



MANAGEMENT, REMEDIATION AND COMPENSATION IN CASES OF CRUDE OIL SPILLS IN NIGERIA: AN APPRAISAL

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ABSTRACT

The goal of this article is to inquire and consider the viability of the management, remediation and compensation in cases of crude oil spills in Nigeria and also appraise the adequacy or otherwise of the compensation of victims of oil spillage in Nigeria. The article implored doctrinal research and collated data were qualitatively analysed. Part of the findings of the article is that oil spillage is prevalent in Nigeria and those who are affected by spillages are barely or inadequately compensated due to the antics of the multinational oil companies which is hinged on the lacunae in some of the municipal legislation regulating the oil industry in Nigeria. It is however recommended that the legal framework regulating the oil industry in Nigeria be repositioned in such a manner that issues arising from oil spillages will be properly managed and addressed including payment of compensation to victims of oil spillage where that be the case. This article is geared towards revealing the plights of victims of oil spillage in Nigeria as well as the epileptic legal regime regulating the oil industry in Nigeria.

Keywords: Petroleum, Oil Spills, Compensation, Remediation, Nigeria.

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INTRODUCTION

The appraisal of Management Mechanism, Remediation process and Compensation of victims of oil spillages in Nigeria would be incomplete without first doing an overview of oil spillage in Nigeria which encompasses the origin of oil spillage, types of oil spillage, causes of oil spillage and effects of oil spillage etc. Oil was first found in Nigeria in 1958 at a place known as Oloibiri which is a community in the present day Bayelsa State and its discovery was made possible by the combined efforts of the Royal Dutch Shell and the British Petroleum. The discovery of Oil and its exploration in commercial quantity indubitably made the Nigerian environment particularly the Niger Delta Region and its inhabitants vulnerable to the catastrophic effects of Oil spillage and gas flaring.³ Spillages often occurs in the course of oil exploration, exploitation and transportation and upon such occurrence, compensation is ordinarily required to be made to persons affected by such spillages.

Unfortunately, inhabitants of the spilled environments or victims of oil spillages in Nigeria, particularly those of the Niger Delta region are either faced with the problem of non-payment or inadequate compensation for oil spill damage and such threatens the peaceful existence of the oil producing communities of Nigeria.⁴ Similarly associated with the problems of oil spillage in Nigeria is the fact that inhabitants of the oil producing communities of the Niger Delta Region of Nigeria have lost their means of livelihood and sustainability.⁵ The victims of oil spillages particularly the people of the Niger Delta Region of Nigeria are seen to be paying the price of the development of the Nigerian Nation with their lives, health, socio-cultural identities and in some cases they are internally displaced from their ancestral homes.⁶ These problems associated with oil spillages, come to

³ O. Mustapha and others 'Adequate Compensation as a Tool for Conflict Resolution in oil Pollution Wetland of Niger Delta Region of Nigeria (2016) 3rd International Conference on Africa Development issues (CU- /CADI 2016) available at <http://eprints:convenantuniversity.edu.ng/6683/1/icadi16pp455-461.pdf> . Accessed 18/1/2017.

⁴ C.J. Osimiri, 'Arbitration as a Conflict Resolution Approach to Oil Spill Compensation Payment in Oil Producing Communities of Rivers State Nigeria' (2011) (2)(1) *International Journal of Advanced Legal Studies and Governance*; 17- 32.

⁵ A.A Kadaka 'Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria' (2012) (12) (2) *Global Journal of Science Frontier Research Environment and Earth Science*; 19-28; T.A Abii and P.W. Nwosu, 'The Effect of Oil on the Soil of Eleme in River State of the Niger Delta Area of Nigeria' (2009) (3) (3), *Research Journal Environment Sciences*; 316 – 320.

⁶ O. Oluduro, 'Oil Exploration and Ecological damage: the compensation policy in Nigeria' (2012) (33) (2), *Canadian Journal of Development Studies*

fore because most of the host communities are either peasant farmers, fishermen, palm wine tappers, or hunters etc. as agrarians, they are put out of their local economy because oil spillage particularly catastrophic spills devastate and degrade the environment thereby causing soil aeration, soil infertility, loss of the savannah and mangrove forest, water pollution and endangers the *flora* and *fauna* with some totally in extinction. Therefore, oil spillage renders members of the host communities jobless and forces them to compulsorily embark on the search for white collar jobs which is not always there and in this case, they become ready-made tools to social vices such as kidnapping, armed robbery, vandalism, sabotage and militancy which have been prevalent in the Niger Delta Region of Nigeria for some time now.

At this juncture, it is pertinent to ask ‘What is Oil Spillage?’ or ‘When is Oil said to have been spilled?’ Accordingly, oil spillage is viewed as ‘a non-continuous discharge of oil (crude or refined) into the environment which normally occurs as a result of accidents caused by malfunctioning of an equipment or human error’.⁷ It can be contended that the above definition of oil spillage only contemplated spillage occasioned by malfunctioning of oil drilling equipments but never conceived the fact that acts of vandalism, sabotage and pipeline corrosion among others are responsible for some of the oil spillages in Nigeria.

Broadly, oil spillage is the escape of crude oil or its bye products either in small or large quantity from oil installations such as flow stations, tanks, terminals, vessels, pipelines, refineries and other oil production equipments/facilities which causes hardship, suffering and loss to man and his environment by way of pollution, contamination of waters and degradation of the environment.⁸ Though the origin of oil spillage cannot be stated with certainty but available data suggests that the first recorded oil spill in the world was in 1500 when oil was seen to have been bubbling

/Revenue canadienne d’etudes du developement (2012)(33) (2); 164 – 179; C.O. Opukri and I.S. Ibaba, ‘Oil Induced Environmental Degradation and Internal Population Displacement in the Nigeria Niger Delta’ (2008) (10) (1), *Journal of Sustainable Development in Africa*; 173-193.

⁷ A. E. Ogbuigwe ‘Compensation and Liability for Oil Pollution in Nigeria: Need for Positive Approach’ (1985) (3) *Journal of Private and Property Law (JPPLL)* 21.

