting issues are resolved.

Many communities have filed claims for oil spill damages in Nigerian courts, but few of these have been satisfactorily resolved. Others have recently sought justice successfully in courts in the UK and the Netherlands. The international cases are helpful in placing liability where it belongs, but in context of the hundreds of oil spill damage claims in need of resolution across the Delta, such an incremental approach could take decades, long past the life expectancy of most local people alive today. And even if local people win such cases, compensation is seldom sufficient, and effective oil cleanup and restoration seldom occur.

This incremental approach will not solve the larger, immediate crisis, and local civil society can't afford to wait decades for justice and restoration. Until all claims and grievances across the entire region are equitably resolved, the oil infrastructure is upgraded to highest international standards and/or removed, and the ecosystem is cleaned up and fully restored, there will likely be no peace or sustainable development in the Niger Delta.

The Niger Delta's oil crisis is the result of decades of reckless, corrupt choices, by people who know better. It is time for Nigeria's leaders to make different choices, choose a new path, and remedy this ongoing crisis once and for all. It is perfectly clear how to do this, as recommended in this report. The international community needs to focus greater attention on the Niger Delta, as the ongoing crisis is an important case of environmental injustice, particularly in context of the global energy transition. But in the end, solving this crisis will be the responsibility of the Federal Government of Nigeria. The people of the Niger Delta feel that this situation has continued far too long, and it needs to be resolved. It is hoped that the new administration of President Bola Tinubu will rise to this challenge.

IV. Oil Industry Divestment in the Niger Delta

Over the past decade, International Oil Companies (IOCs) have begun strategic divestment of marginal oil assets, mostly in politically unstable regions of the world. The West's largest six producers have reportedly divested over $44 billion since 2018, and are looking to divest another $128 billion in coming years.[34] This divestment trend is amplified and accelerated in the Niger Delta.

On April 22, 2010, Nigerian President Goodluck Jonathan signed into law the Local Content Bill 2010, seeking to increase the participation of Nigerian companies in the nation's lucrative oil sector. The Act provides preferential treatment for local ventures and workforce, stating:

> *[Nigerian operators] shall be given first consideration in the award of oil blocks, oil field licences, oil lifting licences and shipping services and all projects for which contracts are to be awarded in the Nigerian oil and gas industry… and there shall be exclusive consideration for Nigerian indigenous service.*[35]

This act set the stage for the beginning of divestments of assets by IOCs to much smaller Domestic Oil Companies (DOCs), with considerably less financial and technical capacity, far less experience in the oil business, and with lower (or non-existent) Environmental, Social, and Governance (ESG) standards. By divesting (selling) onshore and nearshore assets in the Niger Delta, International Oil Companies hope to avoid: 1) the need to make costly investments to upgrade old, poorly maintained oil infrastructure; 2) properly decommissioning, abandoning, and removing unused infrastructure; 3) ongoing security risks from sabotage and theft; 4) further demands from communities for social and economic support; and 5) liability for decades of environmental, social, and economic damage they have caused. But instead of simply retiring these assets (which would clearly be in the interest of global climate commitments), the IOCs are selling them to small Domestic Oil Companies (DOCs) in Nigeria, many of which are new to the business, do not conduct due diligence on the acquired assets, lack the financial and technical capacity to safely manage these complex operations, and seek to maximize production with much lower environmental standards.

At present, IOC divestments in Nigeria must be understood within the context of recent mega-mergers of several multinationals, including ExxonMobil's recent purchase of Pioneer Natural Resources for $60 billion, and Chevron's recent purchase of Hess for $53 billion, both with the intent of increasing production in more politically stable areas (such as the U.S.).[36] These recent mega-mergers come amidst speculation that the U.S. majors had been interested in acquiring European majors such as BP and Shell, as the European majors underperformed financially pivoting toward less profitable renewables, while U.S. majors seek to capitalize on high oil prices due to the wars in Ukraine and the Middle East by producing more oil and gas. The current trend is for IOCs to divest assets in politically unstable regions, and to consolidate and increase production in politically stable regions.

Many IOCs are simply selling assets in politically volatile regions to other smaller companies with lower standards to continue producing, resulting in greater carbon emissions and environmental damage. In this way, what may be an environmental positive for one multinational oil company is actually a net environmental negative globally.

In the past, International Oil Companies (IOCs) including Royal Dutch Shell, ExxonMobil, Chevron, Total, ENI/Agip (Nigerian Agip Oil Company, Ltd.) along with their federally-owned Joint Venture (JV) partner the Nigeria National Petroleum Corporation (NNPC) as majority owner, were the only oil and gas producers across the Niger Delta. With the 2010 passage of the Local Content Bill, IOCs began divesting (selling) substantial onshore and nearshore assets to smaller DOCs - including Seplat Petroleum Development Company (Seplat), Aiteo Group (Aiteo), Eroton Exploration and Production Company Ltd. (Eroton), Newcross Exploration and Production Limited (Newcross), Oando Oil Ltd. (Oando), Neconde Energy (Neconde), Belema Oil Producing Ltd. (Belema), West African Maroil & Energy Services Limited (West African), Sterling Oil Exploration and Energy Production Co. (SEEPCO), First Hydrocarbon Nigeria Ltd. (First Hydrocarbon), Shoreline Natural Resources (Shoreline), Heirs Holdings Oil & Gas Limited (Heirs Holdings), Sahara Energy (Sahara), Conoil PLC (Conoil), as well as NNPC and its subsidiary Nigerian Petroleum Development Company (NPDC).

Instead of joining the effort to reduce carbon emissions from oil production, Nigeria is currently trying to increase oil production by significantly lowering oil taxes and royalties to incentive oil investment, and by establishing a *Frontier Exploration Fund to* stimulate new oil finds in non-traditional areas of the country. As with other petrostates (OPEC and non-OPEC alike), Nigeria is headed the wrong way on climate. Rather than the *progressive* global energy transition urgently needed, Nigeria today represents a *regressive* transition that the global community must recognize and resist. From a global climate perspective, Decommissioning & Abandoning these oil and gas reserves would be preferable to Divesting them in order to continue production.

There can also be considerable confusion post-divestment regarding which company actually owns and operates an OML, such as the ongoing dispute between Eroton and NNPC regarding OML 18 and OML 24 at Bille, Rivers State.[37] As well, companies have often been unclear about which pipelines they still own post-divestment.

While most local communities say that the IOCs were bad, many now say the DOCs are even worse. Communities fear that by divesting, companies may be attempting to escape liability for their decades of negligence. However, Nigerian and international law clearly holds that liability remains the responsibility of those who caused the injury, regardless of any subsequent transfer of assets. Thus, IOCs should remain liable for all damage caused under their ownership (pre-divestment), and potentially even for damage arising post-divestment if caused by undisclosed faulty assets divested in a transaction.

The details of most divestment deals remain largely obscure to the public. Some IOCs have loaned $ hundreds of millions to domestic buyers to facilitate these deals, such as Shell's reported 2014/2015 loan of $504 million to Aiteo for its purchase of Oil Mining License (OML) 29.[38] And some IOCs have been accused of selling assets that they do not own, as Aiteo has alleged in its $2.4 billion lawsuit against Shell for the OML 29 sale.[39] Several Nigerian banks (including Zenith, Fidelity, Guaranty Trust, etc.) are heavily invested in many of these DOC acquisitions, and many of these loans reportedly remain unpaid. Shell asserts that Aiteo owes over $2.6 billion in loans for its acquisition of OML 29, and lenders have notified Aiteo of its loan default.[40] Such indebtedness leads to concern regarding the resilience of the Nigerian banking system.

Across the Niger Delta, IOC operations have been plagued by poor maintenance and operational integrity, sabotage and theft, but as they continued to make substantial profits, the companies have not appeared seriously committed to remedying the situation, and are instead now simply exiting the onshore/nearshore Delta.

Traditionally, court cases filed by Host Communities seeking compensation for oil spill damages filed in Nigerian courts have not resulted in resolution favorable to the communities. Thus, for decades, oil companies felt they were effectively shielded from significant liability. More recently however, communities have had substantial success in filing claims in the home countries of the IOCs, such as the U.K. and Netherlands, including spill cases against Shell at Bodo and Goi (Rivers State), Oruma (Bayelsa State), and recently even in the Nigerian courts, with the 2021 settlement of the Ejama Ebubu (Rivers State) case, dating back to the 1967-1970 Biafran war. It is important to note that in March 2022, an appeals court in Oweri had suspended all of Shell's proposed divestments in Nigeria until it had resolved the Ejama Ebubu claim,[41] which clearly helped motivate Shell to settle the case.

IOCs now recognize that their reckless conduct may no longer be sheltered from liability by Nigeria's dysfunctional judicial system, and are exposed to substantial claims in the future. Thus, many IOCs are choosing to divest their toxic onshore and nearshore assets in Nigeria, attempting to escape liability. However, both Nigerian and general principles of tort law holds those responsible for causing damage as liable for such damage, regardless of subsequent sale or transfer of their assets, irrespective of attempts to transfer such liability in any divestment transaction.

Summary of Previous Reports on Divestment

Problems arising from Niger Delta IOC divestments have been well-documented in five recent reports by Civil Society Organizations (CSOs) in the Niger Delta, all in close agreement with each other, as well as one by an industry consulting firm in London:

1. 2015 Environmental Rights Action (ERA): *Shell Divestments and local community responses in the Niger Delta*[42];
2. 2021 Stakeholder Democracy Network (SDN): *Divesting from the Delta: Implications for the Niger Delta as international oil companies exit onshore production*[43];
3. 2021 Wood Mackenzie: *Shell to divest its entire Nigeria JV portfolio*[44];
4. 2023 We the People (WTP): *Dirty Exit: Why Oil Companies in Nigeria are Selling Off Assets and How it Denies Niger Delta Communities of Justice*[45];
5. 2023 Bayelsa State Oil and Environmental Commission: *An Environmental Genocide: Counting the Human and Environmental Cost of Oil in Bayelsa, Nigeria*[46];
6. 2023 Health of Mother Earth (HOME) Foundation: *Exploited, Dispossessed, and Abandoned: A Study on Oil Divestment by International Oil Companies in the Niger Delta*[47].

These reports are briefly summarized below.

1. 2015 *Environmental Rights Action* (ERA) Report

The ERA report was the first to sound the alarm on the issue of divestment in the Niger Delta, and focused specifically on Shell, as the major operator historically. Regarding reasons for Shell's divestment of onshore and nearshore assets, it states:

> *Illegal production and sale of oil, rising environmental rights awareness among community groups, government Local Content Law, and likely increased legal action in local and foreign courts against the company for environmental infractions are some of the less clearly stated reasons. The fear of incurring heavy costs in remediation of polluted sites and huge financial compensation to communities have contributed to the company's almost effortless subscription to the idea of divestment.*

The report specifically cites Shell's divestment as a clear attempt to avoid financial liability for its toxic legacy of the decades of pollution damage caused by its oil spills and gas flaring in Ogoniland (Rivers State) and Nembe (Bayelsa State). The secrecy surrounding these divestments, particularly with regard to ongoing liability for past damage, and questionable integrity of the assets being sold, caused considerable concern in communities.

The report states that since 2010, Shell had earned more than $1.8 billion from the sale of its share in several OMLs across the Delta, and was considering many additional OML sales. This first assessment recognized that the divestment issue in Nigeria at the time was poorly studied or understood, and of considerable concern.

To secure right-of-way for oil pipelines and other oil facilities across the Delta, the federal government appropriated lands from Indigenous communities, who then received little or no financial benefit from oil, and suffered severe consequences from spills and flaring.

The report disclosed the intra-tribal dispute within the Ogoni community regarding support for the 2015 sale of OML 11 by Shell to Belema Oil Producing Ltd. Reportedly, the Movement for the Survival of the Ogoni People (MOSOP) voted to reject the sale, while the Supreme Council of Ogoni Traditional Rulers, who some claimed were appointed by government and did not adequately represent broader Ogoni interests, supported the sale. Some Ogoni youths contended that bribes were paid to key Ogoni leaders to secure their consent for the sale. ERA reports that some Ogoni leaders had understood that Belema offered the communities a 10% share of profits from the OML, but many local people at the time questioned whether this would actually occur. It didn't.

At the time of the report, the sale of OML 29 and the Nembe Creek Trunk Line was pending, which prompted the Nembe community in 2015 to wisely place a *caveat emptor* (buyer beware) decree on any such sale, warning any buyer of substantial potential liabilities it might be acquiring. The Nembe Chiefs Council sent a letter to Shell requesting, among other demands, a 10% equity interest in the divestment; fulfillment of previous commitments for electrical power, scholarships, provision of diesel fuel, and roads; payment of all outstanding obligations for previous spill damage; internationally accepted cleanup and environmental restoration; and formal introduction of the new owner/operator – Aiteo – to the Host Communities. None of these were abided by Shell. The issue of liability in divestments has clearly not been adequately addressed.

Local communities feel that Nigeria's 2010 Local Content Law was seriously flawed, in that it did not expressly provide for Host Community engagement prior to, during, and after divestments were negotiated and approved. Communities also expressed concerns that divestment to domestic companies would moot existing Global Memorandums of Understanding (GMOUs) providing investments from Shell to the Host Communities. At that time, communities expressed the demand that all responsibilities and obligations of the GMOUs pre-dating the sale be fully transferred to the buyer.

The report predicts a rise in violence as divestments continue to domestic companies who are not held accountable in Nigerian courts, and the federal government continues failing to enforce court judgments for community plaintiffs.

The ERA report finds a haunting comparison between the exclusion of local peoples in divestment decisions today with the slave trade centuries ago, in that both involve the rights of human beings being "negotiated away between buyers and sellers without the consent of the victim."

The report concludes with several recommendations, including providing an option for equity participation of Host Communities in any sale; IOC divestors should fulfill all of its existing obligations under the GMOUs; the divestment process be open and transparent and involve Host Communities; companies should fully address all environmental damage pre-

sale; avoidance of the "divide-and-conquer" strategy, by which IOC divestors pay certain community leaders to support the sales, but left others out of the process; fully account for all liabilities in the divested assets; and encourage an actual phase-down of fossil fuel projects in Nigeria, and development of alternative energy resources for local communities.

2. 2021 *Stakeholder Democracy Network* (SDN) Report

SDN reports that three phases of divestment have occurred in the Niger Delta:

> 1. In the 1990s, politically connected "big men" in-country, with little industry experience, were awarded Oil Mining Licenses (OMLs) by the federal government;
> 2. In the 2000s, the government, seeking to expand local (domestic) involvement in the oil sector, leased small marginal fields onshore exclusively to Domestic Oil Companies at comparatively low cost; and
> 3. Since 2010, IOC's have been strategically divesting onshore and nearshore OMLs to DOCs.

Some, including Chevron and Total, are reportedly seeking to sell offshore assets as well. The SDN report attributes the divestment trend to three principal causes:

> 1. Rising operational costs and risks of continued operating onshore fields, due primarily to the necessary upgrades of degraded infrastructure and intentional third-party interference from theft and sabotage;
> 2. Declining investor interest, with fewer banks, insurers, and shareholders willing to support high-carbon investments; and
> 3. Increasing social costs due to unfulfilled Host Community demands for financing community development projects including electricity, potable water, medical assistance, jobs, and scholarships.

The SDN analysis reports that IOC divestments peaked in 2014 and 2015.

As stated by Shell's CEO in 2021:

> *We cannot solve community problems in the Niger Delta, that's for the Nigerian government perhaps to solve. We can do our best, but at some point in time, we also have to conclude that this is an exposure that doesn't fit with our risk appetite anymore.*

All IOCs cite lack of security for their oil assets as a prominent reason for divesting their onshore and nearshore assets in the Niger Delta, e.g., those in proximity to local populations. The militancy in the Delta grew out of the recognition that few of the economic benefits of oil were flowing to Host Communities, as well as the attractive financial benefits for some from oil theft and sabotage, and this problem persists.

As the FGN consistently failed its responsibility for ensuring the development and social welfare of the communities in the Niger Delta, the IOCs are continually pressed by Host

Communities to fill this role. This is one reason the IOCs cite for their desire to divest. Due to these mounting risks and costs, the IOCs continue to divest:

> *As projects in Nigeria are associated with high costs and risks, IOCs are compelled to sell these first when reorganizing their portfolios to reduce their exposure….and move their capital to areas with lower costs and risks.*

The report discusses the economic, social, security, and environmental implications of divestment, noting the significant possibility that oil production will decrease under management of DOCs, all of which are heavily burdened with debt (now amounting to over $12 billion)[48]; and a growing worry that the FGN is not planning for the inevitable decline in oil production and revenue, leaving the entire country vulnerable to "traumatic decarbonization," economic collapse, insolvency, and violence. Socially, while DOCs were once hoped to be more responsive to Host Community engagement and development needs, the experience so far has been otherwise. There is concern as well regarding how the DOCs will address security, as they have less experience and financial capacity than IOCs with such issues in the Delta.

