

**CRITICAL REVIEW OF COMPENSATION FOR OIL
POLLUTION IN NIGERIA**

BY

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**A Dissertation Submitted for the Award to the Postgraduate School in Partial
Fulfilment of the Requirements for the Award of Master of Laws (LL.M) Degree
of the Delta State University, Abraka**

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CERTIFICATION

I certify that this work was submitted by **OMOZUE, Moses Ogorugba** in partial fulfillment of the requirements for the award of Master of Laws (LL.M) degree of the Faculty of Law, Delta State University, Abraka, Nigeria.

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DECLARATION

I hereby declare that apart from references from other people's works which I have duly acknowledged, this work is the product of my personal research and that this work has neither in whole nor in part been presented for a degree or certificate anywhere else.

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Student

Date

DEDICATION

To God Almighty

ACKNOWLEDGMENTS

I Thankthe Almighty God for providing me with good health, life and sustenance to go through the LL.M programme.

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A. C.	-	Appeal Cases
C. A.	-	Court of Appeal
Cap.	-	Chapter
Ed.	-	Edited, Edition
Eds.	-	Editors
FREPR	-	Fundamental Rights Enforcement Procedure Rules
Ibid.	-	Ibidem
LFN	-	Laws of the Federation of Nigeria
Loc. Cit	-	Loci Citato
NGOs	-	Non-governmental Organisations
No.	-	Number
Op. Cit	-	Opera Citato
P.	-	Page
Pp.	-	Pages
Pt.	-	Part
U.N	-	United Nations
Vol.	-	Volume
OMPADEC	-	Oil Mineral Producing Areas Developing Commission
OPEC	-	Organization of Petroleum Exporting countries
SPDC	-	Shell Petroleum Development Company
NLR	-	Nigeria Law Reports
MEND	-	Movement for the Emancipation of the Niger Delta
NDDC	-	Niger Delta Development Commission
MOSSOP	-	Movement for the Survival of the Ogoni People
IYC	-	Ijaw Youth Council
NDPVF	-	Niger Delta Peoples Volunteer Force
NDV	-	Niger Delta Vigilante
FEPA	-	Federal Environmental Protection Agency
UNDP	-	United Nations Development Programme
NWLR	-	Nigeria Weekly Law Report

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ABTRACT

Many natural resources which are necessary for economic development such as oil are located on land that is inhabited by communities which depend on that land for survival. The foremost side effect of the operation of the oil industry is pollution. Exploitation of the resource often leads to conflict about national development and environment priorities, the allocation of resources, and the manner in which those who harvest the resources interact with the host communities. The laws regulating, the payment of compensation for pollution are neither comprehensive nor adequate. This is partly because it is an externally creating activity which occurs, outside the market place and therefore no appropriate compensation exchange for it. In other words, compensation has not faired well. Exploration and exploitation of the resource can result in environmental degradation which often has potentially negative effects on the basis enjoyment of some human rights. In such a situation the inhabitants of the area become environmental victims. The peoples of the Niger Delta of Nigeria are in just such a quagmire as a result of oil pollution. They suffer human rights violations and are in a desperate search for environmental democracy, which are concise expressions of the need for environmental protection, the observance of human rights and sustainable development, which requires the inclusion of the people, who are directly affected in the decision-making process. These dissertations posit and programme the framework which focus on community development through execution of projects and programme which improve the qualities of life of those people. In other to achieve this aim, the researcher adopted doctrinal research method. The work based on the observation highlighted above recommend the need to develop and advance alternative remedies to compensation in pollution resulting from exploration.

CHAPTER ONE INTRODUCTION

1.1. Back Ground to the Study

The concern of legal writer's until recently appears to have been consumed by the desire to appraise the legal regimes governing the operations of Oil Mineral prospecting companies in Nigeria with a special focus on the question whether the said regimes are adequate for the prevention of pollution and the protection of the Nigeria environment particularly oil installations. This concern has been articulated by Nwosu¹ in the following words.

The tendency has been to review petroleum legislation and other enactments which impinge directly or indirectly on the activities of the petroleum industry with the aim of determining the adequacy of the statutory provisions and the effectiveness of enforcement machinery in preventing, reducing, and responding to the adverse ecological and human environment impact of petroleum operations.

In other words, the concern has not been well focused on the question of Oil compensation and its adequacy in the resolution of matters arising from pollution in mineral oil prospecting. For instance, what is the measure of damage in compensation dispute and what are the facts a claimant is expected to lay before the court to succeed in a claim for compensation? Was compensation adequately tackled and addressed or, redressed the multifarious problems of oil communities in Nigeria in search of sustainable development? Are there no better alternatives to monetary compensation in disputes arising from the weaknesses of these alternatives?

1.2. Statement of Problem

The problem of remedies in both financial and other terms has become complex. According to *Allswell Osini Muzan*², an inventory of the injuries which may be occasioned by the multifaceted industry is, realistically unquantifiable, and for this reason, this complex has been noted by experts in the field as one likely to continue to cause, incremental concerns for conflict resolution and national security in Nigeria.