⁸ Nweke Prince Nweke, ‘Incidents of Oil Spillages in Nigeria’: Effects of Human Health and the Environment’ (2018) (Vol. 7) (No. 1) *Port Harcourt Law Journal (Zubic Infinity Concepts)* 55.

out from a natural seep in today's Santa Barbara, California in USA.⁹ Also, in 1859, the first non-natural oil spill occurred when the first USA Oil Well was drilled near Titusville, Pennsylvania.¹⁰

In the case of Nigeria, the Royal Dutch Shell in 1956, discovered Crude Oil at Oloibiri in today's Bayelsa State and commercial production of the discovered crude oil commenced in 1958. Possibly, an insignificant quantity of oil might have been spilled in the course of exploration and drilling in the late 50's but the first known oil spillage in Nigeria spilled in 1976 while the most disastrous spill ever recorded occurred in 1980.¹¹ Since ever the first oil spill incident in Nigeria was recorded in 1976, oil had spilled unprecedentedly in Nigeria to an extent that Nigeria is described as one of the most oil polluted places on the planet.¹² For instance, between 1976 – 2008, oil spill incidents in Nigeria rose to over Thirteen Thousand Four Hundred and Ninety Two (13,492) in which 4,647 incidents of Oil spillage occurred from 1976-1996; with 2,369,470 barrels of oil spilled into the environment; 549,060 barrels (of oil) recovered and 1,820,410.5 barrels lost into the environment.¹³ Further, from 1997-2008, the total number of 8,845 incidents of oil spillage also occurred.¹⁴

Accordingly, it is indeed unprecedented for 8,845 incidents of oil spillage to have occurred within the space of 12 years which is approximately twice the number of oil spillage that occurred between the space of 21 years (1976 – 1996). While the geometrical increase of oil spillage between 1997 – 2008 was alarming and condemnable, it is acknowledged that the major causal reasons of the high increase of oil spillage within the period of 1997 – 2008 was due to the high level of restiveness, insecurity and militancy experienced in the Niger Delta Region during the period under consideration.¹⁵ The frequency of oil spillage in Nigeria is worrisome

⁹ Your search.livescience.com/9885-faq-science. Accessed 2/2/2017.

¹⁰ USA National Atmospheric Administration World Oil Spill Report. Available at www.livescience.com/9885-faq-science Accessed 2/2/2017

¹¹ E. Uyigwe and M. Agho, 'Copping with Climate Change and Environmental Degradation in the Niger-Delta of Southern Nigeria' Benin Community Research and Development Center Report 2007 (CREDCR)5.

¹² *Ibid* (n.1) 455.

¹³ See generally P.B. Eregha and I.R. Ireghe, 'Oil Induced Environmental Degradation in the Nigeria's Niger Delta: The Multiplier Effect' (2009) (II) (4) *Journal of Sustainable Development in Africa*. Clarion University of Pennsylvania.

¹⁴ Department of Petroleum at the Oil Workshop held in Lagos Resources Centre (15th Sept. 2009).

¹⁵ *Ibid*.

because most of the oil spillage which occurred between 1976 - 2008 in Nigeria where major oil spillages and also devastating in nature. According to the Friends of the Earth Report, some of the most devastating and catastrophic oil spill incidents in Nigeria since 1976 are:

- a) Shell GOCON's Escravos 1978 spill, caused by Tanker failure at Forcados Terminal which 580,000 barrels were spilled in the environment.
- b) Texaco's Fuma-5 Offshore blow-out in 1980 that released 4,000 barrels of oil into the environment.
- c) Mobile Spill at Idoho in 1998 with a reported release of 40,000 barrels of crude oil into the environment.
- d) The Shell spill in 2008 at Ikot Ada Udoh in Akwa Ibom State where a 'capped well' failed and spewed an unreported amount of oil for months before it was stopped. This spill was more of an interstate oil spill as the spill spread across the coast of Akwa Ibom, Cross Rivers, Rivers, Bayelsa to Lagos state, thereby putting the aquatic animals in danger of annihilation.
- e) Agip oil spills at Calabar, Bayelsa and Rivers State. This spill lasted for months before it was stopped. More spills occurred in the same pipeline in September, 2012 and remained unchecked for a long stretch of time.
- f) Exxon Oil Spills at Ibeno, Akwa Ibom State in May and June 2010.
- g) Shell's Bonga 40,000 spill of 2011.
- h) Exxon mobil spill at Ibeno – 25km offshore, which happened on the 9th day of November, 2012, that spread across the major coastlines in the Niger Delta.

In all, it is saddened that incidents of oil spill have been on the increase as the official record from National Oil Spill Detection and Response Agency (NOSDRA) covering the periods of 2006 – 2015 indicates that there were over 9,000 spills which occurred in over 5,000 spillage sites across the Niger Delta Region.¹⁶ Following the unprecedented level and increase of oil spillage, it is pertinent to consider the types and causes of oil spillage in the Niger Delta region of Nigeria. Oil spillages in Nigeria are mainly caused by corrosion of pipeline which contributes 50% of the total

¹⁶ Sweet Crude Reports: A Review of the Nigerian Energy Industry. Available at www.sweetcrudereports.com/2015/09/02/nigeria-records-1943-oil-spill-incidents-in-10years/. Accessed 20/7/2017.

spillages in Nigeria,¹⁷ sabotage, vandalism, oil production operation, ship seepage, tankers and oil terminal leakages, equipment failure or malfunction, deliberate/incidental discharge of oil from leaking tankers and ships etc.¹⁸

Oil spillage falls into different categories depending on the type of spillage or its effect on the environment and its inhabitants. Accordingly, spillages are categorized into four (4) namely, Minor, Medium, Major and Catastrophic spill.¹⁹ While Minor Spill is one which the volume of oil spilled is less than 250 barrels on land, offshore or coastal water and does not pose a threat to public health, Medium Spill is one which volume of oil spilled is up to 250 barrels or less in the inland water, offshore or in the coastal water. Further, Major Spill occurs when the oil discharged into the inland water is in excess of 250 barrels in offshore or coastal waters while Catastrophic Spill is a kind of spill caused by uncontrolled well-blow-out, pipeline rupture or storage tank failure which poses an imminent threat to the environment, public health and welfare.²⁰

Spillages inevitably impacts negatively on the environment as well as inhabitants of the host communities of the Niger Delta Region of Nigeria including staffs of multinational oil companies and those involved in remediation and clean-up of the spilled environment. The effect of oil spillages depends on the magnitude of the spillage, the part of the environment affected and the season it occurred.²¹ To mention but a few, oil spillage is a catalyst of some complicated health issues such as respiratory problem, skin rashes, cancer, tumors, gastrointestinal problems and malnutrition.²² It also affects the environment and causes weathering.²³

¹⁷ Library.thinkingquest.org/Coo418/oil. Available at www.wisegeek.org/what-causes-oil-spill accessed on the 20th May 2010.