Regarding environmental concerns from divestment, the report discusses two main issues: what happens to legacy environmental damage due to IOC operations, and how will DOCs perform environmentally compared with the previous IOC owner/operator. There are serious concerns with both issues. The IOCs may seek to transfer all liabilities along with the divested assets to the purchasing DOCs, but such liability divestment is actually impermissible. Regarding environmental performance of DOCs, they are almost universally worse than the prior IOCs. Again, the DOCs have less financial and technical capacity to maintain the integrity of oil infrastructure, particularly as the infrastructure purchased is usually run down and not fit-to-purpose. As well, they operate within a less responsive political culture.

> *The current environmental performance of DOCs suggests that they will be worse than IOCs in the future. This point was reiterated by a Nigerian government official, who stated that "the standard to which the oil majors operate is distinctively higher compared to the indigenous companies."*

Another concern is that as DOCs are headquartered in Nigeria, damage claims by communities will need to be brought in Nigeria's dysfunctional judicial system, and will be much less possible to resolve in the favor of the communities.

3. 2021 *Wood Mackenzie* Report

While the full 2021 Wood Mackenzie (London industry consulting firm) report was not available to the author, a synopsis from the online summary (in "Insight") is presented verbatim below. This is an important look at the divestment issue from industry insiders:

> *Shell has been active in Nigeria since the 1930s. It is no exaggeration to say that Nigeria helped transform the company into the supermajor IOC we know today. Now,*

63 years after producing its first barrel in Nigeria, it plans to divest all of its operated JV licenses held by Shell Petroleum Development Company (SPDC). This includes a 30% interest in 19 Oil Mining Licenses (OMLs). This is a radical step which would have seemed unlikely only 12 months ago, but is highly symbolic of what the Energy Transition means for IOCs in Africa.

Emissions from Shell's assets in the onshore and shallow water delta are among the highest in its global portfolio. This is because of ageing infrastructure, under-investment, vandalism, continued flaring and the harsh operating conditions. Until now, Shell has sold oil blocks but kept gas blocks supplying NLGN (Nigeria Liquid Natural Gas). This has changed, perhaps surprisingly, given that Shell seeks 55% natural gas in its global portfolio by 2030. Shell's gas assets have the lowest emissions intensity within the JV, although still comparatively high compared with its global average. The integration of these assets with oil infrastructure coupled with the ever-present security risks may have further persuaded Shell that a clean break from the onshore delta is, on balance, preferable. Rather than sell single OMLs, Shell is seeking buyers for asset packages in the eastern, western, and shallow water delta.

Before all that though, Shell must negotiate with NNPC (holder of 55% of the JV assets) on the terms of a sale. This could cover NNPC's preemption rights, treatment of outstanding JV liabilities including decommissioning, the fate of the JV's terminals, transfer of staff, and host community approval. Shell's priority is identifying credible buyers and ensuring deal completion. It wants to limit negotiations to handpicked bidders only, thus avoiding a long, drawn-out process. But it needs NNPC's buy in.

Who wants high-cost, emissions intensive assets in the Niger Delta? Not many. Yet Nigerian independents and new entrants are eager to acquire under-invested assets with plenty of volume upside. Playing at home, [domestic companies'] acceptance of risk differs markedly from international E&Ps, so there will few in the later [IOC] category. But in the Energy Transition era, can bidders raise enough finance to a) acquire, and b) invest in, a challenging portfolio of swampy assets? Deal financing will be necessarily complex to mitigate risks. The recent OML 17 transaction highlighted that, with a consortium of buyers backed by local and international lenders with multiple layers of debt, commodity traders will seek offtake opportunities in return for funding, and one or two may even consider equity.

Shell may itself provide finance to help smooth deals. It may even maintain an indirect interest in the OMLs, perhaps within a special purpose vehicle, coupled with a clear exit strategy. This would get assets off the balance sheet, and provide more comfort to lenders. Contingent payments might also feature. Innovative solutions will be needed. A complete sell-off would be historic. However, all 19 OMLs will be extremely hard to shift in the current environment.

There could be as much as 4 billion boe (barrels of oil equivalent) across the JV. However, we consider only 20% to be commercial due to a lack of investment, crude theft, insecurity and gas market constraints. Five of the OMLs are undeveloped. Our

valuation of Shell's 30% in the JV (excluding export pipelines and terminals) is US $2.3 billion, (NPV 10, Jan 2021, US $50 long term oil price). But this is based on the current suboptimal, business as usual profile. A competent buyer/operator, giving priority to the assets, could commercialize much more than 20% of the resource base, although the availability of funding for the JV partners will, as ever, dictate how much. The recently passed PIB [Petroleum Industry Bill, or Act) overhauls the fiscal regime offering materially lower oil royalty and taxes. Hence, there is much more upside than downside to our base case, which bidders will need to carefully quantify. Few apart from Seplat have created value through M&A [Mergers and Acquisitions]. Overpaying for resources in the ground has been disastrous for some previous buyers, so an appreciation for what is fair value given all the above ground risks and opportunities is essential.

Does this mean that Shell is leaving Nigeria? Far from it. Its deepwater business, run by SNEPCO [Shell Nigeria Exploration and Production Company] is centered on OML 118. That's been hugely successful since Bonga came onstream in 2005. Deepwater Nigeria offers economic advantage through the scale and quality of the reservoirs and resources, as well as lower emissions intensity through a single production hub. A new negotiated set of fiscal terms similar to the original vintage will enable fresh investment. And of course, it is removed from the risks of the onshore delta. Production from OML 118 will grow later in the decade driven by new wells on Bonga North, and eventually the long-awaited Bonga SW, although FID [Final Investment Decision] there will be [2022] at best.

After decades of dominance in Nigeria, Shell is preparing for a new era with a much smaller, advantaged portfolio.

4. 2023 *We the People* Report

The 2023 "Dirty Exit" report further confirms and updates previous findings by fellow CSOs ERA and SDN. It cites reports confirming that, due to the increase in successful litigation against the company, Shell divested eight OMLs in Nigeria between 2010 and 2014, and that by 2022, Shell had sold 50% of its assets, earning the company over $13 billion USD. Regarding its exposure to litigation, Shell's CEO stated:

> *…developments like we are still seeing at the moment mean that we have to take another hard look at our position in onshore oil in Nigeria.*

Similarly, Total is selling its onshore assets, and its CEO stated that: "disruption by local communities are sources of great concern, necessitating their divestment." In 2022, ExxonMobil, agreed to sell its onshore and nearshore assets in Mobil Producing Nigeria Unlimited to the Nigerian firm Seplat, but the Federal Ministry of Petroleum Resources has yet to approve the sale. The deal is reportedly worth $1.2 billion, and ExxonMobil would continue to operate its deepwater production assets in Nigeria. Chevron has sold several of its onshore/nearshore OMLs, some to Nigerian firm Conoil. Agip (Nigerian Agip Oil Company, NAOC), a subsidiary of Italian oil major ENI, sold its interest in OML 17 in Port

Harcourt to Heirs Holdings, and is reported to be considering selling its entire onshore holdings in Nigeria, worth from $2 billion to $5 billion.

The report states that the FGN is concerned about the rapid pace of IOC divestment, citing concerns about the technical and financial capacity of the domestic buyers to maintain production levels and revenue streams to the government.

While the 2007 U.N. Declaration of the Rights of Indigenous Peoples (UNDRIP), provides that Free, Prior, and Informed Consent (FPIC) be prerequisite for approving any extractive industry project, Nigeria abstained from approving the Declaration. However, UNDRIP today is universally considered Customary International Law, and should thus be abided in Nigeria as well.

As to one of the excuses invoked by IOCs for divesting from onshore Nigeria – declining production due to sabotage and theft – the report cites the CEO of Seplat stating that the larger reason for declining production has been a 70% decline in capital investment in the region by the IOCs since 2012, thus this is more a self-created decline.

> *In simple terms, through their deliberate reduction of investments in the oil sector, transnational oil companies created a decline in production that resulted in reduced outputs and then turned around to blame the decline they created for their decision to divest.*

The report cites a 2021 commitment by NNPC to "ensure that Nigeria's national strategic interest is safeguarded by developing a comprehensive divestment policy," focusing on:

> *'...abandonment and relinquishment costs; severance of operator staff; third party contract liabilities; competency of the buyer; post purchased technical, operational, and financial capabilities, especially in the era of activist investor's sentiments against the funding of fossil fuel projects and alignment with Nigeria national strategic interest*".

However, the 2021 NNPC commitment makes no mention of environmental, social, health concerns. To date, no such policy has been announced. The report concludes:

> *Divesting without accountability and restoration will see the emergence of stranded communities, who will be left with 65 years' worth of pollution and health hazards to contend with, while the transnational oil companies that caused their calamity move elsewhere for more profits or greenwash themselves as clean energy companies. This is not only unjust, it is criminal. They must be held to account.*

The report recommends that the FGN immediately enact a moratorium on further oil industry divestment in the Niger Delta, and require a process of environmental evaluation, health auditing, and restoration planning.

5. 2023 *Bayelsa State Oil and Environment Commission* (BSOEC) Report

The 2023 *Bayelsa State Oil and Environment Commission* (BSOEC) report presents an excellent synthesis of the causes and impacts of oil damage in the Niger Delta, specifically in Bayelsa state. Regarding divestment, the BSOEC report discusses recent trends at length, stating, for instance, that:

> *Since 2010, the IOCs have been divesting from their onshore and shallow water assets and selling these concerns to indigenous Nigerian firms. However, most divestment decisions end up as private contractual arrangements hurriedly agreed upon by IOCs and the Federal Government, often with responsibilities for environmental and social liabilities left underspecified and with the communities 'hosting the assets' effectively kept in the dark. This has created a widespread perception among many local communities that divestment of oil and gas assets to indigenous oil firms is simply an attempt by IOC operating companies to evade their ecological liabilities. Indigenous firms eager to acquire the assets and subsequently the lease upon expiration are prone to accepting contracts absolving the seller of responsibility in the case of defects associated with the asset after decommissioning, as well as liabilities for other legacy issues that may arise.*
>
> *Asset sales have tended to take place in secrecy, with limited public oversight with respect to questions of liability for (past and future) pollution damage associated with sold assets, which has been determined contractually between buyer and seller, rather than by regulatory authorities.*

The Bayelsa Commission reviewed Shell's 2014/2015 divestment of its 30% share of OML 29, which it had operated for its JV partners including NNPC, including the Nembe Creek Trunk Line (NCTL), to Nigerian startup Aiteo. Negotiations for the sale were conducted secretly at the Ministry of Petroleum in Abuja, with no community engagement or knowledge, and apparently with no discussion of the transfer of liabilities for legacy spills. [Note: local community members allege that bribes were paid by Aiteo to the Ministry to secure the asset]. Regarding spills before Shell's divestment, analyses reported that between 1980 and 2000, more than 50 spills had taken place from OML 29, amounting to over 500,000 barrels total; and another 17 spills have occurred since 2009. After Shell's divestment to Aiteo, there was a blowout on March 1, 2019 leaving 50 people missing, and requiring Aiteo to temporarily shut down the Nembe Creek Trunk Line; and then the large Santa Barbara Well-1 blowout occurred November - December 2021.

> *According to the NGO ERA, the secrecy around the sale of OML29 to Aiteo was deliberately orchestrated to keep communities, who would have wanted to acquire part stakes in the assets themselves, or insist that liabilities of environmental remediation outstanding, out of the picture. Special purpose vehicles were set up to allow the communities to participate in asset acquisition. Yet all assets in the end were bought and sold in Lagos. The regulators (DPR, NNPC, NOSDRA, Ministry of Environment) appear to have played very little, if any, role in the transactional – contract negotiation stage, with very little discussion about outstanding*

environmental pollution matters. If these issues had been raised, the scope would have existed for the seller to indemnify the purchaser with respect to issues that may have arisen as a result of damage that was already in place, even where there was no litigation pending.

Regarding the Nembe divestment, the Bayelsa Commission report states:

The Nembe Santa Barbara blowout, and the divestment that preceded it, should serve as a test case for how not to conduct asset divestment in the future. Full environmental impact assessments and transparent community consultation should be a standard requirement before any asset divestment. The Santa Barbara Well also suggests that new legislation should include firm provisions on who bears liability for pre-divestment oil spills. It is arguable that this should not be left to contract, but rather be captured in legislation that clarifies the obligations of all the parties involved when oil companies elect to divest from their assets. There should also be community participation in asset sales and divestment, with transparency over the status of Global Memorandum Of Understandings (GMOUs) signed with the divesting company. Provisions for community participation in asset interest acquisition should be included alongside environmental impact assessments as an integral feature of asset sales protocol. Regulatory bodies such as the Ministry of Environment and NOSDRA should be involved in the contract stage alongside the Ministry of Petroleum Resources.

6. 2023 *Health of Mother Earth (HOME) Foundation* Report

The July 2023 Health of Mother Earth (HOME) Foundation report confirmed the findings of previous CSO reports on oil industry divestment in the Niger Delta, and offered several new findings and recommendations. The report reiterates that the IOCs (Shell, Exxon, Chevron, Total, Eni) are divesting onshore marginal assets due to infrastructure vandalization, oil theft, insecurity, and environmental issues. The report reiterates that IOC divestment is largely intended to avoid liability for oil spill cleanup and environmental damage.

The report reiterates that most DOCs purchasing the former IOC assets, such as Aiteo in Bayelsa State, are operating with dangerously low environmental standards, far worse than IOCs. These DOCs have virtually no experience, no operational readiness for environmental issues, lack financial resources, are heavily in debt, have no infrastructure integrity monitoring capacity, have no safety culture, have little commitment to Host Communities, and seek to minimize costs while increasing production and revenues.

In contrast, the report also finds that at least one DOC, Belema Oil in Rivers State is, so far at least, operating in a responsible manner. Host Communities where Belema operates report that the company is providing better CSR commitments, and is generally operating in a more environmentally friendly manner. This is a significant finding, indicating that not all DOCs are the same, and that some can indeed choose to operate with integrity, in compliance with the law, and by being responsive to community concerns.

The HOME Foundation report makes several significant recommendations to remedy the environmental and social impacts of this trend, as follow:

Federal Government of Nigeria: must hold the IOCs fully responsible and liable for the environmental damage caused, should diversify the national economy beyond current reliance on petroleum, revoke OMLs for Domestic Oil Companies (DOCs) when they are found to be out of compliance with federal law requiring international best practice in operations, and that the DOCs remain in compliance with federal law.

State Governments: must hold IOCs liable for the environmental damage they have caused, assert the state's legal obligation to ensure overall environmental compliance, that DOCs meet required international best practice standards, and ensure that Corporate Social Responsibility (CSR) commitments from DOCs are abided.

Communities: Host Communities should establish a coalition to provide rigorous oversight of all DOC operations, and monitor and resist all attempts by DOCs to "divide-and-rule" local communities.

Civil Society Organizations: CSOs should expand outreach and capacity building in communities, particularly with regard to international best practices required by Nigerian federal law; and continue to provide oversight and pressure to hold IOCs fully liable for the environmental damage their operations have caused.

Together, these research reports by Niger Delta Civil Society Organizations (CSOs) are in close agreement, and reinforce mutual concerns and recommendations.

And today, these IOC divestments continue. In September 2023, Italian oil major ENI announced an agreement to sell 100% of its shares in Nigerian Agip Oil Company Ltd. (NAOC Ltd) to the domestic oil company Oando, increasing Oando's share of onshore OMLs 60, 61, 62, 63 from 20% to 40%, with the government's NEPL (NNPC Exploration and Production Limited) retaining 60% ownership.[49] The sale is said to be part of ENI's long term strategy to reduce oil holdings in favor of natural gas, after its divestment in June of its oil holdings in Congo.[50] Oando stated the sale would allow it to "significantly increase production."[51] Here again, while this divestment may reduce the carbon footprint of one IOC, it may increase production by the purchasing DOC, and thus add more carbon emissions to the global atmosphere.

If approved by the Minister, the new Joint Venture arrangement will increase Oando's operational involvement in forty oil & gas fields, 1,490 km of pipelines, and the Brass Oil Terminal. Although the announcement does not clarify this, it is assumed that Oando will now become the operator of these OMLs, replacing NAOC in this critical role. And as with all other such IOC-to-DOC divestments, it is unclear whether Oando has the technical and financial capacity to manage and safely operate this JV, whether the required Environmental Evaluation Report was completed by NAOC, and what the agreement says

about existing liabilities. And it is likely that Host Communities, Local Governments, State Government, and NGOs have not been consulted regarding the proposed sale.

If this divestment trend continues, by 2030 there will be little, if any, IOC ownership of onshore/nearshore oil and gas operations remaining in the Niger Delta. This will leave all oil & gas operations onshore/nearshore to be run by DOCs, with much the lower technical, financial, and operational standards.