1. Nwosu, E.O. Petroleum Legislation and Enforcement Laws and Standards in Nigeria. The Nigeria Judicial Review. Vol. 7 (1998-1999) P 80

Therefore, are there legal regimes and remedies for payment of compensation for pollution damage? If there are none, why? If there are, are they adequate as can meet the needs of the victims and international standards? Have the victims and claimants fared in the process of getting compensated for pollution claims? Are there more legal hurdles and impediments to them than there are lee-ways and legal facilities for the establishment and appropriation of the claims and then there are lee-ways and legal defenses for the oil companies to go scot-free.

In fact, does it not seem to be that there are more cogent extant and consistent criminal legal regimes for offences against the vandalization and sabotage of oil installations and facilities than there are any articulated regime for compensation claims victims of pollution?

Above all, the question as to whether compensation has proved from hindsight, to be the most adequate remedy, for oil pollution matters in Nigeria appears to elicit a disaffirmative response. There is therefore the need to develop alternative remedies to monetary compensation in pollution matters in Nigeria.

1.3. Aim and Objectives of the Study

The general aim of this dissertation is to consider the prevailing dominant methodology of compensating oil pollution victims in Nigeria and to prefer and advance alternative remedies to the methodology in the light of the result rather than ushering in sustainable development and cohesion in the communities.

1.4. Methodology

The methodology adopted in this dissertation is the doctrinal research methodology which involves the copious use and reliance on the library for Primary and Secondary source material especially statutory laws and instruments, case laws and the opinion of legal text writers rendered in the area of oil and gas law in Nigeria, and current print mediareports on oil and energy matters. The Nigerian Agip Oil Company Limited and Shell Petroleum Development Company Nigeria Limited on the other hand. Letters of demand and other written communications made by victims to the oil companies, most times through legal representatives, were also obtained.

1.5. Literature Review

In the course of this research work, the researcher in the quest to give this work its resourceful and comprehensive presentation, made reference to and reviewed works of some renowned authors with the view to

evaluating their position in relation to compensation in oil pollution which forms the fulcrum of this research.

The works of the following authors as outlined below were critically examined.

J.A. OMOTOLA – ENVIRONMENTAL LAWS INCLUDING COMPENSATION

The work of this author is a substantial resourceful material in the study of compensation in oil pollution in Nigeria. It comprehensively treats compensation in various ways, quantum of compensation which is payable to individual or communities affected by oil spillage. Also guiding lines on the issue of assessment of compensation. It can thus be argued that the yardstick for compensation is still the open market value of the subject-matter for assessment as much as it is, practicable so to do. Although, this text being a very good resource material for this research work it differs substantially from the focus of scope of quantum and assessment of compensation only.

EBIKURAI BRINEMUGHA: In his book titled: Oil Exploration and Development in the Niger Delta Region, the approach of this scholar in examining the concept of compensation in oil pollution is quite different from that of **J.A. OMOTOLA** as discussed above; this author is concerned about empowerment of women and youth including capacity building. The book discusses the perception of women and youth development. This research work is concerned about compensation in oil pollution in Nigeria, but the author maintained that instead of compensation to communities in case of oil pollution, the oil companies in collaboration with host communities and Government should strive towards achieving this in geometric forms. The author went further to state that government and international agencies should respond with requisite (appropriate) intervention. For example, the ministry of women affairs at the national and state levels has shown positive needs of women and the challenges of their role in society. Similarly, international aid organizations have shown interest and facilitated the attachment of these objectives, and in this case both in relation to women and youth development specifically, too, oil companies can collaborate with the National Directorate of Employment (NDE) to enhance youth development programmes.

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3. Omotola, J.A. in *Environmental Laws in Nigeria: Including Compensation*: (ed) (Mayodele Ajayi Enterprises, 1990)
 4. Ebikurai Brinemugha in *Oil Exploration and Development in the Nigeria Delta* (Kwale, SSB Enterprises Publishing Division, 2011)

The book though elaborate in the areas discussed, did not discuss anything on compensation. This work will fill the gap to compliment the various ideas elicited by authors.

AJUZIE C. OSONDU In his Book titled: *Our Common Environment*; discusses the statutory provision for payment of compensation for environmental degradation, but also refers to efforts by the person who caused the damage to actually “make good” the injury caused to the environment where this is possible. However, the author went further to state the redress which a private person and communities must prove before a competent court of law can award compensation for the affected persons or communities. The author cited the case of *Chief A.S. Amos and others (for themselves as individuals and on behalf of Ogbia Community Brass division v. Shell – B.P Petroleum Development Company of Nigeria limited and another*. The Supreme Court held that all the items of special damage and other claim as to compensation were not proved. The author did not discuss the cause of Oil pollution and the need to compensate the victims. The author rely his point on the decision of the supreme court which held that you must prove any damage over and above that suffered by the persons claiming or the communities. The book though elaborate in the areas discussed, did not discuss anything on compensation. This work will fill the gap to compliment the various ideas elicited by authors.