¹⁸ Nweke Prince Nweke, 'Incidents of Oil Spillages in Nigeria': Effects of Human Health and the Environment' (2018) (Vol. 7) (No. 1)*Port Harcourt Law Journal* (Zubic Infinity Concepts) 55.

¹⁹ E.R. Egbe. 'Environmental Challenges of Oil Spillage for Families in Oil Producing Communities of Niger Delta Region' (2011) (13) *JHER* 25 <www/heran.org/html/jher13/zegbe.pdf>. Accessed 20/7/2017.

²⁰ *Ibid.*

²¹ Environmental Pollution Centers, 'Environmental Effects of Oil Spills' Available at <http://www.itopf.com/knowledge-resources/documents-guides/environmental-effects/> Accessed 15/1/2018.

²² S.I. Omofunmwan and L.O. Odiya 'Oil Exploitation and Conflict in the Niger Delta Region of Nigeria'. (2009) *Kamlaray Journal of Human Ecology* 25-30.

²³ E.R. Egbe. 'Environmental Challenges of Oil Spillage for Families in Oil Producing Communities of Niger Delta Region' (2011) (13) *JHER* 25 <www/heran.org/html/jher13/zegbe.pdf>. Accessed 20/7/2017.

‘Weathering is the biological, physical and chemical process which oil undergoes due to its inability to dissolve in water upon spillage’.²⁴ Also, in the Marine environment, upon spillage, oil settles on beaches and kills organisms that lives there same way it also settles on the ocean floor and kills benthic organisms such as crabs, periwinkles, frogs, oysters, etc.²⁵ similarly, oil also hampers soil aeration and further affects the physiochemical properties of soil such as temperature, structure, nutrients status and soil composition.²⁶ Oil spillage is inevitable as long as oil exploration and mining takes place in any given environment and it is also required that proper contingency plan be put in place for the remediation and clean-up of the affected environment as well as for compensation of victims of oil spillages. Hence, this article is also keen in considering the compensation of victims of oil spillages in Nigeria.

MANAGEMENT AND COMPENSATION OF VICTIMS OF OIL SPILLAGES IN NIGERIA

Oil spillage is inevitably associated with some form of damage to the environment and its inhabitants. The inhabitants of the spilled environments are the primary victims of oil spillages. This is so because, the primary victims of oil spillages in most cases contaminates their sources of drinking water, pollutes the water below the ground, the Rivers, Air and the entire Ecosystem thereby making sustenance difficult for those whose source of livelihood depends on their immediate physical environment. In the general legal parlance, damage connotes loss or injury to a person or property. Further, for every legal injury, there is a remedy hence the legal maxim *Ubi Jus Ibi Remedium*. The remedy for victims of oil spillage centers around environmental restoration, remediation, clean-up and compensation of the affected victims.²⁷

In Nigerian, oil is the lifeblood of her economy and the earnings from oil exploration account for over ninety percent (90%) of the Nigeria

²⁴ J.W Farrington & J.E MacDowell, ‘Mixing Oil and Water’ (2004), available at <http://www.whoi.edu/oceanus/viewArticle.do?id=> Accessed 1/12/2012.

²⁵ See generally, P.C. Nwilo and O.T. Badejo ‘Oil spill problems and management in the Niger Delta’ (2005) Paper presented in International Oil Spill Conference, Miami Florida USA

²⁶ R.E. Egbe ‘Environmental Challenges of Oil Spillage for Families in Oil Producing Communities of the Niger Delta’ (2010) JHER Journal. (13) 28

²⁷ B.A Garner (ed) ‘Blacks Law Dictionary’ (Ninth Edn Thomson Reuters 2009) 445.

economy.²⁸ While it is true that proceeds from oil exploration account for 90% of Nigeria revenue generation, it is also worthy to mention that the Niger Delta Region of Nigeria where the oil is deposited and mined is one of the most oil-polluted places on the planet and there are inconsistencies in the records given with respect to the number of oil spills in the region.²⁹

Acknowledging the fact that the oil industry is the mainstream of Nigerian economy presupposes that certain damage caused by way of oil spillage occasions either in the course of oil prospecting, exploration, mining/drilling, reservation, loading, offloading or in the course of transporting crude oil and its products from one point to the other. Accordingly, as earlier stated, since the discovery of oil in Nigeria, multiple barrels of oil have spilled on the Nigerian Niger Delta environment which in no great measure has meted untold hardship on the residents of the oil producing communities which hardship includes but not limited to losses of means of livelihood and sustainability.³⁰ Also, other damages associated with Oil exploitation and oil spillages in the Niger Delta region of Nigeria is the fact that the inhabitants of the Niger Delta region are incessantly paying the prices of National Development with their lives, health, culture, environment and in most cases with the sources of their livelihood. Similarly, other species of damage or legal injuries associated with oil spillage is the impoverishment of the Niger Delta Region of Nigeria which has led to internal displacement of many residents from their native land.³¹

In view of the above, one can posit that in the course of oil exploration, exploitation, mining, loading and off-loading or transportation, spillage

²⁸ A. Imosemi and N. Abangwo 'Compensation of Oil Spilled Victims in Nigeria: The More The Oil, The More The Blood' (2013) (2) (3) *Singaporean Journal of Business Economics and Management Students*, 37.

²⁹ Amnesty International: 'Bad Information Oil Spill Investigations in the Niger Delta' Available at <http://www.amnesty.org/en/document/after/028/2013/en/2013> Accessed 18/1/2017.