V. Nigeria Federal Law on Divestment, Decommissioning & Abandonment

(1) Environmental Guidelines and Standards for the Petroleum Industry (EGASPIN)

Nigeria's federal *Environmental Guidelines and Standards for the Petroleum Industry* (EGASPIN) has provided overall regulatory guidance for the oil and gas industry for decades. The 2002 EGASPIN did not contain provisions stipulating required procedures for industry divestment, as significant divestment had yet to begin at that time, but the 2018 EGASPIN did require an Environmental Evaluation Study and Report (EER) to be concluded pre-divestment. As the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) declined to provide these EERs in response to our May/June FOIA requests, we assume the divesting companies and FGN simply did not comply with this provision.

Regarding divestment, Section 2.1 (ii) of the 2018 EGASPIN required a prospective seller to, prior to divestment, complete an Environmental Evaluation Study (EES) and Report (EER), as follows:

> 2.1 The following systematic process shall be followed in preparing an EER.
> (ii) An operator or licensee that intends to divest any interests in its concession shall be required to conduct an Environmental Evaluation Study [Environmental Evaluation Report, or EER] to document the current state of the environment at the time of the divestment. The EES shall be supervised and the report submitted to the DPR for review and approval prior to finalizing any divestment agreements.
> (iii) The operator or licensee shall draw up the Scope of Work for the preparation of the EER and submit same to the DPR for approval.
> (iv) The operator or licensee prepares/produces and submits the EER to the Director of Petroleum Resources.
> (v) The Director of Petroleum Resources based on the reviewer's recommendation, determines appropriate mitigating and ameliorating measures and instructs the operator/licensee to institute same.
> 2.2 The EER shall contain the following facts:
> (i) Description of the existing actions namely; installation/project, operations, oil/hazardous materials/waste spillage, waste generation, characteristics of wastes, existing pollution control technology, disposal methods, etc.
> (ii) Qualitative and quantitative descriptions of the already impacted environment.
> (iii) Levels of significance for losses of environmental resources affected by the already existing installations/projects or action. These environmental resources are

the elements, features, conditions and areas valued by man that can be characterized as physiographic, biological (including bioaccumulation and chronic toxicity testing) cultural, aesthetic, etc.

(iv) Modification/Mitigation/Amelioration plans to processes or systems to either eliminate or decrease adverse environmental impacts to the greatest extent possible.

(v) Environmental Management Plan (post-EER)

Regarding Decommissioning & Abandonment, Section VIII-H of both the 2002 and 2018 EGASPIN contained essentially similar requirements, as follow:

[2018] EGASPIN: DECOMMISSIONING OF OIL & GAS FACILITIES SECTION 1 GENERAL

1.1 Decommissioning programmes shall be planned, the objectives and implementation drawn-up during the project initiation and design phases.

1.1.1 Such decommissioning objectives/activities shall incorporate remediation/ restoration programmes. (See PART VIII-G).

1.1.1.1 In addition to, and to corroborate the preparatory work earlier done during the EIA/Baseline/Sea-Bed Survey Report for the project/activity, at the point of decommissioning, the licensee or operator shall be requested to provide:

i) An Environmental Evaluation (post-impact) Report (PART VIII–A), specific to the activity and;

ii) A Decommissioning Plan Report specific to the activity.

1.2 Lessees/Licensees shall appropriately decontaminate, dismantle and remove structures from oil and gas installations and facilities after such installations/facilities have been abandoned and decommissioned.

1.2.1 For facilities completely shut down and/or abandoned, decommissioning activities (physical removal of structures) shall commence at most one year after abandonment and be completed within six months.

1.3 Administrative on property acquisition and divestiture shall be complied with and;

1.4 Where possible, communities where such decommissioning is to take place (site) shall be consulted (public/community concern).

1.5 Decommissioning Plan Report.

1.5.1 The decommissioning plan report shall as a minimum contain:

(a) Peculiarity of the project.

(b) The degree of abandonment (partial/wholly).

(c) Methods to be used for the removal of the structure (explosives, mechanical cutting, touches, high pressure jetting, etc.)

(d) Verification of method(s), when used.

(e) Disposal of removed structures, debris and associated wastes (also check for LSA/NORM).

(f) Environmental protection/monitoring (EIA and/or, EER, Restoration and Remediation plans).

1.5.2 A Decommissioning Certificate shall be issued by the Director of Petroleum Resources, when the decommissioning activity is certified as satisfactory.

SECTION 2 PROCEDURES/STRATEGIES 2.1 Offshore/Deep Water Areas

2.1.1 All decommissioned installations on the seabed including the deck and super structure shall be removed entirely.

2.1.1.1 The process of removal shall avoid significant adverse effects upon navigation or the marine environment.

2.1.2 Well Abandonment

2.1.2.1 The provisions in Section 1.2.1 shall apply.

2.1.3 No installation or structure is to be placed on any continental shelf or Exclusive Economic Zone, unless it is designed so that entire removal upon disuse would be feasible.

2.2 Inland and Nearshore Areas

2.2.1 Well Abandonment

2.2.1.1 Licensee/Operator shall:

i) obtain appropriate permit from the Department of Petroleum Resources;
ii) isolate well from surface;
iii) plug and abandon downhole according to permit criteria;
iv) place surface cement plug below cellar, to allow removal of surface components, the process of removal should avoid any significant adverse effect on the environment;
v) isolate production interval to prevent communication between aquifers of different nature.
vi) close pit appropriately.
vii) satisfy other conditions as in API RP 57 [American Petroleum Institute's Recommended Practice re: offshore well abandonment]

2.2.2 Process Equipment/Facilities.

i) Decontaminate appropriately;
ii) Dispose of equipment by recycling, selling etc.;
iii) Demolish structures/buildings where appropriate.
iv) Minimize conflict with available land use.

2.2.3 Pipeline/Flowline

i) Decontaminate, plug and leave on-site, if adequate, otherwise excavate.
ii) All surface components/ancillary facilities shall be removed.
iii) Minimize conflict with available land use.

2.2.4 An approval shall be sought for, from the Director of Petroleum Resources for strategies intended to be used for decommissioning activities.

Thus, it is important to note that, for decades, Nigerian federal law and regulation has required best international practice with regard to Decommissioning & Abandonment of oil facilities. However, as with many other components of federal law and regulation on the oil and gas industry, virtually none of this has been implemented or enforced by the FGN. This is a fundamental problem that must be remedied.

The Upstream Decommissioning & Abandonment Regulations developed pursuant to the 2021 Petroleum Industry Act (PIA), discussed below, have yet to be finalized, but the Draft Regulations essentially continue the Decommissioning & Abandonment (D&A)

requirements found in EGASPIN 2002 and 2018, but with the additional requirement for all operators to establish a D&A Fund sufficient to cover all future costs for D&A.

(2) The 2021 Petroleum Industry Act (PIA)

Nigeria's Petroleum Industry Act (PIA) was signed into law on Aug. 16, 2021, and capped a 20-year-long effort by the government of Nigeria to reform its management of the oil and gas industry in the country. However, although the PIA sets new higher standards for petroleum governance in Nigeria, it has yet to be effectively implemented. Many in Nigeria feel that the PIA is yet another aspirational law intended to project a facade of regulatory effectiveness, as with prior laws and regulations regarding oil and gas in the country, but fear that it will never be effectively implemented or enforced.

The PIA reorganized federal oversight and regulation of the oil and gas industry from the former Department of Petroleum Resources (DPR), into two new regulatory agencies: the *Nigerian Upstream Petroleum Regulatory Commission* (NUPRC); and the *Nigerian Midstream and Downstream Petroleum Regulatory Authority* (NMDPRA); both within the Federal Ministry of Petroleum Resources (MoPR). The PIA transitioned the consistently underperforming NNPC into a quasi-federal/quasi-private company, NNPC Ltd., yet still 100% owned by the FGN. The PIA provides that 30% of any profits of NNPC Ltd., along with 10% of exploration and OML license fees, will go into a newly established *Frontier Exploration Fund* to explore for oil and gas in new areas of the country, and to develop renewable energy resources. The PIA also requires companies to submit to the Commission, within 12 months of enactment of the Act (which was Aug. 2022), a "natural gas flare elimination and monetization plan," and fines for non-compliance. It is noted that Nigeria law has established deadlines to end gas flaring for decades, but all have been ignored by industry and government.

Importantly for the communities of the Niger Delta, the PIA establishes the *Host Community Development Trust Fund* (HCDTF), to provide social and economic development in oil and gas Host Communities. The Fund will derive from 3% of operating expenses of each industry actor in the area of community clusters, based on previous GMOU organization. A controversial provision of the PIA is that, if a Host Community fails to protect oil infrastructure in the area from Third Party Interference, such as sabotage or bunkering, the Host Community will be held accountable for repairs.

The PIA establishes a new deadline for cessation of gas flaring, and penalties for non-compliance. Recognizing that over 95% of oil industry investment in Africa is now going to regions other than Nigeria (e.g., West Africa offshore), the PIA introduced a new fiscal regime that substantially reduces government revenue in Nigeria from oil and gas operations, in an attempt to reverse the decline in industry investment in the country. The new royalty rates are:

- onshore areas: 15%
- shallow water: 12.5%
- deep offshore (greater that 200m water depth): 7.5%

- frontier basins: 7.5%

And a new hydrocarbon tax of 30%, over and above a corporate income tax, was established.

The PIA is widely criticized in the Niger Delta, as it is seen as more beneficial to the North of the country (without oil production at present). The 3% of operating expense contribution to the HCDTF is viewed by many as too small (many had proposed 10%); as well the *Frontier Exploration Fund* is seen by many in the Delta as a means to transfer the Delta's oil wealth to the North of the country. Given the substantial reduction in government royalties and taxes established by the law, there will be a significant decline in revenue to all three levels of governments throughout the country. And many in the Delta question whether the new DOCs will comply with the required annual contribution of 3% of operating expenses into the HCDTF.

PIA Sections Relevant to Divestment, Decommissioning & Abandonment:

There are several sections of the 2021 PIA with direct relevance to this investigation, and are summarized below:

Section 7. Technical and regulatory functions of the [NUPR] Commission

> (f) Keep public registers of -
> (i) licenses and leases granted by the Minister and permits and other Authorizations issued by the Commission,
> (ii)beneficial ownership, and
> (iii) award, renewal, assignment, amendment, suspension and revocation;

This section clearly requires that all OML divestments be listed in a public register, available to the public. The NUPRC staff confirmed in our meeting that this has not yet occurred, and that it was "a work in progress."

Section 83. Confidentiality

This section requires that all operators/licensees/lessees annually submit all financial information (taxes, fees, royalties, profit shares, etc.) to NUPRC and the Minister of Finance, and requires that a summary of these submissions be published on the NUPRC website. Further, this section requires that:

> *The text of any new license, lease or contract or amendment to it shall not be confidential and shall be published by the Commission immediately following the granting or signing of such texts.*

This is to include all such contracts with NNPC, and would clearly apply to any divested assets as well.

NUPRC staff confirmed in our meeting that now, two years after enactment of the PIA, these public disclosure provisions have yet to be implemented, again claiming this is "a work in progress."

Section 95. Assignments, mergers, transfers, and acquisitions

As in previous law and regulation, the PIA provides a deliberate process for companies to apply to the Ministry of Petroleum Resources (MoPR) for approval of a proposed sale/divestment of assets, and stipulates that a company may not transfer any assets without written consent of the Minister, under guidance by NUPRC. A company wishing to transfer/divest assets, must apply to NUPRC, and provide sufficient information for the Commission to evaluate the proposed sale. Within 60 days of receipt of an application for divestment, NUPRC is required to make its recommendation to the Minister, who then has 60 days to make his determination. Criteria to be evaluated include whether the transferee (company to receive the assets) is:

a) registered in Nigeria;
b) of good reputation and standing;
c) has sufficient technical knowledge, experience and financial resources to enable it to effectively carry out all responsibilities of a licensee or lessee under the license or lease;
d) complies with the Federal Competition and Consumer Protection Act.

If the Minister fails to respond within the allotted time, the application for transfer is, *de facto*, considered approved. If the Minister rejects the application, NUPRC shall provide written notification and rationale for the rejection. Section 95 of the PIA requires that details of any/all such transactions be published in the Federal Government Gazette, and be publicly available.

However, the PIA does not provide for public engagement, even Host Community engagement, in the FGN review and approval process. This omission is cited by many in Host Communities as a serious flaw in the act that must be remedied.

Section 232: Abandonment, decommissioning, and disposal

The PIA stipulates that the Decommissioning & Abandonment (D&A) of oil and gas facilities be conducted with good international industry practices and standards; be pre-approved by NUPRC or NMDPRA, and these agencies must require such Decommissioning & Abandonment to adhere to international best practice standards. After 1-year of the effective date of the PIA (which was August 16, 2022) companies have been required to present to the relevant agency detailed plans to Decommission & Abandon (D&A) facilities, including estimated costs, exact facilities to be decommissioned, procedures to be employed, an assessment of the environmental and social impact of the proposed D&A process, and consultation is required to be conducted with interested parties and other relevant public authorities and bodies.

Significantly, section 6(d) provides that, for deep and ultra-deepwater facilities to be decommissioned or abandoned:

> *…where the installation, structure or pipeline is partly removed, the licensee or lessee shall remain liable for any residual liability arising from the installation, structure or pipeline not removed.*

However, for onshore facilities no such liability assignment is made - see Section 7:

> *Installations and structures on land shall be completely removed and the environment restored to its original condition, except for buried transportation pipelines and gathering lines.*

Some suspect that this omission of assigning residual liability for abandoned onshore facilities may have been negotiated by the IOCs in the drafting of the PIA, and is a concern to Host Communities across the Delta.

Section 232 (14) requires the development and annual publication of a comprehensive inventory of oil facilities and their status in Nigeria, as follows:

> *The Commission or Authority, as the case may be, shall ensure that a list of the installations, structures and pipelines on land and offshore in Nigeria used for petroleum operations and their current status is compiled and made available or accessible to the public annually.*

NUPRC staff confirmed that this list/inventory has yet to be developed, and again remains another "work in progress."

Section 233: Decommissioning and abandonment fund

PIA Section 233 requires that each licensee or lease establish and maintain a Decommissioning & Abandonment Fund, via an escrow account in a reputable independent financial institution. Each D&A Fund is to be sufficient to carry out the D&A plan approved by the federal agency, with annual contributions to the Fund over the projected lifetime of the facility, and to be accessible to the Commission or Authority for use if the licensee or lessee fails to fulfill its obligations under Section 232 (above).

Again, to date the PIA remains only partially implemented, and many worry it may never be effectively implemented and enforced, leaving the historic regulatory dysfunction to continue indefinitely.

(3) 2022 Legal Opinion: Divestment Liabilities in Nigerian Law

The Feb. 2022 legal opinion by Attorney Emeka Duruigbo (Houston, Texas) conducted for Milieudefensie (Friends of the Earth) Netherlands analyzes the issue of liability transfer in

Nigeria oil divestment transactions specifically related to Shell.[52] Mr. Duruigbo's conclusions include the following:

- *Shell has the freedom to divest under Nigerian law. However, it cannot legally run away from existing obligations to its host communities and their residents. Nigerian law will apply, primarily. Home country legislation may also apply if they have extraterritorial effect. International law is largely not implicated in these matters, which are internal to a country.*

- *Affected communities will still be able to sue Shell because Shell remains primarily liable for environmental obligations. If the obligations attach to the oil and gas license, and not to Shell personally, such as the obligation of a licensee to contribute to community development, Shell will only be liable for obligations that accrued while it held the license. If environmental or other obligations are transferred to the purchaser, affected persons or victims will still be able to sue Shell, but financial recovery may ultimately come from the transferee, i.e. purchaser.*

- *It is not possible to transfer the legal liability to environmental or tort victims, whether in negligence or statutory. It is possible to transfer the financial liability or responsibility for paying for such wrongs. Thus, while many purchasers will be reluctant to accept such transfers because of potentially enormous costs, there is generally no legal impediment for concluding and enforcing such contracts.*

- *Example: X drives his car and hits a pedestrian Y. X is legally responsible to Y. Before liability is determined, X sold the car to Z, with an agreement that all liabilities arising from X's use of the car prior to sale will be borne by Z. Y can sue X but X will call upon Z to pay. The agreement between X and Z is valid, but it is not binding on Y.*

- *Liabilities attached to assets will transfer to the domestic Nigerian company. If oil spills occur subsequent to the purchase, from the defective equipment, the purchaser will be responsible. Thus, the domestic company so concerned would be assuming a monumental risk of incurring liability for subsequent damage caused by such defective assets. Also, regulatory constraints could prevent further use of such assets if found to be unsafe for use.*

A clear conclusion of such legal analysis is that the IOCs remain liable for damages occurring from their operations pre-divestment, irrespective of subsequent sale of assets. As well, under Nigerian law, limitation periods are incapable of applying to claims for compensation under the Oil Pipelines Act, or to claims involving ongoing breaches of duty, such as the duty to clean-up oil spills.[53] Further, although buyers must exercise due-diligence in any asset acquisition, it remains a possibility that, if significant faults in asset integrity are not fully disclosed pre-sale to buyers, claims could be brought against the seller for such non-disclosure.

Thus, it is recommended (see proposed *National Principles for Responsible Oil Industry Divestment* in the recommendations of this report), that all asset integrity issues be required to be fully assessed and disclosed by the seller prior to transfer. Pre-sale disclosure requirements are standard practice for sales of other properties elsewhere, such as the required home inspection and full disclosure of integrity issues in order to finance a home sale in the U.S.

The 2021 post-divestment lawsuit filed by Aiteo against Shell pertaining to the 2014/2015 OML 29 sale is reportedly due to Aiteo's allegation that six of the wells transferred by Shell in the sale had not actually been owned by Shell.[54]

4) 2023 U.S. Court Ruling on Post-Divestment Liability

An example of an International Oil Company (IOC) being held liable for oil pollution long after a pollution event occurred, and long after the company had divested the asset, is the July 2023 ruling in Louisiana (U.S.) District Court in the case of Broussard Properties v Shell Oil.[55] The case derives from the underground blowout of Shell's Norman Breaux B 1 (NBB1) well in 1943, resulting in years of gas emissions both underground and to the surface in the Atchafalaya Basin of Louisiana. In 1998, Shell asserted there was no longer any pollution coming from the failed wellbore, and sold the asset to another oil company, which later transferred the asset to other owners, and eventually to Broussard Properties, who filed suit for the extensive and continuing oil pollution damage to the property.

The 2023 Louisiana District Court ruling found that Shell had not properly cemented, plugged and abandoned the failed well in 1943, and that pollutants continued to flow to the surface for decades.

Further, the July 2023 Court ruling found that, after the 1943 blowout:

> *Shell did nothing to ensure that there was no environmental issue with the well blowout area…while knowing that [it] had the potential to be an environmental issue.*
>
> *The Court further finds Shell, in a concerted effort to lessen its burden caused by its known environmental damage, transferred its known duty to remediate or address the environmental damages to the purchaser of the property in 1998.*

The 2023 Court ruling found that pollution from the 1943 blowout continues today - 80 years later - and ordered:

> *Shell to cease and remedy the NBB 1 water pollution and discharges…*
>
> *…to comprehensively assess and delineate pollutant and contaminant levels in soils, sediments, surface waters, and groundwater polluted, damaged, or otherwise impacted by Shell's NBB1 blowout…*
>
> *Shell shall develop a plan to plug and abandon the NBB 1 well…*

and submit:

> *…a proposed "feasible plan" to repair the environmental damage caused by Shell's NBB 1 blowout…*

Such court rulings illustrate the emerging judicial consensus around the world that, irrespective of IOC desires to escape liability for oil pollution by divesting assets, courts can and will hold them responsible, even decades later. This should be clarified and enshrined in Nigerian law as well.

VI. July 2023 Niger Delta Fact-Finding Mission

The author of this report and his colleague, Dr. Festus Odubo (a Nigerian/American energy specialist), conducted a fact-finding mission to Nigeria from July 1-17, 2023, examining the issue of oil industry Divestment, Decommissioning & Abandonment. In advance, we requested meetings with relevant federal agencies and officials in Abuja, and spent July 1-4 in Abuja, and again July 14-17. In Abuja, we met with the Permanent Secretary for the Federal Ministry of Petroleum Resources (MoPR) and staff, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), the Director and staff of the National Oil Spill Detection and Response Agency (NOSDRA), the previous Minister for Petroleum Resources, the Host Community Association (Local Content Stakeholders), and HRM King Alfred Diete-Spiff. We requested, but were not granted, meetings with the Nigeria Midstream and Downstream Regulatory Authority (NMDRA), the Federal Ministry of Environment, and the Nigeria National Petroleum Corporation (although we did have a Zoom meeting with NNPC staff).

In the Niger Delta (July 5-13), we were hosted by the Center for Environment, Human Rights, and Development (CEHRD) and the Stakeholder Democracy Network (SDN) in Port Harcourt and Rivers State, and Environmental Rights Action (ERA) and the Bayelsa State Government in Yenagoa, Bayelsa State.

Prof. Prosper Ayawei, President of the Ijaw Nation Development Group (INDG), and leader of the Nigerian Local Content Development and Promotion Council, organized meetings for us with Local Content/Host Community Stakeholders in Abuja, Port Harcourt, and Yenagoa.

Prior to the site visit, we asked colleagues at CEHRD to submit a Freedom of Information (FOI) Act request to the Nigeria Upstream Petroleum Regulatory Commission (NUPRC) in Abuja (which they submitted on May 25 and June 6), for specific public documents, as follow:

> *1. All Upstream Decommissioning and Abandonment Plans and Regulations for oil and gas projects submitted to Nigeria Upstream Petroleum Regulatory Commission (NUPRC), as required by the 2021 Petroleum Industry Act (PIA); including whether the plan was approved or not by the Commission; any public consultation conducted; and*

an accounting of all funds placed in Decommissioning & Abandonment funds by the owners/operators.

2. All agreements over the last 10 years (since June 1, 2013) for the sale, transfer. or divestment of oil and gas licenses (OMLs etc.) and infrastructure between International Oil Companies (IOCs), Nigeria National Petroleum Corporation (NNPC), and any other company, including any agreements regarding legal and financial liabilities being transferred or retained by the seller.

3. All Environmental Evaluation Reports/Studies submitted by licensee/lessee and/or operators who intend to divest any interest in their concessions.

4. All Environmental Management Plans submitted, as provided by Upstream Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (UEGASPIN).

5. Documents discussing any future plans for sale, transfer, or divestment of OMLs and/or oil and gas facilities and infrastructure.

6. Documents discussing environmental or social damage caused by sale/transfer/divestment of OMLs and infrastructure by IOCs to other companies.

7. Database, maintained by NUPRC, of upstream installations, structures, pipelines, and other assets in Nigeria (as stipulated in the PIA).

8. A copy of Upstream Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (UEGASPIN).

9. The most recent Asset Integrity Reviews conducted by International Oil Companies (IOCs), Joint Ventures, Nigeria National Petroleum Corporation (NNPC), and/or other petroleum companies, in Bayelsa, Rivers. Delta, or Akwa Ibom states.

10. The most recent Pipeline Integrity Management System (PIMS) reviews performed by IOCs, Joint Ventures, NNPC, and/or other petroleum companies in Bayelsa, Rivers, Delta, or Akwa Ibom states.

11. The most recent Compliance Audits performed by IOCs, Joint Ventures, NNPC, and/or other petroleum companies in Bayelsa, Rivers, Delta, or Akwa Ibom states.

All of these documents should be public records, and available to the general public. Nigeria's FOI Act requires a 7-day response/production time by federal agencies. While NUPRC confirmed receipt of the FOIA requests, the agency declined, without explanation, to provide *any* documents. We reiterated the FOIA request at our in-person meeting with NUPRC in Abuja, but staff again declined to provide *any* documents, or to offer an explanation for the agency's failure to comply with Nigeria's FOI Act. It is evident that the agency has no intention of complying with its legally prescribed disclosure obligations.

We are left to assume that these required documents simply were never submitted to NUPRC by oil industry operators/licensees/lessees as required by law, and that NUPRC did not follow through in enforcing their required submission.

We also requested meetings with and documents from several IOCs and DOCs, but other than one Zoom meeting with NNPC, none responded.

In Rivers State, we conducted day-long site visits, hosted by CEHRD and SDN, to the communities of Afam Ukwu in Oyigbo Local Government Area (LGA) and Ogale in Eleme LGA, where we met with local community leaders, and were escorted to sites of derelict oil wellheads and prior spills. In Port Harcourt, we met with SDN, CEHRD, ERA, Rivers State Environment Commissioner and staff, the Coordinator of HYPREP, and held a Zoom meeting with NNPC officials. We asked for a meeting with Shell/SPDC in Port Harcourt, but the company declined. We met with a group of Civil Society Organization (CSO) stakeholders, and separately with community leaders from Bille Kingdom who traveled to Port Harcourt to meet with our team to share their perspective on the divestment issue.

In Bayelsa State, we were first hosted by ERA in Yenagoa, and conducted daylong site visits to the communities of Ikarama, in Yenagoa LGA, and Otuabagi, in Ogbia LGA; met with local community leaders, and inspected oil-impacted sites and pipelines. We then were hosted by the Bayelsa State Government, and conducted site visits by boat to Nembe, the site of the 2021 Santa Barbara Well-1 blowout, and then following day to Aghoro, the site of the 2018 Trans Ramos Pipeline spill. In Yenagoa, we met with HRM King Bubaraye Dakolo, a local content Stakeholders group, and a Stakeholders group organized by the Bayelsa Commissioners of Environment and Mineral Resources.

After having no response to our request for meetings with and documents from oil companies, we offered several – Shell, ENI/Agip, Chevron, Aiteo, Seplat, Eroton, and Oando - an opportunity to submit written statements describing their company perspective on Divestment, Decommissioning & Abandonment. There was no response from any of the companies.

VII. Findings

(1) Federal Government Dysfunction

Our experience with Federal Government of Nigeria (FGN) meetings, meeting requests, and document requests reaffirmed that the federal government remains strategically and intentionally dysfunctional. There are indeed some competent staff in the Ministry of Petroleum Resources (MoPR), but the political culture of the federal government remains bureaucratic, non-transparent, and ineffective. An overall finding is that, as it has for decades, the federal government fails to provide substantive oversight of the oil industry, or to ensure the welfare of its citizens in the Niger Delta – two of its principal responsibilities.

We were unable to confirm that *any* of the federal regulations regarding the oil & gas industry are effectively enforced, and no documents were provided to our team's FOIA requests of NUPRC, or in response to our several document requests made in meetings with federal agencies. The absence of legitimate federal regulatory oversight has allowed substandard practice by IOCs, NNPC, and other industry operators, at the expense of the environment and social welfare of Host Communities and the nation. It is likely that some federal government officials have no intention of effectively implementing the recently adopted Petroleum Industry Act (PIA). And the absence of basic government assistance in the Host Communities in providing basic social services has placed the IOCs in the role of a quasi-governmental body, which they do not welcome and cannot fulfill.

Both NUPRC and NOSDRA are important federal regulatory agencies regarding oil and gas industry oversight, but are not fully functional and must be reformed and strengthened.

Nigerian Upstream Petroleum Regulatory Commission (NUPRC): NUPRC staff we met with in Abuja provided no documents in response to our requests. Further, staff were unable to identify what oil pipeline leak detection systems were installed on pipelines in Nigeria. Automatic leak detection systems are required on oil pipelines around the world, are considered Best Available Technology, and are thus clearly required under Nigerian federal law.[56] Oil pipeline leak detection systems can incorporate continuous, automatic monitoring technologies such as line-volume accounting, flow meters, pressure transducers, rarefaction wave monitoring, real-time transient monitoring, acoustic emission monitoring, fiber optic sensing, and vapor sensing technologies.[57] Such systems must incorporate redundancy, dynamic alarm systems, high sensitivity, accurate leak location identification, and provide a pipeline's real-time pressure profile. NUPRC staff were unable to confirm that Nigerian oil pipelines have such critical systems installed, raising concerns over the adequacy of regulatory oversight by the agency.

In response to our questions re: NUPRC's implementation of Section 7 of the PIA, requiring the agency to keep a public register of licenses, leases and permits issued by the agency, including any "assignment, amendment, suspension and revocation" of such authorizations, NUPRC staff simply said this is "a work in progress." Agency staff were unable to confirm that they conduct any comprehensive oversight of Divestment, Decommissioning & Abandonment of oil facilities in the Niger Delta; did not provide any documents to confirm they were ensuring compliance with Nigerian laws and regulations regarding the oil industry; and failed to respond to our Freedom of Information (FOI) request submitted in May/June, 2023. It is evident that NUPRC does not intend to comply with its legal disclosure requirements. Such lack of transparency and violation of federal disclosure laws by a federal agency should be unacceptable to the FGN.

National Oil Spill Detection & Response Agency (NOSDRA): Similarly, NOSDRA remains fundamentally unable to fulfill its duty of detecting, reporting, and responding to the many oil spills across the Niger Delta. NOSDRA staff often remain at the mercy of the spiller to report spills and access spill sites, and are eager to accept oil industry assertions regarding causes, volumes, responses, and impacts of spills. NOSDRA's contentions in JIV reports are widely understood to understate the volume of spills (as discussed in the introduction to

this report), and to ascribe, without evidence, spill cause to Third Party Interference. The agency lacks a rigorous, methodical, technical process to determine the cause of spills, and instead relies on subjective and biased industry conclusions. Thus, people across the Niger Delta simply do not trust NOSDRA. As well, NOSDRA apparently has no program specifically to detect and respond to spills from improperly Decommissioned & Abandoned oil infrastructure across the Niger Delta. Finally, NOSDRA staff failed to provide public oil spill information upon our request.

Clearly, both NOSDRA and NUPRC remain dysfunctional and co-opted by the oil industry they are established to regulate. Both agencies need to be reformed and significantly improved.

Corruption: All local citizens that we talked with expressed concern about ongoing endemic corruption in the Federal Government of Nigeria (FGN), Ministry of Petroleum Resources (MoPR), Joint Task Force (JTF), and the oil industry of Nigeria. Clearly, the psychology of corruption in Nigeria deserves greater examination.

Some clinical psychologists conclude that corruption generally serves as a "power mask" to conceal personal insecurities:

> *Corruption begins with the seeds of discontent, unhappiness, and the need for recognition. The need for recognition is a powerful psychological need. Resentment ferments over time until the tipping point is reached when unhappy people feel compelled to take action to become happy. Corruption provides the illusion of happiness. Being a member of a corrupt group provides personal recognition by other group members. Corrupted groups also provide justification for illegal activities.*[58]

Corruption is at the heart of the oil/government dysfunction in Nigeria. As long as the self-interest of some corrupt government and industry leaders prevails over their commitment to the national interest, progress on these issues will be challenging, at best.

Some progress combatting corruption in Nigeria has reportedly been made in recent years, as reported in this 2016 study from the Open Society Foundations:

> *Nigeria has made substantial commitments to crack down on corruption, including with stricter beneficial ownership disclosure legislation, improvement in the transparency of public procurement processes, and greater adherence to the principles and processes supported by the Open Government Partnership, through which 69 countries have agreed to make their governments more accountable.*
>
> *The country's value system—which celebrates even wealth obtained by questionable means—is greatly flawed. Strategic and effective public education must be developed to ensure a change of attitude and show people the true and damaging effects of corruption. Young people, in particular, should be brought on board to begin to build a new culture.*[59]

As corruption touches all aspects of life in Nigeria, including oil industry Divestment, Decommissioning & Abandonment, the FGN should continue to explore the underlying causes of corruption in the country, and evaluate specific remedies. Clearly, progress on this issue is possible, and just as clearly, more needs to be done to reduce this drain on the Nigerian economy, governance, and society.

We noted that government checks-and-balances used by other national governments are not employed in Nigeria. These include an independent *Government Accountability Office* (GAO), *Office of Inspector General* (OIG), and robust Whistleblower protections.

To help remedy persistent federal government dysfunction, the National Assembly is encouraged to consider establishing a *Government Accountability Office* (GAO) as in the U.S. (https://www.gao.gov). In the U.S., the GAO provides Congress, the heads of executive agencies, and the public with independent, fact-based, non-partisan research to improve government operation, and save taxpayers billions of dollars. Its work is done at the request of congressional committees or subcommittees, or is statutorily required by public laws or committee reports. A Nigeria GAO could perform similar functions. In addition, the *Nigeria Extractive Industry Transparency Initiative* (NEITI) should be strengthened.

As well, the FGN might consider establishing an independent *Office of Inspector General* (OIG) within the Ministry of Petroleum Resources (MoPR). The OIG would function independently of the Ministry, and be responsible for independent oversight of all operations of the Ministry, including NNPC Ltd., and should investigate and respond to complaints from citizens, Host Communities, State Governments, Local Governments, and CSOs/NGOs. The OIG is a well-established federal institution in the U.S., such as within the principal U.S. federal agency regulating oil and gas operations, the U.S. Department of the Interior (https://www.doioig.gov). One role for the MoPR OIG would be to ensure the transparency of the Ministry, including an effective response to Freedom of Information Act (FOIA) requests, as well as ensuring regulatory compliance. The MoPR OIG should also be tasked with conducting annual performance reviews for the Directors of NUPRC, NMDPRA, and NOSDRA.