³⁰ A.A. Kadafa, 'Environmental Impact of Oil Exploration and Exportation in the Niger Delta of Nigeria' (2012) (12) (3) *Global Journal of Science Frontier Research Environment and Earth Sciences* 19; and T.A. Abii and P.C. Nwosu 'The Effect of Oil on the Soil in Eleme, Rivers State of the Niger Delta Area of Nigeria' (2009) (3) (3) *Research Journal of Environmental Sciences* 316.

³¹ See generally C.O. Opukri and I.S. Ibaba, 'Oil Induced Environmental Degradation and Internal Population Displacement in the Nigeria's Niger Delta' (2008) (10) (1) *Journal of Sustainable Development in Africa*; See also B. Terminski, 'Oil-Induced Displacement and Resettlement: Social Problem and Human Right Issues' (2011) Research Paper, School for International Studies, Simon Fraser University, Vancouver.

occurs and occasions inevitable losses to both man and his environment. Therefore, for losses suffered from oil spillage, the standard practice is to award compensation that would launch the victims back to their respective positions before the spillage or mishap occurred.³² The compensation accruable or to be awarded to victims of oil spillage depends on the level of injury suffered by either the victims or community of persons. In essence, legal injuries caused by oil spillage attract remedies which may take the form of damages, compensation or any other form recognized in law. This proposition was vividly captured by Emiri and Deinduomo viz: The communities and individuals in the vicinity of petroleum operations are the direct victims of whatever emission in the environment or pollution of the environment. Since these communities and persons are lawfully present (resident, ownership or occupation) on the land, they have a stake that must be protected. The law which vests the ownership [of oil] in the Federal Government and land in the State Government recognizes sufficient rights of parties (i.e. owners and occupiers of land) which are required to be compensated in the event of damage or loss.³³

The compensation payable in the event of oil spillage is hinged on ameliorating the damage caused to private properties, other valuables, or infringement on the occupation or usage of any part of the environment. Compensation, when paid to ameliorate the effect of oil spillage goes to the victims or owners of the properties damaged by the spill as an amendment of the loss or wrong they suffered.³⁴ More often than none, payment of compensation with respect to ameliorating injuries or damage caused by oil spillage is said to be an uphill task in Nigeria due to some unfavourable lacuna and grey areas inherent in the Municipal Statutes governing compensation in the oil and gas operations in Nigeria. The grey areas or lacunas in the statutes as the case may be, provide grounds and veritable

³² Oyewole Mustapha and Others, 'Adequate Compensation as a Tool for Conflict Resolution in Oil Polluted Wetlands of Niger Delta Region of Nigeria (2016) 455 3rd International Conference on African Development Issues. Available at http://eprints.covenantuniversity.edu.ng/6683/1/icadi_16pp455-461.pdf.

³³ F. Emiri and G. Deinduomo (ed). *Law and Petroleum Industry in Nigeria; Current Challenges: Essay in Honour of Justice Kate Abiri* (Malthouse Press Limited 2009) 139.

³⁴ K.S.A. Ebeku, 'Compensation for Damage Arising from Oil Operation' and *Shell Petroleum Development Company of Nigeria v. Amah Revisited* (March 2002) (6) (1) *Nigerian Law Practice Journal* 1.

lee-ways for payment of insufficient compensation or outright refusal of compensation of victims of oil spillages.³⁵

There is a problem of ineffective/non-payment of compensation to victims of oil spillage. The problem of non/ineffective payment of compensation seems to be prevalent because the legal and institutional framework for compensation in cases of oil spillage is incoherent and was not articulated to accommodate the menace of oil spillage which is the negative aspect of oil exploration. Similarly, the institutional framework also accounts for the inadequate or meager compensation in cases of oil spillage; and the inadequacy in compensation for oil spill damage had been identified as a major cause of conflict in the host communities/oil producing communities of the Niger Delta Region of Nigeria for which the fall out of such conflicts leads to destruction of oil and gas installations, income losses, less of manpower, loss of peaceful coexistence and abduction of expatriates and indigenous oil company workers.³⁶

The fact that the law of compensation is part of the general law of remedies which does not only apply to contract but also covers other elements like disturbances and injurious affections suffered by any party,³⁷ presupposes that the law of compensation covers such areas as personal injuries or disturbances sustained/suffered in the event of petroleum activities and oil spillage in particular.

DAMAGES IN RELATION TO OIL SPILLAGES

Generally, damages and compensation are often used conterminously especially as it relates to the general law of contract. Damages are the pecuniary compensation or indemnity which may be recovered in court or through any other legitimate means by any person who has suffered loss, detriments or injury, whether to his person, property or rights through the unlawful act, omission or negligence of another be it a natural or juristic person. This proposition was tacitly affirmed by the English Court of

³⁵ M. David and Wykie, *Abuse of Power-Social Performance of Multi-national Corporation* (New Horizons Press 1993) 142.

³⁶ Oyewole Mustapha and Others, 'Adequate Compensation as a Tool for Conflict Resolution in Oil Polluted Wetlands of Niger Delta Region of Nigeria (2016) 455 3rd International Conference on African Development Issues available at http://eprints.covenantuniversity.edu.ng/6683/1/icadi16_pp455-461.pdf. Accessed 18/1/2017.

³⁷ *Horn V. Sunderland Corporations* (1941) 2 KB 26 at 42.

Appeal in the case of *Livingstone v. Rawyards Coal Company*³⁸ per Blackburn where it was held inter alia that: “damages is the sum of which will put the party who has been injured or who have suffered in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation. The object of the award is to give the injured party compensation for the damage, loss or injury suffered.” Therefore, damages are monetary compensation for loss or injury suffered by an innocent party which for the purpose of this article can be likened to victims of oil spillage. It equally follows that money is not awarded as a replacement; rather, it is a substitute for that which is generally more important than money which in this case, may be no other thing than the violated rights of existence and source of livelihood of the victims of oil spillage. Hence, oil spillage is a wrongful act capable of giving rise to compensation and entitles the victims to claim damages because the essence of damages is to compensate a victim who has suffered wrong by the act of another.