Finally, the FGN should improve its encouragement of, and legal protections for, whistleblowers within government and the oil/gas industry. Whistleblowers are employees that wish to report wrongdoing within their organizations, and can be an invaluable component of good governance. The 2016 Nigeria Whistleblower Policy encourages agency staff to disclose information about fraud, bribery, misconduct, or corruption to the Federal Ministry of Finance, with a reward of 2.5% - 5% of any recovered funds. While this was a good first step, the policy reportedly failed to fully protect agency whistleblowers. Subsequent attempts to enshrine Whistleblower Protections in law by the National Assembly failed. Such legal protections for Whistleblowers should be clarified and enshrined in federal law.

(2) Lack of Transparency of the Nigerian Oil Industry

The oil companies we requested meetings with, and documents from, mostly ignored our requests. It was abundantly clear that the oil companies did not want to engage on this issue. The project team did have one Zoom meeting with Mr. Maher Giundi, International Business Advisor to NNPC Group (100% owned by the FGN), in which he reiterated the company narrative that everything was fine re: divestment, and that the DOCs (including NNPC/NPDC/NEPL) are fully competent to operate these acquired assets. This is clearly a false narrative (e.g., Aiteo's alleged failures at Nembe, Eroton's alleged failures at Bille, and so on). Mr. Giundi stated that he expects the company to issue an Initial Public Offering (IPO) soon, to offer public purchase of shares (perhaps 10% - 15%) of the government-owned company. NNPC remained unresponsive to our repeated requests to meet further in person and to provide any documents regarding its operations or regulatory compliance. And when we asked NNPC about the July 2023 sinking of the confiscated illegal oil tanker Tura II on behalf of NNPC,[60] the company again remained unresponsive.

Again, as we received no response to our request for meetings with, or documents from, oil companies, we offered several – Shell, ENI/Agip, Chevron, Aiteo, Seplat, Eroton, and Oando - the opportunity to submit written statements describing their company's perspective on Divestment, Decommissioning & Abandonment. There was no response from any of the companies. The lack of response by the oil companies to our repeated requests for information and meetings betrays a significant lack of confidence in their public position. It seems clear that these companies recognize they are out of compliance with international best practice standards and Nigerian law, and do not wish to be independently scrutinized or to remedy such.

(3) Failure to Enforce Decommissioning & Abandonment Requirements

Most of the derelict oil facilities we inspected had not been properly Decommissioned & Abandoned, as has been required by Nigerian federal law for decades. While Nigerian law and regulation clearly requires proper Decommissioning & Abandonment (D&A) and removal of all unused oil facilities to best international standards, these requirements are rarely enforced. Proper D&A of wells includes isolating reservoirs with cement plugs and mechanical plugs placed at specified intervals down the borehole. One local expert, former Bayelsa State Environment Commissioner Iniruo Wills, feels these improperly abandoned oil facilities are essentially "landmines" or "time bombs" spread across the Delta, that could explode at any time. Just recently (Oct. 2023), an abandoned NPDC wellhead in OML 66 in the fishing community of Bendick-Kiri, Okpoama Kingdom, Bayelsa State exploded, releasing gas and oil into the estuarine environment for days.[61]

IOCs/NNPC seem to be mostly abandoning idle, derelict assets they can't sell, without fulfilling requirements of Nigerian law. This is a widespread and growing problem across the global oil industry that needs to be addressed with urgency. One recent study reported that globally, there are approximately 29 million abandoned oil and gas wells.[62] It will likely cost $ hundreds of billions (USD) to properly secure these derelict wells.

For instance, studies have estimated that in the U.S., a minimum of 150,000 orphaned (with no known owner) and/or abandoned oil wells need to be permanently plugged, and up to 2 million oil wells remain inactive.[63] A 2021 study estimated that of the 4,700,000 wells drilled in the U.S., 2 million are currently producing, and only 1.5 million (one in three) are properly plugged.[64] Impacts from these improperly plugged and abandoned wells include groundwater contamination, surface water contamination, air contamination, including toxic contaminants such as methane, volatile organic compounds, benzene, arsenic, hydrogen sulfide, nitrogen oxides, sulfur dioxide, ammonia, and particulate matter; human health impacts; and ecosystem impacts, including forest fragmentation, habitat loss, farmland conversion, and soil degradation.[65] High concentrations of methane can also cause serious human health impacts, including weakness, nausea, vomiting, convulsions, and death; are highly explosive; and methane is a potent greenhouse gas (86 times more potent than CO^2 in its first two decades after release, and 34 times more potent over a 100-year period).[66] A 2020 Special Report by *Reuters* reported that in 2018 alone, an estimated 281,000 tons of methane was emitted from abandoned and orphaned oil & gas wells in the U.S.[67]

The 2021 North America study describes the upward migration of hydrocarbons from improperly plugged and abandoned oil wells as follows:

> *…if a highly permeable conduit such as an unplugged or poorly plugged well exists, fluid movement driven by buoyancy and/or pressure can cause fluids to leak rapidly to overlying aquifers. As the leaking fluids migrate upward, some may enter overlying aquifers. This process has been referred to as the "elevator model," using the analogy of a full elevator at the ground floor becoming emptier as the elevator goes up and people exit at various floors.*[68]

Clearly, the same risks and impacts exist from improperly plugged oil and gas wells in the Niger Delta.

The authors of the 2021 North America study made six policy recommendations for monitoring and managing abandoned/orphaned oil and gas wells, (all relevant for Nigeria as well), as follow:

1. Monitor representative populations of plugged and unplugged abandoned wells across multiple basins to understand the ability of plugging to address the full suite and interdependency of environmental risks. Ongoing analysis of monitoring results and well attributes are needed to identify representative populations of wells. Moreover, it is important to perform pre- and post-plugging monitoring and understand short-term variations (i.e., daily and seasonal).
2. Study the long-term—decadal to century-scale—impacts of abandoned wells. Such studies should include monitoring at the same wells over decades.
3. Monitor and manage abandoned wells regionally to account for inter-wellbore communication and complex subsurface leakage pathways. The region to investigate will depend on the geology, hydrogeology, and the history of oil and gas

and other subsurface activities. Additional research involving field and modeling work is needed to develop a framework for selecting these regions.
4. Find and document wells that are not in current databases so that they can be addressed through plugging and site restoration in a systematic manner.
5. Develop national and international standards for documenting historical and modern wells to improve the long-term maintenance and usability of databases.
6. Train workers on well-plugging, site restoration, environmental monitoring, and other jobs that will remain available during and after the transition to clean energy.

Costs for Decommissioning & Abandonment in the U.S. have been estimated to range from $10,000 - $50,000 to plug old wells, and $300,000 to plug newer, deeper wells.[69] Other estimates suggest costs up to $1 million per well for more complex wells.[70] In a 2015 study, the U.S. Government Accountability Office (GAO) estimated the cost to securely decommission (plug and abandon) the thousands of deepwater oil and gas wells in the U.S. Gulf of Mexico (two-thirds of the 5,000 wells in the Gulf of Mexico are in deepwater) at $38.2 billion.[71] The U.S. GAO study reported that, of the $38.2 billion in decommissioning liabilities, $2.3 billion were not covered by existing financial assurances; and of the remaining $35.9 billion in decommissioning liabilities, the federal government held $2.9 billion in bonds and other assurances, while waiving the remaining $33 billion for companies that passed a financial strength test. GAO expressed concern about such extensive waivers of financial assurances, as this exposes the federal government to substantial future costs. The U.S. federal administration recently proposed that Congress appropriate $16 billion to plug and abandon abandoned oil and gas wells across the country, and in response, Congress appropriated $4.7 billion to the effort in the 2022 Inflation Reduction Act.[72]

Costs for proper Decommissioning & Abandoning derelict wells and other oil facilities in the Niger Delta will also be substantial, and the Federal Government of Nigeria (FGN) has yet to ensure sufficient funds will be available to meet this challenge.

(4) Host Community Concerns

The Host Communities we visited/met with – Ogale, Afam Ukwu, and Bille in Rivers State; and Ikarama, Otuabagi, Nembe, and Aghoro in Bayelsa State - all expressed remarkably similar perspectives and concerns re: Divestment, Decommissioning & Abandonment of oil facilities in their regions, as summarized below:

- None of the Host Communities had been consulted by either government, IOC sellers, or DOC buyers prior to divestment and transfer of oil facilities in their communities, and none were afforded the opportunity to obtain an equity interest in such sales. Some were not even sure who presently owns or operates the facilities.

- All expressed great concern for the serious, unresolved legacy oil pollution issues caused by the IOCs, and that by divesting, the IOCs may be attempting to simply escape liability for this damage. All demanded that, prior to a divestment proposal

being approved by the FGN, the IOCs fully settle their liabilities. Regarding this attempt to avoid liability by the IOCs, ERA cited the 1868 Rylands v. Fletcher ruling in the UK, that attaches strict liability to damage caused to another's property, which has formed the basis for strict liability clauses in many national jurisdictions, including the U.S. Canada, Australia, and Nigeria. Further, as noted by the London law firm Leigh Day in its court filings on behalf of communities in the Niger Delta, State statute limitation laws in Nigeria (e.g. a 5-year time bar on claims), do not apply to claims brought under Nigerian federal law, which have no time limitation on claims. Furthermore, the damage caused by IOC negligence pre-divestment is continuous and ongoing post-divestment, as oil spills have not been effectively cleaned or remediated as required by Nigeria federal law. Thus, there should be no time restriction on bringing claims for legacy oil pollution damage anywhere across the Niger Delta.

- All expressed concern regarding the new domestic owners/operators' commitment to the promises in pre-existing Global Memorandum of Understandings (GMOUs), and most communities did not even have an actual copy of the prior GMOU. All expressed concern re: the newly established *Host Community Development Trust Fund (HCDTF)* organizations, in that IOCs will serve on all HCDTF boards, and may try to dominate the process (e.g. that companies are "hijacking" the process). All communities expressed concern that provisions of the GMOUs have been suspended over the past two years, as the FGN attempts to implement the 2021 PIA.

- All expressed ongoing need for fulfillment of prior commitments by oil companies for socioeconomic development in their communities as committed in pre-existing Global Memorandums of Understanding (GMOUs), including jobs, potable water, community electricity, health care, empowerment of women, roads, youth centers, and scholarships for youth. All felt that as the government has failed to provide these basic services, the oil companies must do so.

- The Host Community Stakeholders expressed concern that in 2023, a full year after the PIA HCDTF was to take effect, the process has yet to commence. Some relayed allegations that monies due to the HCDTF had already been siphoned off by some state governors, and not gone to the legally prescribed purpose in the Host Communities. Some also expressed fear that conflict may arise between many Delta communities regarding funds disbursed to the HCDTF community clusters.

- All expressed concern that the purchasing DOCs would not have the technical or financial capacity to adequately maintain and safely operate the oil facilities, would not be able or willing to respond to large spills, and would not be able or willing to adequately compensate the community for future oil spill damage (as required by Nigerian law).

- All expressed concern about the inadequacy of the 3% of operating expenses that the PIA requires oil companies contribute annually into the HCDTFs (many had

pressed for 10%, and early iterations of the Petroleum Industry Bill reportedly proposed a 15% of profits contribution, and later a 5% of profits distribution), as well as concerns regarding how such would be calculated and independently monitored.

- Many Host Community leaders and members expressed a desire for training to be conducted by NGOs regarding how to manage these new HCDTF accounts.

- All expressed concern about the PIA clause holding them financially responsible for any intentional Third Party Damage (TPD) to oil infrastructure in their communities. Many cited the inherently unfair nature of this provision, as well that TPD can be caused by individuals not from the community, and yet this statutory provision still holds the community financially liable.

- All expressed continuing concerns about the integrity of oil infrastructure in the community, and demand that all old oil infrastructure be replaced and properly maintained (as required by Nigerian law).

- Many expressed concerns regarding a recent increase in the health-related issues from the oil spills arising from old oil facilities and gas flaring, such as cancer, infant mortality, acid rain impacts, high blood pressure, eyesight issues/loss of eyesight, respiratory illnesses, mental health issues, etc. These health impacts from oil and gas pollution were well documented in the 2011 UNEP *Ogoniland Environmental Assessment*,[73] and the 2011 UNEP results can reasonably be extrapolated to similar polluted sites across the Niger Delta.

- Many Host Community women leaders expressed their concern that, due to their subsistence farming and gathering activities, women may be most exposed to oil contamination, as well as to risks from improperly abandoned derelict oil infrastructure. These women leaders also reiterated concerns about necessary improvement in gender equality and women's empowerment.

- Many Host Community members expressed concerns regarding a persistent loss of livelihood caused by oil spills, and thus an increase in crime in their communities.

- Many expressed demands for methodical process to be employed prior to any divestment of oil assets in Host Communities, including a pre-sale Environmental Evaluation Study/Report (as required by Nigerian law], all liabilities being fully resolved, transparent community engagement, and an Environmental Bond being posted by the seller and/or buyer to ensure strict compliance with Nigerian environmental laws and regulations requiring best international standards.

- All communities reiterated their long-standing demands that all derelict and improperly abandoned wellheads, manifolds, pipelines, and flow stations be properly decommissioned and removed, and the environment be restored to its

prior condition (as required by Nigerian law). These improperly abandoned oil facilities occupy a considerable amount of land that can and should be put to better use after proper Decommissioning & Abandonment. The Host Communities demand that these lands be returned to them in original, productive condition.

- Some community members want the IOCs/NNPC to honestly and publicly admit the legacy damage they have caused, and apologize, as a matter of human dignity.

- All expressed grave concern and frustration regarding the continuing failure of the Federal Government of Nigeria (FGN) to fulfill its role as regulator of the oil sector, and its role of ensuring the welfare of its citizens in the Niger Delta communities. Most feel the federal government is wholly captured by the industry it is supposed to regulate.

- Many expressed concerns about the corrupt behavior of the IOCs, the FGN, NNPC, and DOCs, in how contracts are awarded and how decisions are made. In particular, many community members expressed concern regarding the oil industry practice of "divide-and-conquer," where they pay some community members for their support, while ignoring the community as a whole, thereby fracturing and weakening the community.

- Many communities expressed concern about inter-community rivalries and conflicts arising when contracts are awarded and funds begin to flow to and from the HCDTF organizations.

- Some Stakeholders expressed disappointment that State Governments had been unable or unwilling to protect the environment and interests of their communities in relation to oil industry operations and divestments.

- Regarding the current divestment trend, one NGO poignantly stated: "They are just robbing Nigeria all over again."

- Several community members expressed concern/resentment that the 2011 UNEP *Ogoniland Environmental Assessment* (OEA) and the subsequent HYPREP program, were only conducted in Ogoniland (~2% of the Delta), effectively ignoring the majority of the Niger Delta.

- Aghoro Community members in Bayelsa State expressed their continued frustration with the lack of response to the large SPDC (Shell as operator) May 2018 Trans Ramos Pipeline spill near the community. Community leaders told us that Shell's response to the spill had been delayed for months, there was no Post Spill Impact Assessment (PSIA), and the JIV process had been delayed for months as well, due to Shell's refusal to cooperate.[74] Upon inspection of the spill site in July 2023, we observed oil still percolating to surface waters from entrained oil deep within the sediment surrounding the pipeline spill site; as well as old broken pipeline cement

casings from the 2018 replacement of the failed section of pipeline, simply abandoned and left on the ground surface.

- Nembe Community members expressed concern about the 2014/2015 divestment by Shell, Total, and Agip to Aiteo for their collective 45% share of OML 29 (with 2.2 billion barrels of oil) and the NCTL. The deal was reportedly valued at $2.4 billion, with Aiteo reportedly receiving loans of $504 million from Shell (the seller), and $1.5 billion from Nigerian banks.[75] Community members at the time said that the divested assets were poorly maintained and unsafe, and felt that it was only a matter of time before there would be significant spills from the facilities. At the time that the sale of OML 29 and the Nembe Creek Trunk Line was pending (2015), concerns over potential spills prompted Nembe community leaders to register a precautionary *caveat emptor* (buyer beware) decree on any such sale, warning any buyer of substantial potential liabilities it might be acquiring.[76]

  After divestment, community members report that there were two large spills – Mar. 1, 2019, and Nov 1-Dec 9, 2021, and several smaller ones.[77] The community also said that none of the previous spills had received proper cleanup, assessment, or remediation, as required by Nigerian law. Our independent estimate of spill volume from the 2021 Well-1 blowout, from video evidence of the blowout plume, is that over 500,000 barrels of hydrocarbon fluids (gas and oil) were released into the tidal estuary system of the region.

  An excellent discussion of the 2021 Nembe spill is found in the Dec. 2021 report *Wellhead Woes*, by Health of Mother Earth (HOME) Foundation. HOMEF reports that the well in the Santa Barbara River had only been commissioned in 2010. Community members told us that, while the OML 29 assets sold by Shell/Total/Agip had previously produced roughly 35,000 barrels per day, Aiteo, with little experience in the business, increased daily production to 90,000 bbls, and planned to increase production even further, with little regard for safety or potential spills. They reiterated their view that the Nov. 1, 2021 blowout was clearly caused by mechanical failure of the wellhead, not sabotage. In Dec. 2021, the author had urged the JIV to secure the wellhead for analysis by independent engineers to determine the cause of the failure, but as Aiteo controlled all access to the facility, this was not done. Even before the Nov. 2021 blowout, Aiteo filed a claim against Shell for $2.4 billion USD, stating that six of the wells it had acquired were not owned by Shell, but by NNPC.

  Due to what Aiteo claims is an unmanageable ongoing risk of sabotage and theft from the Nembe Creek Trunkline (NCTL), in 2021 Aiteo established the Nembe Crude Oil Export Terminal, a tank farm and Floating Storage and Offloading (FSO) tanker loading facility at the Nembe Creek Flow Station, to ship oil directly to the Brass Oil Terminal via mid-sized tankers, instead of the NCTL. This in-river oil terminal has reportedly not been subjected to a proper Environmental Impact Assessment, and should be. Community members said: “Shell was horrible, but

Aiteo is much worse." We inspected an ongoing oil spill at the Nembe Flow Station and Terminal, with substantial oil on the water surface, that had only been reported to regulators that morning. But although we had federal and state regulators onboard our vessels (NOSDRA, and the Bayelsa State Commissioners of Environment and Mineral Resources), we were not permitted access to the spill source by the Nigerian military JTF gunboats, on contract to Aiteo. This is standard operating procedure in the Niger Delta, but represents an unacceptable usurpation of government authority by the oil industry. This relationship must be remedied, with government regulators having unfettered access to and authority over spill sites as they so determine.

- Bille Kingdom community leaders expressed frustration at the convoluted divestments and poor maintenance and operation of oil facilities in OML 18 and OML 24, containing 11 oil and gas fields, 24 wells, several manifolds, flow stations, and the Nembe Creek Trunkline (NCTL), which Shell divested to Aiteo in 2014/2015, carrying oil to the nearby Bonny Oil Terminal. From 2011-2013, Shell's Bille pipelines failed repeatedly, spilling large volumes of oil into the creeks, causing widespread mangrove death, damage to aquatic life, contamination of freshwater wells, and abandonment of several settlements rendered uninhabitable by the oil spills.[78] In 2014, Shell, Total, and Agip (NAOC) divested their collective 45% share of the OML (leaving NNPC's share) to DOCs – to a convoluted and contentious arrangement between Eroton, Newcross, NNPC OML 18 Operating Ltd., and Sahara Oil (OML-18 Energy Resources).

  At the time of the sale, Bille community leaders requested that a pre-sale Environmental Impact Assessment study be conducted, and the opportunity to acquire an equity interest in the sale/purchase - neither of which were obliged. They stated that the oil infrastructure has not been well-maintained since Shell divested in 2014. And there is now an ongoing dispute as to who is actually operating the OML, with both Eroton and NNPC claiming themselves as operator.[79] The FGN contends that Eroton had mismanaged the asset, reducing oil output from 30,000 bpd to zero earlier this year, and thus replaced them with NNPC as operator.[80] An environmental scientist from Bille recommends a comprehensive environmental restoration program be launched for Bille, including replanting of mangroves destroyed by oil spills; a biodiversity survey; effective oil cleanup; development of oyster culture and fish ponds; and an air quality management program to mitigate damage from the two gas flares still burning in their area, and cessation of flaring.

- Some NGO stakeholders and community members expressed concern that in some divestment transactions, IOCs might be secretly retaining interests in divested assets (as reported by Wood Mackenzie[81], and ERA[82]), and could potentially still be receiving payments, thus making these deals even more nebulous. This deserves further investigation.

- Hon. Iniruo Wills, former Commissioner of Environment for Bayelsa State and current President of the Homeland Chapter Ijaw Professionals Association (IPA), proposes that international tribunals be explored with which to remedy the many grievances and claims regarding these intersecting oil issues in Nigeria, and proposes a U.N. Rapporteur for the Niger Delta.

- HRM King Bubaraye Dakolo, originally from Otuabagi (where the first oil well was drilled on the Delta in 1956), reiterated that the oil industry has been callous in its continuous disregard for the welfare of the citizens of the Niger Delta. He estimates that over 56 billion barrels of oil (boe) had been produced to date from the Delta, and proven remaining reserves today estimated at 37 billion bbls. Thus, Nigeria has already produced and exported more than half of its oil reserves. King Dakolo said that the large amount of oil money that had been stolen by corrupt government and industry officials can now be found in golf courses, yachts, private jets, opulent mansions, and secret bank accounts scattered around the developed world. He felt that if this extraordinary level of theft had not occurred in Nigeria, there would today be no Boko Haram or militancy in Nigeria. He has written about this in his 2021 book: *The Riddle of the Oil Thief.*[83]

(5) State Government Concerns

Both Bayelsa State and Rivers State government officials expressed serious frustration with the process of oil industry Divestment, Decommissioning & Abandonment in their respective states, and echoed concerns of the Host Communities. Senior officials from both governments said that State governments have been effectively marginalized by the Federal Government of Nigeria (FGN), granted little authority over such issues, and are seldom consulted by either the oil industry operators or the FGN regarding issues of Divestment, Decommissioning & Abandonment. Clearly this must be remedied, and State governments must be afforded their rightful regulatory authority over these issues, alongside the FGN.

(6) Former Minister of State for Petroleum Resources

Our meeting with the previous Minister of State for Petroleum Resources, Hon. Timipre Sylva in Abuja, who resigned as Minister in March 2023, illuminated several important aspects of divestment. Minister Sylva reiterated the conventional federal narrative that all blame for oil spills in the Niger Delta does not rest solely with the IOCs, but that most are caused by sabotage, theft and bunkering. But importantly, he stated that the current process of divestment is a failed process that must be corrected. He confirmed concerns that the DOCs buying the assets lacked sufficient capital and technical capacity to operate the facilities efficiently, and he is concerned that the DOCs are now heavily in debt to the lenders. Importantly, he asserted concern that these lending institutions, which know little about oil industry operations, were now exercising too much control over these very operations. Clearly this is a dangerous situation. Minister Sylva raised concerns that NNPC has little actual operating experience or capacity, but through its subsidiary NPDC, is now

becoming a major operator of oil facilities in the Delta. He also said that some of the sales (e.g. OML 30) were agreed at approximately 10% of their true market value.

Minister Sylva said that, as Minister, he had previously rejected a proposed $1.3 billion sale by ExxonMobil to Seplat for its onshore holdings in OMLs 68, 69, and 70,[84] as while he supported Seplat's ownership, he remained concerned about NNPC's role in the transaction, as well that due process may not have been followed. [Note: In 2019, the Nigerian federal government also rejected a previously approved 2017 Chevron sale of OML 49 to Transnational Energy, reportedly for political reasons, but the sale was subsequently reinstated in 2020 by the Federal High Court in Abuja, with a $20 million penalty assessed against the FGN for the affair[85]]. Minister Sylva expressed a desire that the current rate of industry divestments be slowed, and a more methodical and transparent process be developed. Finally, he pleaded that "we must enforce the law."

(7) Permanent Secretary, Ministry of Petroleum Resources

In our meeting with the Permanent Secretary of MoPR, Amb. Gabriel Tanimu Aduda, and his staff, Secretary Aduda reiterated the conventional federal narrative that the Ministry's oversight of the oil sector was functioning appropriately. Regarding the current divestment trend, Mr. Aduda asserted that, as NNPC is involved in all such transactions, the FGN and MoPR's interests are ensured. He conceded though that, although the Minister reviews the financial and technical capacity of proposed buyers and grants final approval of proposed divestments, the specific details of such transactions were subject mainly to the due diligence of the buyers.

The MoPR Permanent Secretary confirmed that there is no provision in law requiring public engagement in proposed sales, other than the public bidding solicitation. When asked, Secretary Aduda could not provide us with a list of sales that had transpired, instead deferring to NUPRC (which also did not provide such a list when asked). He stated that due to the PIA, gas flaring had declined to some extent, with 45 gas commercialization/capture contracts now secured from 174 licenses. [Note: the International Energy Agency (IEA) estimated in 2021 that Nigeria has indeed reduced gas flaring by 70% between 2000 and 2020]. Secretary Aduda stated that oil industry compliance with federal regulations was sufficient, and stated that they have suspended some licenses and operations due to non-compliance. He declined to provide any evidence or documents to support this claim. In response to our question re: the reduced revenue stream that will flow to the government due to the reduced royalty and tax regime established by the PIA, Secretary Aduda reiterated a standard industry claim that over the long-term lower taxes will result in greater investment, more production, and thus more government revenue. He cited Shell's recent commitment to invest $1 billion this year (we assume for expansion of its deepwater Bonga development).

Mr. Aduda's professed confidence in the federal oversight system for oil industry operations was reiterated by staff at NOSDRA and NUPRC. With respect, this is widely believed by the many citizens and experts we met with to be a false narrative, and many agency staff

recognize this. In fact, federal regulatory oversight of oil in Nigeria is virtually non-existent, indeed a large part of the current problem. This must be remedied.

VIII. Conclusion

Obviously, the situation with the oil & gas industry and Federal Government of Nigeria (FGN) remains seriously dysfunctional. The industry continues to exploit failed government oversight, and the industry and federal government remain unresponsive and non-transparent re: their decision making and regulatory compliance. Decades of pollution damage due to industry negligence remain unmitigated across the Niger Delta, leaving local civil society in a something of a death spiral. Now, International Oil Companies (IOCs) are divesting their onshore and nearshore holdings in the Niger Delta to Domestic Oil Companies (DOCs) in Nigeria, hoping to avoid: 1) the need to make costly investments to upgrade old, poorly maintained oil infrastructure; 2) properly decommissioning, abandoning, and removing derelict infrastructure; 3) ongoing security risks from sabotage and oil theft; 4) further demands from communities for social and economic support; and 5) liability for decades of environmental, social, and economic damage they have caused.

Rather than the *progressive* global energy transition urgently needed, Nigeria today represents a *regressive* transition that the global community must recognize and resist. Many International Oil Companies are selling assets to other companies with lower standards to continue producing, resulting in greater carbon emissions and environmental damage. In this way, what may be an environmental positive for one oil company is actually a net environmental negative globally. Nigeria should explore financial opportunities from international carbon markets to monetize oil and gas reservoirs left in the ground and seabed, such as the new *ZeroSix* and *CarbonPath* efforts by former oil executives.[86] As stated by ZeroSix:

> *In a net-zero world, the most valuable barrels of oil and cubic feet of natural gas are those that remain in the ground—never extracted and never burned. We're tapping into the power of voluntary carbon markets to permanently close wells and convert their shut-in reserves into carbon credits.*

The current oil industry divestment trend is making matters worse in the Niger Delta, as the smaller domestic companies buying these assets have neither the financial or technical capacity to operate them with International Best Practice standards required by Nigerian law, nor do they possess a corporate culture that is responsive to local communities and the environment. As well, many old oil facilities (wellheads, flowlines, manifolds, flow stations, and pipelines) have not been properly Decommissioned & Abandoned, leaving significant residual risk of spills. Importers, investors, and insurers of Nigerian oil and gas should pay closer attention to these issues in Nigeria. Absent significant adjustments in government, it is likely that the newly adopted Petroleum Industry Act will not be effectively implemented or enforced.

This tragic situation would be considered unacceptable anywhere in the world, and should be considered unacceptable in Nigeria. All of these problems with oil in the Niger Delta can

be remedied if there is political will to do so. More broadly, it is in Nigeria's national security interest to accelerate, rather than delay, the decarbonization of its economy. It is time for bold action by the Federal Government of Nigeria to resolve the many intersecting issues raised in this report, as respectfully recommended below.

IX. Recommendations

The recommendations below were vetted at a Civil Society Organization (CSO) workshop in Port Harcourt, Oct. 31, 2023, and are endorsed by the following Niger Delta organizations – Ijaw Elders Forum; Ijaw Nation Forum; Ijaw Professionals Association; Embasara Foundation; Stakeholder Democracy Network (SDN); Centre for Environment, Human Rights, and Development (CEHRD); Social Action; ERA/Friends of the Earth Nigeria; Youth and Environment Advocacy Centre (YEAC); Society for Women and Youth Affairs (SWAYA); We the People (WTP); and Natural Resource Governance Institute (NRGI).

1. ***National Principles for Responsible Petroleum Industry Divestment***

The Federal Government of Nigeria (FGN) and oil industry should agree to a new set of principles for responsible oil industry divestment, called the *National Principles for Responsible Petroleum Industry Divestment*. All oil and gas companies operating in Nigeria should be requested/required to sign and abide by these principles. The National Assembly should adopt legislation mandating the agreed Principles in law. And the *National Principles for Responsible Petroleum Industry Divestment* should form the basis for responsible extractive industry divestment globally, and should form the basis of a multilateral agreement/treaty among all extractive industry companies and governments as a new global norm. All stakeholders should discuss and agree to adopt the National Principles at the proposed Abuja 2024 Conference (Recommendation 16 below).

The proposed *National Principles for Responsible Petroleum Industry Divestment* are as follow:

> *Informed, transparent and inclusive decision-making on divestment proposals*
>
> 1. All oil industry divestment applications shall be publicly noticed at least 90 days prior to submission to the Federal Government of Nigeria (FGN). At a minimum, public notice shall be posted in two national daily newspapers, and be clearly communicated to all communities within the Oil Mining License (OML) area. Host Communities, Local Governments, and State Governments must be authentically engaged and consulted regarding the sale by both the seller and proposed buyer, and written confirmation of such engagement by these local entities must be included with the seller's divestment application, consistent with standards of Free Prior and Informed Consent (FPIC). Confirmation should include written consent from the leadership structures across the OML – including the Paramount Rulers, Councils of Chiefs, Women's groups, and Youth groups – to confirm that all components of civil society have been consulted.

2. The FGN shall confirm that the seller has informed the proposed buyer of all pollution events and other environmental liabilities within the OML area to be divested, including pending litigation, as part of the checklist for statutory consent to be granted for divestment. Such disclosures shall be published as part of the 90-day pre-divestment notice, and also filed with the Attorney General of the Federation, with penalties stipulated for breaches.

3. Prior to a divestment application being considered by the FGN, proposed buyers shall, to the full satisfaction of an independent auditing body, demonstrate the following: a) their technical and financial capacity to safely and effectively operate the assets to Best International Standards (as required by Nigerian law); b) that they have a robust Integrity Management program, spill prevention and response capability, and a corporate commitment to remaining engaged with Host Communities, Local Governments, and State Governments throughout the expected lifetime of their ownership and operation of the acquired facilities; and c) to transparently disclose to the general public their company history, financing, staff and directors.

4. All applications for divestment shall include a full *Environmental Evaluation Report* (EER), as required pre-divestment by Section 2.1 (ii) of EGASPIN; an *Environmental, Social, and Health Impact Assessment* (ESHIA); and an *Environmental and Social Due Diligence* Study (ESDD). The EER, ESHIA, and ESDD shall be submitted to all affected Host Communities, Local Governments, and relevant State Governments at least 90 days prior to any decision being made by the FGN. The ESHIA should include a schedule for regular monitoring and evaluation – ideally by independent NGOs, community groups, or an environmental consulting firm – to monitor impacts of operations.

5. All applications for divestment shall include a comprehensive *Asset Integrity Review,* conducted by a credible third-party engineering firm, of the condition, operational integrity, maintenance, previous failures, etc., of all oil and gas assets to be divested; and prior to sale approval, all integrity or safety deficiencies must be disclosed and remedied to the satisfaction of Host Communities, Local Governments, State Governments, and the FGN. This shall be funded by the seller, and the buyer shall be part of the process to ensure they are satisfied with the review process and report. As part of its due diligence, the FGN shall require *venditor sit honestus* ("seller-be-honest"), in which the seller fully discloses all asset integrity issues prior to divestment. This is consistent with requirements of the PIA, under which the NUPRC is required to publish online detailed information on divestments.

6. Prior to FGN consideration of a divestment application, all environmental damage due to the seller's prior operations shall be cleaned up and fully remediated (as required by Nigerian law) to the satisfaction of Host Communities, Local Governments, State Governments, and the FGN, and an Environmental Bond should be posted by the seller to cover any damages unknown/undisclosed at the time of sale.

7. Prior to FGN consideration of a divestment application, all financial liabilities of the seller – including payments due to contractors, Host Community Development Trusts, the Decommissioning and Abandonment Fund, and liabilities related to past environmental damage – shall be fully resolved, to the satisfaction of the Host Communities, Local Governments, State Governments, and the FGN.