Factors that Give Rise to Damages

In the oil industry, damages payable to victims of oil spillages emanates whenever there is collective injury to communal right or property which may manifest by way of pollution of communal stream, sources of water, communal land, etc. it also emanates whenever there is an injury suffered by an individual or class of persons in the community such as spillage leading to loss of farm produce, crops or fish ponds. The factors that give rise to such damages emanate from seismic activities, drilling activities and production activities of the oil companies.

In the general oil filed practice, seismic activities are the first to be carried out in the course of oil exploration, prospecting and mining.³⁹ The term exploration in relation to petroleum means ‘... to make a preliminary search by surface geological and geophysical methods including drilling below 91.44metrs...’⁴⁰ Also, Oil prospect in relation to petroleum simply means

³⁸ (1880) 5 AC 25 at 29.

³⁹ Petroleum Act 1969, s. 2(1). Although this Act is now sought to be repealed with the Petroleum Industry Act which process is hitherto inconclusive. Pending when the said Petroleum Industry Bill will be properly passed, assented by the President or becomes operative as an Act of the National Assembly reference shall still be made to the Petroleum Act which is still the principal legislature regulating the Nigeria Oil Industry.

⁴⁰ P.N. Oche, *Petroleum Law in Nigeria: Arrangement for Upstream Operations* (Heirs Great Commission 2004) 62-63.

the search for petroleum by all geological and geophysical methods which as well include drilling and seismic operations. Simply put, petroleum prospecting, in a nutshell, is the conscious search for a commercially viable accumulation of petroleum.⁴¹ Similarly, with respect to the meaning of oil mining, Oche described it as follows: An oil mining license vest in the lessee the exclusive right within the leased area to conduct exploration and prospecting operations and to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered in or under the leased area.⁴²

From Oche's perspective above, it means that oil mining is the exploration and prospecting of oil in a given area covered by oil mining lease in other to win, get, work, store, carry away, transport, export or otherwise treat petroleum discovered under the leased area as it ought to be treated. Haven encapsulated the meaning of oil prospecting, exploration and mining, what is of interest to this article is the fact that both oil explorations, prospecting and mining involve seismic operations/activities which does a great deal of damage to the environment, Host Communities and the inhabitants of the Niger Delta Region of Nigeria. Therefore, the question worthy to be asked is, in what ways does seismic activities occasion damage to individuals and the host communities of the Niger Delta Region of Nigeria?

In response, seismic activities involve the detonation of explosive and electric charges underground at periodic intervals while recording the resonance and resistive electronic connections at the central station. In the operational field, whenever the explosives are detonated in a place where larger hydrocarbon is deposited, it results to spill which inevitably occasions damage on the environment and negatively affects members of the host communities. Also, damage emanating from seismic operations occurs both on land and sea depending on where the geological and geophysical activities are being undertaken.

Similarly, in contradistinction to damage emanating from oil spill caused by seismic activities, other kinds of environmental damage like invading and clearing of reserved forest, misplacement of endangered species, destruction of soil structure, injection of alien chemicals into the soil, river and air pollution; shock and psychological disarticulation, transmission and

⁴¹ *Ibid.*

⁴² *Ibid.*

emission of dangerous fumes and other pollutants into environment also occasions in the process of seismic activities.⁴³

Drilling activities is another factor which gives rise to damage in the oil industry. Drilling activities in the oil industry takes place in four (4) phases namely; preparing the drilling site, exploration drilling, production testing and transportation of hydrocarbon.⁴⁴ All these stages cause damage at one point or the other to the host communities. The damage caused either takes the form of depositing waster/toxic chemicals, acidic substances, or Seepage into the environment in the course of transportation of hydrocarbon. Also, drilling is responsible for certain incidents of oil spillage and no matter the form it takes, damage actually occurs in the process of drilling activities.⁴⁵

Production of oil is the last phase of oil mining or drilling operation and it gives rise to damage. The kind of environmental damage associated with oil production includes but not limited to oil spillage and its menace, alteration of the hydrological character of rivers where the operation is being carried out and emission of acidic gas into the environment.⁴⁶ Accordingly, the British Shell Annual report captured environmental damage caused by production viz:

“... the construction of extensive oil and gas production infrastructure especially the area around the oil filed at flow stations alters the hydrological character of rivers and the land where it is located... in the process of oil production, crude oil comes out of the ground through connecting pipes and other drilling hosts. Fresh crude oil contains dissolved petroleum gas, acidic gas, and high quantities of hydrogen sulphide... its contact on the soil surface and river cause a lot of

⁴³ See Generally CLEARING HOUSE, ‘Tribal Energy and Environmental Information’. Available at <https://teeicindianaffairs.gov/er/oilgas/impact/drilldev/> Accessed 18/7/2017.

⁴⁴ P.N. Oche, *Petroleum Law in Nigeria: Arrangement for Upstream Operations* (Heirs Great Commission 2004) 62-63.

⁴⁵ *Ibid.*

⁴⁶ British Shell Corporation (BP) Annual Report, (1997) 50.

damage to the environment if not properly treated.⁴⁷

Further, production operation is a process which ends at the terminal where oil is channeled into tanks, that is, the oil storage tanks at the terminal for the purpose of removing the production water⁴⁸ before reloading the oil into the cargo/ship for shipment. This water is extremely offensive, poisonous, oily and very harmful when discharged into the environment.⁴⁹

Another factor that gives rise to damage is oil spillage in itself. In this instance, reference is been made to spillage caused by other factors after oil prospecting, exploration and mining. These other factors comprise spillages caused by equipment failure, corrosion of oil installation, sabotage, vandalization etc.

THE PURPOSE OF COMPENSATION

As earlier adumbrated, compensation is the pecuniary award an injured party is entitled to get due to the injury sustained or suffered by him as a result of the wrongful conduct/act of another. Primarily, the essential purpose of compensation is to place the injured party as far as possible in the position he would have been had the wrong complained of not occurred.⁵⁰ However, it can be argued with respect to oil spillage that monetary compensation alone is inadequate as an award of compensation. Without clean-up, remediation and restoration of the polluted part of the environment may still cause hardship to persons who are not directly affected by the physical spill but may one way or the other have something to do with that part of the environment where the spillage occurred.