8. Prior to FGN consideration of a divestment application, the buyer shall demonstrate it has been certified by the *Nigerian Content Development and Management Board* (NCDMB), and is compliant with Community Content Guidelines (as distinct from Nigerian Content requirements). The buyer shall also outline their plans for ensuring local content.

9. All divestment applications shall, if the assets to be divested continue gas flaring, contain a plan to end gas flaring by the 2030 legal deadline, and demonstrate how they will fund this plan and include gas flare commercialization opportunities.

10. All divestment applications shall outline a plan to properly Decommission and Abandon infrastructure (as required by the PIA), and demonstrate that the D&A plan is fully funded.

11. Prior to FGN consideration of a divestment application, the seller and proposed buyer shall submit an accounting of all carbon emissions that have been, or are expected to be, released from the facilities to be divested; and a plan to mitigate or offset all emissions.

12. Host Communities must be afforded the opportunity to receive an interest (e.g. equity interest, profit share, etc.) in any new joint venture agreement following divestment/acquisition. Such agreement should involve the Host Communities in decision-making, without requiring any financial investment by the Communities, and must indemnify the Communities from liability. Community profit shares could be contributed to Host Community Development Trusts, to support and enhance projects outlined in community development plans under the PIA.

13. The FGN shall methodically consider all above information presented by the seller, proposed buyer, Host Communities, Local Governments, State Governments, and NGOs in its decision regarding divestment applications, and post all such information and the rationale for its final decision on the NUPRC/NMDPRA/MoPR websites. This should be aligned with the Bureau of Public Procurement Act 2007.

Effective and transparent monitoring of divestments

14. All previous divestments since the year 2000 shall be independently reviewed by an independent auditing firm and brought into compliance with the *National Principles* within two years, with compliance progress reports published and

communicated to Host Communities, Local Governments, and State Governments every six months within the two-year review period.

15. Two years post-divestment, the buyer/new owner will be required to convene a follow-up, multi-stakeholder engagement process, giving the Host Communities, Local Governments, State Governments, NGOs, and the FGN a chance to review and comment on the new owner's conduct to date, and to propose any remedial actions they feel appropriate. This will require funding for independent monitoring, evaluation, and consultation going forwards.

16. The FGN shall provide to the Public, National Assembly, and State Governments, an annual summary of all divestments proposed, approved, and/or declined.

17. The FGN shall, along with its approval of a divestment application, publish a summary compliance checklist documenting that all elements of the National Principles are fulfilled, including responsibilities of federal agencies.

2. <u>Decommissioning & Abandonment</u>: Existing regulations for Decommissioning & Abandonment (D&A) seem clear and sufficient, but they are simply not implemented or enforced. The Ministry of Petroleum Resources (MoPR) and Nigerian Upstream Petroleum Regulatory Commission (NUPRC) should commission a gap analysis for D&A in the Niger Delta – a survey of all oil infrastructure across the Niger Delta in need of proper D&A the current status of D&A, and initiate action to properly decommission, abandon, and remove all derelict oil and gas facilities across the Delta. The PIA [Section 232 (14)] requires NUPRC to develop a list of oil and gas infrastructure across the Niger Delta and its current status, and to publish this list/inventory on its website annually. When asked about this list, NUPRC staff claimed it is a "work in progress." The FGN should ensure that this list is published annually, including a summary of the status of D&A across the Niger Delta, and the amount of funds that each operator has contributed into its required D&A Fund. The FGN shall involve other stakeholders (Host Communities, States, CSOs, etc) in the gap analysis. As well, the six D&A recommendations cited above from the 2021 study in North America, should be adopted by the Federal Government of Nigeria. And as the costs for D&A across the Niger Delta will be substantial, the FGN needs to make certain the Funds are indeed available for this challenge. Decommissioning and Abandonment should be a central topic in the proposed Abuja 2024 Conference (Recommendation 16 below).

3. <u>Involvement of Host Communities, Local Governments, and State Governments in all Decommissioning & Abandonment Issues</u>: As governments and people closest to the oil facilities have most to gain or lose from their proper Decommissioning & Abandonment (D&A), the FGN must authorize all of these levels of government to engage in such decisions. Importantly, as proposed above with the *National Principles for Responsible Oil Industry Divestment*, all Host Communities, Local Governments, and State Governments should be consulted regarding the status of Decommissioning & Abandonment in their area, as well as any plans to enforce federal regulations requiring proper D&A.

4. <u>UNEP Should Develop a Multilateral Environmental Agreement on Hydrocarbon Divestment, Decommissioning & Abandonment</u>: Given the global green energy transition underway, together with the enormous number (29 million) of improperly abandoned oil and gas facilities across the world, it is imperative that the U.N. Environment Program (UNEP) negotiate a legally-binding Multilateral Environmental Agreement specifically focused on remedying this global issue to ensure a Just Transition. This should include some version of the *National Principles for Responsible Oil Industry Divestment* (outlined above), along with global best practice for Decommissioning & Abandonment of oil & gas facilities.

5. <u>National Assembly Must Clarify Federal Law on Liability for Legacy Pollution Damage</u>: Nigeria's National Assembly should develop divestment legislation to clarify responsibilities and ongoing liabilities and for environmental impact assessments, Decommissioning & Abandonment, compensation, clean-up and remediation with respect to divested oil and gas assets. And recognizing the long term and continuing impacts of oil pollution, such divestment legislation should clarify that no statute of limitation (time restriction) exists for any future oil damage claims. The Petroleum Industry Act (PIA) should be amended to make it explicit that both the historical polluter (seller) and buyer shall remain strictly liable to provide appropriate remedies – clean-up, remediation, compensation, etc. – to victims of environmental and safety breaches.

6. <u>Annual Industry/Government *International Best Practice* Technical Workshop</u>: The FGN must do more to ensure that all oil & gas industry operations – IOCs, NNPC, and DOCs - meet *International Best Practice* standards, including those of the American Petroleum Institute (API) and the American Society of Mechanical Engineers (ASME), as required by Nigerian law and regulation. To assist with this goal, the MoPR should sponsor an annual technical workshop for all oil and gas operators, government regulators, Host Communities and other stakeholders (CSOs/NGOs) on *International Best Practice* standards for all phases of oil and gas operations – exploration; drilling; production; pipeline construction, integrity monitoring, and maintenance; terminal operations; shipping; Decommissioning & Abandonment; oil spill response, remediation, and restoration; etc.

7. <u>Reform and Enhance NUPRC and NOSDRA</u>: Both the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), and National Oil Spill Detection and Response Agency (NOSDRA) need considerably more financial and technical resources to accomplish their objectives. NUPRC technical staff should be afforded training opportunities with the American Petroleum Institute (API), including various API certification programs (https://www.api.org/products-and-services/individual-certification-programs); as well as those of other technical organizations, including the American Society of Mechanical Engineers (ASME) (https://www.asme.org/get-involved/groups-sections-and-technical-divisions/technical-divisions/technical-divisions-community-pages/petroleum-division). Similarly, NOSDRA staff should be provided training opportunities with Oil Spill Response Ltd. (OSRL) (https://www.oilspillresponse.com/training/courses/), and other relevant oil spill organizations. The National Assembly should ensure that each agency has sufficient technical staff, training, and adequate finances, as well as adequate equipment such as

helicopters, marine transport, surveillance drones, etc. for effective monitoring, oversight, and enforcement.

8. <u>Annual Independent Compliance Audit</u>: The FGN should contract with an independent industry consultancy outside of the country -- e.g. Wood Mackenzie (London), Deloitte Touche (London), KPMG (Netherlands), Det Norsk Veritas (Norway), etc. -- to conduct an annual Compliance Audit of all oil industry submissions and regulatory compliance activities (for IOCs, NNPC, and DOCs) required by Nigerian federal law (including by the PIA), gaps in operators' compliance with safety, environmental, decommissioning, community content and other regulatory standards; and any fines or other remedial actions ordered by the FGN. The MoPR/NUPRC shall be required to publish the annual Independent Compliance Audit on its website, update the Independent Compliance Audit annually, and release such to the media, Host Communities, and relevant stakeholders.

9. <u>*Niger Delta Cleanup and Restoration Program*</u>: The FGN should require the IOCs and NNPC to commission and pay for a Niger Delta-wide oil spill cleanup and restoration program, administered by the Federal Ministry of Environment. This Delta-wide program need not repeat the detailed 4-year UNEP *Ogoniland Environmental Assessment* (OEA), as the 2011 OEA results can be extrapolated across all similarly polluted sites in the Delta. However, it is imperative that the FGN initiate a Niger Delta-wide *Cleanup/Remediation Assessment*, to identify all oil polluted sites that require cleanup and remediation to international standards, and a subsequent *Niger Delta Cleanup and Restoration Program* (essentially a HYPREP program across the entire Niger Delta). The *Niger Delta Cleanup and Restoration Program* should remediate not only environmental damage, but also health impacts to the 40 million Delta residents. The FGN should require an initial, good faith deposit of *$25 billion USD* collectively from all IOCs and NNPC, according to their respective share of responsibility. After the cleanup/remediation effort, the Niger Delta Restoration program must do everything scientifically possible to restore oil-injured Niger Delta ecosystems and civil society to original, pre-impact condition. This should include such efforts as replanting mangroves, removal of invasive nipa palms, fish culture to restore freshwater fish populations, continuous scientific monitoring, and other Restoration efforts as deemed appropriate by the scientific community in consultation with the Host Communities, Local Governments, States, CSOs/NGOs, and the Federal Ministry of Environment. The FGN should also lead a multi-stakeholder process to address and avoid recontamination of the areas after clean-up and restoration, particularly risks posed by artisanal oil refining and oil theft.

10. <u>*Environment Superfund:*</u> The Petroleum Industry Act (PIA) should be amended to create an Environment Superfund into which operators pay duly assessed amounts periodically, at least annually, to adequately cover costs of remediating all outstanding pollution sites, undertaking all pending decommissioning requirements, and providing for future remediation and decommissioning obligations promptly as they arise. The Environmental Superfund should also provide legal aid and technical support to enable communities and individuals adversely affected by industry operations to pursue legal remedies. Alternatively, the provisions of the PIA on a Decommissioning & Abandonment

Fund and an Environmental Remediation Fund should be amended to explicitly expand their scope to address all historical and pending pollution and decommissioning obligations, as well as provide for legal and technical aid for (verified) victims and impacted communities.

11. <u>Arbitrated Settlement of Legacy Liabilities</u>: The FGN should require the IOCs - Royal Dutch Shell, ExxonMobil, Chevron, Total, and ENI/Agip - and NNPC, to jointly submit to a binding arbitration process to resolve all financial liability claims, past and present, arising from their operations on the Niger Delta. Fair compensation for oil pollution damage is required under Nigerian law, including the Oil Pipelines Act 1990, the Petroleum Act 1976, Petroleum Drilling and Production Regulations 1969, and the Petroleum Industry Act 2021. And legacy liabilities clearly remain with the companies responsible for the damage (e.g., IOCs/NNPC), irrespective of their desire to transfer such liabilities in any divestment/sale of assets; as well, there is no clear statute of limitation, time-limiting such claims, in federal law of Nigeria. The final damage amount should be determined in the independent arbitration process, perhaps with U.N. supervision, and should resolve with finality all claims across the Delta that are not currently subject to ongoing litigation. The FGN should require that IOCs and NNPC collectively contribute, according to their respective share of responsibility, a down payment of *$25 billion USD* into the Legacy Liability Settlement Fund.

12. <u>*Niger Delta Oil Litigation Support Network*</u>: In concert with the Arbitrated Settlement of Legacy Liabilities proposed above, the international community should establish a *Niger Delta Oil Litigation Support Network* to support individuals and Host Communities in filing claims for oil spill damage. The inability to secure up-front funding to initiate legal proceedings is a significant impediment for local people in the Delta in seeking environmental justice/redress through the courts. This new Litigation Support Network should connect individuals and communities in the Niger Delta with a network of lawyers and litigation funders willing to fund, investigate, and progress oil spill claims in various appropriate jurisdictions. Individuals, companies, NGOs, and governments concerned about environmental justice may wish to engage with such a direct mechanism to support environmental justice in the Niger Delta.

13. <u>Importers, Investors, and Insurers of Nigerian Oil Should Focus Greater Attention on Divestment, Decommissioning & Abandonment in Nigeria</u>: Other stakeholders in these DD&A issues in Nigerian petroleum - including importers, investors, and insurers - must pay greater attention to these issues in Nigeria, as well as overall integrity of the oil industry and Federal Government of Nigeria.

14. <u>FGN Should Explore Incentivizing Oil and Gas Reserves being Left in the Ground and Seabed</u>: Clearly, from a global climate security perspective, Decommissioning and Abandoning these onshore/nearshore oil reserves is preferable to Divesting them to DOCs to continue production. The FGN should explore all possible incentives to monetize reserves left in the ground. International carbon markets are beginning to embrace monetizing hydrocarbon reserves left in the ground/seabed as carbon sequestration efforts, such as the new *ZeroSix* and *CarbonPath* efforts by former oil executives.[87] Nigeria could be a beneficiary of such a financial mechanism, by selling oil and gas reserves left in

the ground/seabed as emission offsets, instead of leasing them for further production, thus providing a net positive global climate benefit and financial benefit to Nigeria. In addition, the FGN should explore use of the Green Climate Fund (www.greenclimate.fund), Global Environment Facility (www.thegef.org), or other financial mechanisms with which to monetize oil reserves left in the ground/seabed. A clear mechanism should be established to ensure that the Niger Delta region benefits from such markets or sales, since it is the region most significantly impacted. And the FGN and National Assembly should explore eventually prohibiting further oil Divestment, and requiring these assets to be Decommissioned and Abandoned.

15. Expand Ecological Protected Areas in Areas Where Oil Facilities are Decommissioned & Abandoned: As Decommissioning & Abandonment proceeds, the Federal Ministry of Environment should explore opportunities to establish and/or expand Ecological Protected Areas/Indigenous Protected Areas in such areas. This should be done in consultation with Host Communities, Local Governments, State Governments, and CSOs/NGOs; and would support the Delta-wide restoration effort discussed above.

16. Mitigating *Traumatic Decarbonization* by Enhancing Nigeria's *Sovereign Wealth Fund*: As with other governments heavily dependent on hydrocarbon revenues, with oil providing 70% of government revenue and 90% of export earnings,[88] Nigeria is at extreme risk of "traumatic decarbonization."[89] The country is facing an inevitable fiscal cliff that, if not anticipated and managed now, could lead to serious destabilization. In this context, Nigeria's *Sovereign Wealth Fund* (SWF), managed by the Nigeria Sovereign Investment Authority (nsia.com.ng), is terribly insufficient and must be significantly expanded to provide a buffer from this inevitability (which many predict may be coming sooner than later). This will help Nigeria's economy after oil to have a "soft-landing," rather than a catastrophic collapse. Currently, funds into the SWF come from "the surplus income generated from the sale of Nigeria's crude oil." Its assets in 2021 were reported at only $3.5 billion.[90] The SWF Stabilization Fund only receives 20% of annual contributions, and will be entirely incapable of meeting its primary mission – to provide stabilization in times of economic distress "in preparation for the eventual depletion of Nigeria's hydrocarbon resources" (and from production, price, or revenue fluctuations). The SWF is nowhere near what it needs to be to avert collapse of the Nigerian economy.

By comparison, the *Alaska Permanent Fund,* derived from 50% of all State of Alaska revenue from oil (which has been less than half of that in Nigeria), today has a balance of more than $77 billion.[91] The Norway oil savings fund (*Government Pension Fund Global*) today has a balance of over $1.3 trillion USD.[92] While Alaska has a population of only 730,000, and Norway a population of 5.5 million, Nigeria has a population in excess of 220 million.

It is imperative that the FGN begin a gradual, substantial, incremental increase in annual contributions into its SWF, by 10% of total government revenue/year, until it reaches 50% of government revenue/year by 2030. And the Fund should be expanded to include revenues from all extractive industries (mining, etc.). The balance of the SWF of Nigeria needs to reach at least $300 billion within a decade, in order to support government services during the inevitable decline of hydrocarbon revenues, and avoid the most difficult

impacts of traumatic decarbonization. Areas directly affected by oil and gas, particularly the Niger Delta, should be allocated a dedicated percentage of the SWF.

17. <u>Abuja 2024 Conference</u>: The Federal Government of Nigeria (FGN), along with international partners, should convene a multi-stakeholder conference in Abuja in 2024, to discuss the Divestment, Decommissioning & Abandonment (DD&A) issue, agree to the *National Principles for Responsible Petroleum Industry Divestment* and a comprehensive Decommissioning & Abandonment plan. The Abuja conference should be chaired jointly by the President of Nigeria and the U.N. Secretary General, and involve all oil and gas operators in Nigeria (IOCs, NNPC, and DOCs), the FGN, State Governments from the Delta, Local Governments, Host Communities, and CSOs/NGOs. The 2024 Abuja Conference should also designate the Niger Delta as Host/Focus of World Environment Day 2025, with global oil industry DD&A as its theme, to focus global attention to this issue.