It has been proven that adequate compensation is a veritable tool for conflict resolution in the oil-polluted Niger Delta region of Nigeria hence, to make good for the losses suffered by victims of oil spillage, the standard practice entails the award of compensation capable of re-launching the victims back to the *status quo* before the spill.⁵¹ It is in this regard that this

⁴⁷ *Ibid.*

⁴⁸ This is the water which comes out simultaneously with crude oil in the process of oil mining.

⁴⁹ British Shell Corporation (BP) Annual Report, (1997) 50.

⁵⁰ *CBN v. Beckiti Construction Ltd* (2011) 5 NWLR (Pt. 1240) 203.

⁵¹ Oyewole Mustapha and Others, 'Adequate Compensation as a Tool for Conflict Resolution in Oil Polluted Wetlands of Niger Delta Region of Nigeria (2016) 3rd International Conference on African Development Issues 455-460.

article will consider the various type of compensations available for victims of oil spillage in the Niger Delta region of Nigeria.

Types of Compensation

Suffice it to say that the standard practice whenever oil spillage occurs is to award compensation or take such other steps capable of ameliorating the personal or environmental injury/loss suffered by victims of such spills.⁵² In essence, in the cases oil spillage or environmental pollution as the case may be, there are three (3) major types of compensation or remedies available to victims of oil spillage or pollution namely: (a) Environmental restoration; (b) Compensation; and (c) Derivation.

(a) Environmental Restoration

This kind of remedy is aimed at rehabilitation or restoration of the spilled, degraded and the polluted environment. It is premised on the ‘polluter pay principle’ which implies that anybody responsible for environmental degradation is bound to clean- up and restore the polluted area. In recent time, this is the principle whereupon the UNEP Report⁵³ for the clean-up of Ogoni land was predicated upon.⁵⁴

(b) Compensation

This is another specie of remedy available for victims of oil spillages in Nigeria. It is primarily predicated on the principle of Natural justice mainly sitting on the principle of ‘*Ubi jus ibi remidium*’ literally meaning that to any legal injury there must be a remedy. This principle is essentially premised on the rationale that environmental restoration may not be sufficient where the victims of oil spillage in addition to pollution of their environment, suffered physical and actual damage different from environmental degradation. Instances where victims suffers double jeopardy in cases of oil spillage include, where the spill causes environmental degradation, pollution and also leads to the destruction of domestic animals, fish ponds, economic trees, agricultural crops and/or affects the health condition of the victims. The above proposition was aptly

Available at http://eprints.covenantuniversity.edu.ng/6683/1/icadi16_pp455-461.pdf. Accessed 18/1/2017.

⁵² *Ibid.*

⁵³ United Nations Environmental Program Report.

⁵⁴ See generally, the UNEP Environment Assessment of Ogoni Land. Available at [www.shell.com.ng.environment](http://www.shell.com.ng/environment) Accessed 18/7/2017.

stated in *Shell Petroleum Development Company v. Farah*⁵⁵ where the Nigerian Courts held that any victim who suffered actual and environmental damage should be compensated in monetary terms and the polluted environment should also be restored. Therefore, fair compensation in cases of oil spillage comprises monetary compensation and an order of environmental restoration or remediation of the affected areas.

(c) Derivation

This is another type of remedy or compensation recently introduced in Nigeria. The Constitution of the Federal Republic of Nigeria (CFRN) 1999 as (amended),⁵⁶ provides that allocation of not less than thirteen percent (13%) of the revenue accruing to the Federation Account directly from any natural resources be given to the states endowed with such resources. The jurisprudential bases for this provision are aimed at enhancing rapid infrastructural and human development in the oil and mineral endowed states.⁵⁷ However, derivation cannot *stricto sensu* be qualified as a form of compensation or remedy to victims of oil spillage. This is so because, the derivation is paid directly from the Federation Account to the States Account and it is used by the States as state fund hence does not directly touch the lives of the victims of oil spillage. In accentuating this proposition, it is pertinent to state that oil producing communities or victims of oil spillage, do not enjoy any special privilege from the derivation paid into the various states accounts in Nigeria. Odiri⁵⁸ succinctly captured the expose in his argument as follows:

The impacts of the fund released to the oil-bearing states are not felt by the people in these oil producing communities. Whereas these communities bear the brunt associated with oil exploration and exploitation... Once these funds get to states governors, the money is mismanaged by states officials while the little that remains are used to develop the state capital only. The capitals of these states are not oil producing communities... So the present policy must be jettisoned

⁵⁵ (1995) 3 NWLR (pt. 382) 148.

⁵⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 162 (2).

⁵⁷ P.N. Oche, *Petroleum Law in Nigeria: Arrangement for Upstream Operations* (Heirs Great Commission 2004) 52- 54.

⁵⁸ M. Odiri, 'Punch Newspaper: Community Own Derivation' (27th March 2000) 43.

while another one which takes care of people of the oil producing communities be put in place.

It is therefore not out of context to press forward the fact that the oil-endowed communities of the Niger Delta Region of Nigeria are not satisfied with the inherent arrangement enshrined under s. 162(2) of Constitution of the Federal Republic of Nigeria 1999 (as amended) and same in the spirit of equity cannot be said to qualify as remediation mechanism to ameliorate injuries caused by oil spillage. In contradistinction to the provision of s. 162 (2) of CFRN 1999 (as amended) aforesaid, solace may come to the host communities of Niger Delta if the Petroleum Industry Bill (PIB) which has been passed by Nigerian National Assembly is eventually assented by President. This is because PIB provides for ten percent (10%) fund to be paid to the oil-endowed communities of the Niger Delta Region of Nigeria and this may be a fall back for oil spill victims of the said communities if properly managed by managers of the fund.

Principles of Assessment of Compensation and Damages

Whenever there is an incident of oil spill, in order to ensure fair and adequate compensation mechanism or scheme, an evaluation of the degree of damage, injury, or harm caused has to be made and ascertain. The evaluation or assessment is required to be carried out by estate surveyors, valuers or professionals oriented in the particular area of life or parts of the environment affected by the spill.⁵⁹ This requirement of law was upheld in the Nigerian case of *Seismograph Services v. Ogbari*⁶⁰ wherein the case was dismissed due to lack of expert to prove the damage alleged. Without much ado, Imosemi and Abangwu⁶¹ captured the essence of the principle of assessment of damages/compensation thus: Before compensation is paid, the damage is evaluated. By virtue of Cap E 13, Laws of the Federation of Nigeria (2004), the estate surveyors and the valuers (appraisers) are the sole professionals statutorily recognized in Nigeria to provide advice on the value of pecuniary interests in land or landed

⁵⁹ See generally, Estate Surveyors and Valuers (Registration etc) Act. Cap E13 LFN 2004.

⁶⁰ (1974) 4 SC 85.

⁶¹ A. Imosemi and N. Abangwu 'Compensation of Oil Spilled Victims in Nigeria: The More The Oil, The More The Blood' (2013) (2) (3) *Singaporean Journal of Business Economics and Management Students*, 32 – 33.

property for various purposes including compensation arising from spillage.

Accordingly, the estate surveyor and valuers carry out the evaluation upon which the claimant/defendant or victims of oil spillages can seek redress or set up a defence.⁶² Often at times, this evaluation is scientifically based and predicated on evidence. The fulcrum or main role of the experts in the course of the evaluation is to help the court arrive at the just and fair judgment on the quantum of damages considered fairly reasonable and adequate in the circumstance and the criteria for such assessment is based on the unit rate provided by the government.⁶³ In addition, where the injury suffered is one that affects farmland, the Estate Surveyor quantifies the damage; the soil expert evaluates and determines the duration of time the soil will remain unproductive for cultivation as well as the value of products or crops on the farmland and when the value of products on the spilled land is ascertained, it is multiplied by the number of years the spilled farmland will remain unproductive.⁶⁴

In essence, the assessment of damages in cases of oil spillage is purely professional and the evaluation is scientific and quantitative in nature with services of accountants, environmental experts, estate surveyors, petrochemical engineers, health experts, soil management experts etc engaged in the process of evaluation, all depending on the nature of damage suffered by the victims and the part of the environ spilled. Effective and professional evaluation is important in claiming compensation for injury or harm suffered as a result of oil spillage. It is so important that the success or otherwise of the claim is to a larger extent depended on the assessment and evaluation of the experts' evidence. See *Seismography services v. Ogberi* Supra. Further, there are several methods employed by the estate surveyors and valuers in the course of evaluation of the damage caused by oil spillage. Among others, there are two most essential methods namely, 'Investment method' and 'Before and After method'.⁶⁵

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ G.O. Udeli, *Public Land Acquisition and Compensation Practice in Nigeria* (Ikeka Lagos. John West Publications 1987) 119.

(a) Investment Method

According to Udeli,⁶⁶ the Investment Method is based mainly on the estimated income derivable from an investment over a period of time at a given interest rate. In the doctrine of this method, the net income is derived by deducting all the outgoings, i.e., expenses which ought to have been made during a given period of time from the gross income and the difference represents the amount payable as compensation.⁶⁷ The investment income method is quite suitable for assessing compensation for permanent as well as temporary impairments for quantifiable disturbances. Also, this method is mainly applicable to transactions where one has made an investment and is equally expecting an income. To this end, cases of permanent impairment such as crops and fish pond destruction, the unit rates established by the Federal/States Governments may be used to determine the amount payable as compensation to any particular victim of oil spillage.⁶⁸

(b) Before and After Method

This kind of method is used to arrive at compensation for temporary or partial impairments caused by oil spillage. It involves the deduction of the value of the items destroyed immediately after the spill from the value of the same items immediately before the spill occurred. The difference in value represents the level of injury done to the items the victims are entitled to be compensated.⁶⁹ That this method is faulty, it is so because in most cases of oil spillage, it is extremely difficult to retrieve the destroyed items or the area of land destroyed by oil spillage. Similarly, this method requires accurate records before and after the destruction which is nearly impracticable due to the attitude or the literate level of most poor victims of oil spillages and the lackadaisical and nonchalant attitude of most Nigerians in record keeping.

In addition, it can, however, be argued that where reliance is placed on the 'Before and after method' and it happens that no available record exist, reliance can also be placed on any empirical evidence to prove the level of injury suffered by the victim of oil spillage. This position was emphatically

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ A. Imosemi and N. Abangwo 'Compensation of Oil Spilled Victims in Nigeria: The More The Oil, The More The Blood' (2013) (2) (3) *Singaporean Journal of Business Economics and Management Students*, 32-33

⁶⁹ *Ibid.*

stated in the Nigerian case of *Dumez (Nig) Ltd V. Ukpeni*⁷⁰ where it was held that ‘The mere absence of the records of previous income from a business is not fatal to claim for compensation for loss of business provided there is acceptable evidence from other sources about such income’.

Finally, assessment of compensation is done by professionals and it is based on the unit rates provided by the government, even though, more or less compensation can be paid depending on the understanding and mutual agreement of parties.⁷¹ The assessment of compensation puts into consideration the degree of personal injuries suffered by the injured party including damage to economic trees, structures affixed on the land, fishing rights, shrines, venerable objects and many more. It also encompasses compensation for injurious affection and disturbances of the surface right of the claimant/injured party.⁷²

Quantum of Compensation

Quantum of compensation simply means the amount payable as damages in cases of oil spillage. First and for most, the quantum of compensation to be paid for environmental damage is determined by the assessment of the affected area. Secondly, the quantum of compensation to be paid to victims of oil spillage also depends on the extent or magnitude of the ecological disturbances caused by the spillage.⁷³ Hence, in order to determine or ascertain the quantum of compensation payable upon incidents of oil spillage, full information on the condition of the affected part of the environment before the spill, during the spill and after the spill is required to be ascertained.⁷⁴ In ascertaining the condition of part of the environment affected by the spill, the following factors are usually considered:

- a) The area polluted or spilled – That is, whether it is an area of high value of land or not.
- b) The population and type of the community where the spill occurred
- c) The time of the year – That is, whether the pollution occurred in the dry or rainy season;

⁷⁰ (1991) 4 NWLR (Pt. 188)745.