X. References

[1] Department of Petroleum Resources, 2013. 2013 Annual Statistical Bulletin: Nigeria Oil and Gas Industry Annual Statistical Bulletin.

[2] Dakolo, HRM King Bubaraye, 2021. The Riddle of the Oil Thief. Purple Shelves Publishers, Lagos.

[3] Karl, Terry. 1997. The Paradox of Plenty: Oil Booms and Petro-States. University of California Press. Dec.

[4] US EIA, 2016. Crude oil disruptions in Nigeria increase as a result of militant attacks. U.S. Energy Information Administration. Aug. 18

[5] Beaumont, Peter, Isaac Abrak, 2018. Oil-rich Nigeria outstrips India as country with most people in poverty. The Guardian, July 16.

[6] Steiner, Rick. 2010. Double Standard: Shell Practices in Nigeria compared with international standards to prevent and control oil spills, and the Deepwater Horizon oil spill. Friends of the Earth Netherlands, November.

[7] Iheukwumere, Obinna, D. Moore, D. Omotayo, 2021. A meta-analysis of multi-factors leading to performance challenges across Nigeria's state-owned refineries. Applied Petrochemical Research, 11: 183-197

[8] NCF/IUCN CEESP, 2006. Niger Delta *Natural Resource Damage Assessment and Restoration* Project – Phase I Scoping Report. Nigeria Federal Ministry of Environment, Abuja; Nigeria Conservation Foundation, Lagos; WWF UK; IUCN Commission on Environmental, Economic, and Social Policy; May 31.

[9] NOSDRA, 2023. Personal Communication. July 4.

[10] Steiner, Rick. 2021. Richard Steiner: Why Nembe must catalyse new paradigm for oil responsibility in Nigeria. EnviroNews. Nigeria. Dec. 27.

[11] Bayelsa State Technical Committee, 2021. Technical Committee on Oil Spill in Santa Barbara River, Nembe Local Government Area, Bayelsa State. Dec. 24.

[12] Stakeholder Democracy Network, 2016. Improving Oil Spill Response in Nigeria: Comparative Analysis of Forms, Data, and Related Processes in the Joint investigation Visit (JIV), and Suggestions as to how These Can be Improved. Online: www.stakeholderdemocracy.org

[13] Nigeria Conservation Foundation/IUCN. 2006. *Op cit.*

[14] U.N., 2007. Letter to Prof. Richard Steiner from U.N. Under Secretary General. Feb. 7

[15] UNEP, 2011. Ogoniland Environmental Assessment; www.unenvironment.org

[16] BSOEC, 2023. An Environmental Genocide: Counting the Human and Environmental Cost of Oil in Bayelsa, Nigeria. Bayelsa State Oil and Environment Commission. www.report.bayelsacommission.org

[17] Inyang, Prof. Hilary, 2017. Reported in: Cleanup of oil producing areas to cost $50 billion. Vanguard, June 6.

[18] UNEP, 2011. *Op cit.*

[19] Nriagu, J., Udofia, E., Ekong, I, Ebuk, G. 2016. Health Risks Associated with Oil Pollution in the Niger Delta, Nigeria. International Journal of Environmental Research and Public Health. Mar. 21.

[20] Katsouris, Christina, and Aaron Sayne, 2013. Nigeria's Criminal Crude: International Options to Combat the Export of Stolen Crude. Chatham House. Sept.

[21] Oduor, Michael. 2022. 437,000 barrels of oil stolen on a daily basis by criminals in Nigeria. AfricaNews, Sept. 8
[22] Davis, S., Von Kemedi, D., Drennan, M. 2005. Illegal Oil Bunkering in the Niger Delta. Niger Delta Peace and Security Working Paper for Peace and Security Working Group, Federal Government of Nigeria.
[23] This Day, 2021. JTF: 1,291 Attempts to Sabotage Oil Export Pipelines Foiled. March 30.
[24] This Day, 2021. *Ibid.*
[25] Nigeria Natural Resource Charter, 2018. NNRC Assesses the Impact of Crude Oil Theft on Nigerians. Nov. 28.
[26] Dakolo, HRM King Bubaraye. 2023. *Op cit.*
[27] Dakolo, HRM King Bubaraye, 2021. *Op cit.*
[28] Transparency International, 2019. Military Involvement in Oil Theft in the Niger Delta. May 30.
[29] Ojobo, Ejemen. 2023. A review of the Effectiveness of the Nigerian Whistleblower Stopgap Policy of 2016 and the Whistleblower Protection Bill of 2019. Cambridge University Press. March 31.
[30] Henshaw, Ken. 2023. Dirty Exit: Why Oil Companies in Nigeria Are Selling Off Assets And How it Denies Niger Delta Communities of Justice. www.wtp.ngo
[31] Steiner, Rick. 2016. Time to End "Blood Oil" Disaster in the Niger Delta. *Huffington Post*, Mar. 10.
[32] Shell, 2019. Shell Annual Report 2019, www.reports.shell.com
[33] Climate Home News, 2021. Nigeria to end gas flaring by 2030, under national climate plan. Aug. 13, www.climatechangenews.com
[34] The Economist, 2022. Who buys the dirty energy assets public companies no longer want. Feb. 12.
[35] Nigerian Oil and Gas Industry Content Development Act, 2010. April 22; www.ncdmb.ng
[36] Bousso, Ron. 2023. Mega transatlantic oil mergers less likely after Exxon, Chevron deals. Reuters. Oct. 23.
[37] Onuba, Ifeanyi. 2023. NNPC Confirms The Whistler Exclusive: Replaces Eroton With Another Operator to Manage OML 18. The Whistler. Mar. 6.
[38] Ajayi, Omokalade, 2023. Shell alleges Nigerian billionaire Benedict Peters' Aiteo owes $2.6 billion in oil loans. Billionaires Africa, July 13.
[39] Clowes, William. 2021. Nigerian Oil Producer Sues Shell for More Than $2B Over Ownership of Wells. Insurance Journal, Oct. 7
[40] Ajayi, Omokalade, 2023. *Op cit.*
[41] The Cable, 2022. Oil spills: Court stops Shell from selling assets in Nigeria. March 14.
[42] ERA, 2015. Shell Divestments & Local Communities Responses in the Niger Delta. June.
[43] SDN, 2021. Divesting from the Delta: Implications for the Niger Delta as international oil companies exit onshore production. Oct. www.stakeholderdemocracy.org
[44] Wood Mackenzie, 2021. Shell to divest its entire Nigeria JV portfolio. In Insight. Aug. www.woodmac.com
[45] Henshaw, Ken. 2023. Dirty Exit. *Op cit.*
[46] BSOEC, 2023. An Environmental Genocide. *Op cit.*
[47] HOMEF, 2023. Exploited, Dispossessed, and Abandoned: A Study on Oil Divestment by International Oil Companies in the Niger Delta. Health of Mother Earth (HOME) Foundation, 42 pp. July
[48] Asu, F. 2021. Oil, Power firms bank debts rise to N 5.94 tr. *Punch*, Mar. 2.
[49] Oando, 2023. Oando PLC announces agreement with ENI for the acquisition of 100% of the shares of Nigerian Agip Oil Company Limited. Oando Press Release, Sept. 4.
[50] Landini, F; A. Parodi; L. George, 2023. ENI becomes latest energy giant to sell onshore Nigerian assets. Reuters, Sept. 5.
[51] Oando, 2023. *Op cit.*
[52] Milieudefensie, 2022. Legal Opinion of Professor Emeka Duruigbo. Miliuedefensie, Friends of Earth, Netherlands. Feb.
[53] Leigh Day, 2021. Claim on behalf of the Community of Bille against Shell, filed in London High Court of Justice. June 3.
[54] Clowes, William. 2021. *Op cit.*
[55] State of Louisiana v Shell, 2023. Order and Judgment, State of Louisiana, 16th Judicial District Court, July 18.
[56] Steiner, Rick. 2010. *Op cit.*
[57] Steiner, Rick. 2010. *Op cit.*
[58] Schafer, Jack. 2018. The Psychopathology of Corruption. Psychology Today. Aug. 2.
[59] Amenaghawon, J. and Udo Jude Ilo, 2016. In Nigeria, Many Anti-Corruption Policies - And Lots of Corruption, Too. Open Society Foundations, June 29

[60] Insurance Marine News, 2023. Tura II destroyed by Nigerian authorities. July 13.
[61] Ijaw Nation Forum, 2023. Explosion hits Bayelsa fishing settlements. Oct. 26.
[62] Groom, Nichola, 2020. Special Report: Millions of abandoned oil wells are leaking methane, a climate menace. Reuters. June 16
[63] EDF, 2022. Plugging orphan wells across the United States. Environmental Defense Fund.
[64] Kang, Mary; Brandt, A; Zheng, Z; Boutot, J; Yung, C; Peltz, A; Jackson, R. 2021. Orphaned oil and gas well stimulus – Maximizing economic and environmental benefits. Policy Bridge, Elementa. April 28.
[65] Kang, Mary; et.al., 2021. *Ibid.*
[66] Turrentine, Jeff. 2021. Millions of Leaky and Abandoned Oil and Gas Wells are Threatening Lives and the Climate. Natural Resources Defense Council, July 26.
[67] Groom, Nichola, 2020. *Op cit.*
[68] Kang, Mary. 2021. *Op cit.*
[69] Turrentine, Jeff. 2021. *Op cit.*
[70] Klein, Jesse. 2022. Carbon credits for oil companies? GreenBiz. Dec. 13.
[71] U.S. GAO, 2015. Offshore Oil and Gas Resources: Actions Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities. U.S. Government Accountability Office; GAO-16-40. Dec 18.
[72] US DOI, 2022. Through President Biden's Bipartisan Infrastructure Law, 24 States Set to Begin Plugging Over 10,000 Orphaned Wells. US Department of Interior Press Release, Aug. 25
[73] UNEP, 2011. *Op cit.*
[74] Sahara Reporters, 2018. Bayelsa Community Accuses Shell of Frustrating Survey Process. Sahara Reporters, Nov. 8.
[75] Clowes, William. 2021. *Op cit.*
[76] ERA, 2015. *Op cit.*
[77] BSOEC, 2023. *Op cit.*
[78] Leigh Day, 2021. *Op cit.*
[79] Adekoya, Feme, 2023. Eroton confirms ownership of OML 18. The Guardian. Mar. 13.
[80] Onuba, Ifeanyi. 2023. *Op. cit.*
[81] Wood Mackenzie, 2021. *Op cit.*
[82] ERA 2015. *Op cit.*
[83] Dakolo, HRH King Bubaraye. 2021. *Op cit.*
[84] The Cable, 2022. Seplat: Our $1.3 billion deal with ExxonMobil on hold – NNPC secured court order against it. The Cable, July 11.
[85] Akintayo, Ope Oluwani, 2020. OML 49: Nigeria to pay firm $20 million damages. Seetcrudereports.com, Jan. 1.
[86] L. Jennifer, 2022. Ex-Oil Execs to Turn Oil & Gas Reserves into Carbon Credits. Carbon Credits.com. Nov. 4.
[87] L. Jennifer, 2022. *Op cit.*
[88] US EIA, 2016. *Op cit.*
[89] Sarkar, Aditya. 2023. Traumatic decarbonization in Carbon-based (UN) settlements. World Peace Foundation, Mar. 22.
[90] Reuters, 2021. Nigeria sovereign wealth fund's assets rise to $3.5 billion, minister says. Sept. 1. www.reuters.com
[91] Alaska Permanent Fund Corporation, 2023. www.apfc.org
[92] Norges Bank Investment Management, 2023. www.nbim.no

XI. Acknowledgments

This project would not have been possible without the kind participation and support of hundreds of people in Nigeria, including, but not limited to: the Host Communities in the Niger Delta we visited and met with; Center for Environment, Human Rights and Development (CEHRD); Stakeholder Democracy Network (SDN), We the People (WTP); Environmental Rights Action (ERA); Health of Mother Earth (HOME) Foundation; Ijaw Elders Forum; Ijaw Nation Forum; Embasara Foundation; tremendous support from the Bayelsa State Government, in particular Hon. Iselema Gbaranbiri, Commissioner of

Environment, and Hon. Ebieri Jones, Commissioner of Mineral Resources; Rivers State Ministry of Environment; Hon. Iniruo Wills, Mr. Alagoa Morris; Prince Chima Williams; Mr. Nnimmo Bassey; Ms. Florence Kayemba; Ms. Charity Laku; Dr. Nabie Nubari; Mr. Ken Henshaw; Hon. Fred Agbedi; Ms. Oyanbo Owei; Hon. Amb. Gabriel Tanimu Aduda, Permanent Secretary of MoPR; Hon. Minister Timipre Sylva; HRM King Bubaraye Dakolo; HRM King Alfred Diete-Spiff; Mr. Maher Giundi, NNPC; staff of NUPRC, NOSDRA, and MoPR; Prof. Prosper Ayawei; Prof. Mondy Gold with the Ijaw Diaspora Council; Ms. Rukevbe Avbovbo; Mr. Charles Fyneface; Mr. Paul Worika; Prof. Nenibarini Zabbey; Dr. Sterling Ellis; Mr. Furoebi F.S. Akene; Dr. Billy Gillis-Harry; Mr. Olali Henry; the many government security services for the mission; Ms. Audrey Gaughran and SOMO staff in the Netherlands; Dr. Festus Odubo, and many others. Great appreciation is extended to all.

XII. Project Team

Professor Rick Steiner

From 1980 – 2010, Prof. Steiner was a marine conservation professor with the University of Alaska, stationed in the Arctic, Prince William Sound (Gulf of Alaska coast), and Anchorage, and was responsible for the university's conservation and sustainability extension effort.

As the University of Alaska's marine advisor for the Prince William Sound region of Alaska, he advised the emergency response to the *Exxon Valdez* oil spill in 1989, helped found the *Regional Citizens Advisory Councils* and the *Prince William Sound Science Center*, helped formulate federal and state oil spill legislation, and first proposed settling the legal case between Exxon and the government and applying much of the $1 billion settlement toward protection of critical habitat along the coastline of the oil spill region.

Subsequently, he has consulted on oil/environment issues, including oil spill prevention, response, damage assessment, and restoration, advising the United Nations, national governments, NGOs, and industry; including in Russia, Pakistan, China, Japan, Lebanon, Israel, Solomon Islands, Canary Islands, West Africa, Central Asia, Southeast Asia, Norway, Finland, Australia, Canada, Belize, and the Americas. He drafted the U.N. manual on environmental damage assessment for marine oil spills; and advised during the *Deepwater Horizon* Gulf of Mexico spill in 2010. The U.K.'s *The Guardian* newspaper described Prof. Steiner as "one of the world's leading marine conservation scientists," and "one of the most respected and outspoken academics on the oil industry's environmental record."

Prof. Steiner has worked in the Niger Delta several times over the past 20 years, including serving as technical expert in the first environmental damage assessment, an expert witness for communities in several oil spill cases in the Delta, advised the Governor of Delta State, among other efforts. He currently serves as Board Chair for *Public Employees for Environmental Responsibility*, Founder/Director of *Oasis Earth* (www.oasis-earth.com), on the Board of Advisors to *The Ocean Foundation*, and as Technical Advisor to the *Ijaw Diaspora Council.*

E. Festus Odubo, PhD

Dr. Odubo is a regulator, professional and specialist with almost 20 years of experience in energy, homeland security, water, wastewater issues, and oil and gas. His expertise is in the areas of public utility regulation, energy policy formulation and homeland security.

Dr. Odubo has a PhD in Public Policy and Administration with a concentration in Homeland Security Policy & Coordination. He also holds a Master of Science degree in Environmental Pollution & Control, and a Bachelor of Science degree in Industrial Safety Environmental Engineering Technology. Dr. Odubo currently works with the Commonwealth of Pennsylvania's (USA) Public Utility Commission (Commission) as the Executive Policy Manager for the Vice Chair of the Commission.

Dr. Odubo represents the United States in Sub-Saharan Africa on energy-related matters. He is also a subject matter expert in water and wastewater regulation, especially in areas of compliance with local, state, and federal requirements and the review of applications and security plans (physical, cyber, emergency response and business continuity). He also has experience in the oil and gas sector having worked in the Production and Drilling sectors of ChevronTexaco and Schlumberger Oilfield Services, respectively.

Dr. Odubo is a member of the *American Association of Blacks in Energy* (AABE), *National Association of Regulatory Utility Commissioners'* (NARUC) Staff Subcommittee on Critical Infrastructure, NARUC Staff Subcommittee on Water, and *Cyber Security Task Force* of the PA PUC, *PA Regional Counter-Terrorism Task Force*.