⁷¹ A. Imosemi and N. Abangwo ‘Compensation of Oil Spilled Victims in Nigeria: The More The Oil, The More The Blood’ (2013) (2) (3) *Singaporean Journal of Business Economics and Management Students*, 32-33.

⁷² J.A. Omotola (ed), *The Quantum of Compensation for Oil Pollution: An Overview* (Lagos, University of Lagos Press 1990) 290 – 291.

⁷³ *Ibid.*

⁷⁴ *Ibid* 290.

- d) The size of the crops affected – That is, whether they are seedlings, medium, or matured crops. The amount of money spent on the crops/cost of production is also considered and
- e) The future damage and general effects of the pollution/spill are also considered.⁷⁵

In their views, Ajomo and Omobolohi⁷⁶ state that in quantifying the quantum of compensation, victims should endeavour to add the medical history or respiratory problems and other health issues caused by or associated with the spillage owing to air pollution. Also, it is necessary when quantifying quantum of compensation payable to victims of oil spillage, to include the professional evaluation report of the nature of the affected area in order to ascertain the level of damage occasioned by the spill.⁷⁷

In addition, in quantifying the quantum of compensation payable in cases of oil spillage, emphasis is not only had to actual damage suffered but also on the type of disturbances and injurious affection suffered. Disturbances and injurious affection are two different heads of compensation which may be claimed separately even though both may exist in one claim. A question can easily be asked as to the difference between disturbances and injurious affection with respect to compensation in cases of oil spillage. Accordingly, the most important distinction between these two heads of compensation is that, in the case of injurious affection, there is usually a need to prove the loss of the subject matter of the claim alleged to have been affected whereas, in claims touching on disturbances, the subject matter of the claim is usually loss of business, trade, or biological disturbances.⁷⁸

Furthermore, compensations in cases of oil spillage are claimed through any of these two heads (disturbances or injurious affection) and in certain cases, both may be simultaneously invoked especially when the incident of oil spillage is such that does not only cause environmental damage, but

⁷⁵ J.A. Omotola (ed), *The Quantum of Compensation for Oil Pollution: An Overview* (Lagos, University of Lagos Press 1990) 290 – 291.

⁷⁶ M.A. Ajomo and A. Omobolohi, *Environmental Law and Sustainable Development in Nigeria* (Lagos Nigeria, Institute of Advanced Legal Studies Press 1994) 63.

⁷⁷ *Ibid.*

⁷⁸ J.F. Fekumo, *Disturbance and Injurious Affection in Nigerian Petroleum Industry* (Springfield Publishers 1998) 181.

also affects the health of the victims by way of inhalation of fumes, emission of gas and consumption of hydrocarbon through polluted waters or exposure to other health hazards through physical contact to hydrocarbon.

CONCLUSION

This article reveals that oil spillage is a major problem facing the oil endowed communities of the Niger Delta Region of Nigeria. It also shows that oil spillage poses environmental challenges and requires a pragmatic National attention in order to cushion its menace. The causes of oil spillages in Nigeria is principally associated with the negligence of the oil companies and the acts of third parties which often manifests by way of sabotage, vandalism and other vices. Similarly, oil spillage negatively affects the environment, National earnings and also poses health challenges to its victims. Finally, the compensation of victims of oil spillage is not always guaranteed due to *lacunae* and statutory defenses in the Nigerian municipal legislation regulating the oil and gas industry.

RECOMMENDATIONS

It is required that adequate steps be taken to ameliorate identifiable problems. Therefore, to minimize the occurrence of oil spillage as well as ensure compensation of its victims, the following recommendations are instructive:

- a) The Petroleum Industry Governance Bill passed by the Nigerian National Assembly and now awaiting presidential assent as well as the other facets of the Petroleum Industries Bill 2012 which is primarily aimed at repealing some of the archaic municipal legislation, should be given expedient/speedy passage and presidential assent as some of the provisions contained in the Bill are capable of ameliorating the plights of victims of Oil Spillages in Nigeria.
- b) There should be a scheme of Periodic National Orientation by NOSDRA in collaboration with National Orientation Agency, in respect of:
- c) The causes, effects and management of oil spillage in Nigeria
- d) The available remedies for victims of oil spillage under the various ratified and domesticated International Conventions, Common Law Principles, Prevailing Statutes and Regulations in Nigeria.
- e) The Nigerian Nation should identify herself with, ratify and domesticate the relevant international conventions dealing

with/addressing issues of compensation arising from damage caused by oil pollutions/spillages.

- f) There should be a holistic and comprehensive enactment to be known as ‘Oil Spill Prevention, Management and Compensation Act (OSPMCA)’ specifically designated to address issues of prevention, control, effects and management of oil spillage. The Act should also, specifically address issues of compensation of victims of oil spillage including cleanup, remediation, environmental restoration and other related matters.
- g) Among others, the recommended OSPMCA should essentially contain the following:
- NOSDRA Act should be repealed and its relevant provisions should be absolved into the OSPMCA
 - An Agency to be known as ‘National Oil Spill Assessment, Remediation and Compensation Agency (NOSARCA)’ should be created to abolish NOSDRA.
 - Liabilities and compensations should be expressly addressed to avoid any form of ambiguity.
 - A formula for compensation of victims of oil spillage should be clearly stated.
 - Environmental restoration operations should be clearly stated with institutional responsibilities assigned.
 - Establishment of Third Party Oil Spill Intervention Fund (T-POSIF), to retribute innocent victims of oil spill caused by the nefarious acts of third parties is also recommended.
 - Imposition of compulsory quarterly contribution to the Third Party Intervention Fund on all the oil exploration, prospecting and mining companies in Nigeria whether onshore or offshore areas.
 - Establishment of a Special Health Scheme to be known as ‘Oil Spill Victims Intervention Health Care’ (OSVHC) as a department of the OSPMCA, charged with the responsibility of providing free medicals for inhabitants of the oil spill areas suffering from oil-related health hazards.
 - Penalties for failure to adhere to the provisions of OSPMCA should include among others: revocation of license, lease, rights, or seizure of assets etc.

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