LAWRENCE ATSEGBUA, VINCENT AKPOTAIRE, FOLARIN DIMOWO:-In their Book titled: *Environmental Law in Nigeria Theory and Practical* discussed the modern technology and the ever-increasing human population to such, extent that many scientists believe that the existence of man and other forms of life on the earth is being seriously threatened.

Ultimately, how the environment is managed has a direct bearing on the quality of life of every living being, a poor degenerated and polluted environment is bound to do irreparable damage to human existence and could make the earth inhabitable to man if measures are not implemented to control the effect of pollution on the environment. More specifically, with the dawn of industrialization and urbanization, people wanted things quicker, bigger, and faster. The result of this was unwanted waste in solid liquid and

gaseous forms, which eventually give rise to environmental pollution problems.

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5. Ajuzie C. Osondu: *Our Common Environment: Understanding the Environment, Law and Policy*: (Lagos, University Press, 2012)
 6. Lawrence Atsegbua, Vincent Akpotaire, Folarin Dimowo: *Environmental Law in Nigeria: Theory and Practical* (Ishor, Benin city Ambik Press, 2009)

The effect of pollution on the environment is that once the environment is polluted, the quality of the environment, changes from its original state. The environment is considered polluted when it is altered in composition or condition directly or indirectly as a result of the activities of man so that it becomes less suitable for some or all of the uses for which it is suitable in its natural state? Protections of human life takes precedence over everything else in our society and, are very obvious, because environmental pollution destroys the physical, mental and social wellbeing of man.

The authors went further to discuss the case of the Gulf of Mexico Oil Spill, April, 2010 as being the biggest environmental disaster in America. It occurred in the Gulf of Mexico on an offshore facility owned by the British Petroleum. About 419 million barrels of oil was spilled for about three months. British petroleum struggled to cap the underground drilling facility. This spill cost over two billion dollars to clean up and the environmental damage may not be easily quantified. The book though elaborate in the areas discussed, did not discuss anything on compensation. This work will fill the gap to compliment the various ideas elicited by authors.

AKPO MUDIAGA-ODJE: In his book titled: *Niger Delta and the Politics of Oil*, discusses the effects caused to the people of the Niger Delta, their environment as well as their livelihood by the emission of gaseous substances from Oil exploitation and gas flaring by multinational oil companies. The author observes with anger rather than sorrow if not for the magnanimity of God Almighty, the inhabitants of the hinterland in the Niger Delta ought to have long been wiped out of existence. The author opines that the severity of the pollution is so much that in some areas along the creek settlements, a permanent dark smoke engulfs the entire area which in turn produces the infamous "black rain". The oil companies always allege sabotage.

Although Akpo Mudiaga-Odje identified the causes and effects of oil pollution in Niger Delta the author failed the compensation involved to victims of oil pollution in the communities, rather he discusses how oil companies pay

paltry sum of money to the head of community, thereby pitching same against their people. This is therefore need to further discuss this.

7. Akpo Mudiaga-Odje: Niger Delta and The Politics of Oil (Warri Delta State, Jenique International company Limited, 2008)

The book though elaborate in the areas discussed, did not discuss anything on compensation. This work will fill the gap to compliment the various ideas elicited by authors.

CHEGWE EMEKA N.: In his article titled: Law and the Society, Construction of criminal Behaviour: The author opined that the Oil Producing Communities in the Niger Delta Area of Nigeria have been embroiled in one form of crises or the other for many years because of utter neglect of their environment by multinational oil companies. In areas where oil is produced, the immediate inhabitants have lost their means of livelihood due to oil pollution damages. There are massive kills of fish, larvae, birds, crabs and other animals and general dislocation of economic and social life of the communities who may rely solely on the water for livelihood. The communities lack good roads, schools, health care services and regular power supply. In contrast nearby, those area occupied by the oil companies for industrial, residential and other uses are supplied with necessary infrastructural amenities like clean water and electricity. This vengeance, often lead the inhabitants of the oil producing communities (which have formed themselves into militant groups) to resort to sabotage and kidnapping of oil production workers. The book though elaborate in the areas discussed, did not discuss anything on compensation. This work will fill the gap to compliment the various ideas elicited by authors.

AKATUGBA M.A. AJOMO: In his article titled International Environmental Law: influence of international conventions on Nigeria environmental Law. He writes on environmental pollution and degradation which has no territorial limits. The author stated further that the air which is polluted in Nigeria may cause health and environmental hazards in neighboring Niger Republic or other further regions of the world. Worldwide gas blowouts and leakages has adversely affected human life; in oil and gas production spills during production, from tanker accidents inflict has caused major biological damages, causing death to fish eggs plank tonic community, mammals and fish itself. Oil birds which washed ashore after oil spill accidents are a source of depletion of phytoplankton productivity as their guan (fecal particles) are important nutrient.

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8. Chegwe Emeka N. Law and the Society, Construction of Criminal Behaviour: Some Nigeria illustration in Delsu Journal of Jurisprudence and International Law (DELJJIL) Vol. 1 No. 1. 2006
 9. Akatugba M.A. Ajomo, International Environmental Law: influence of international conventions on Nigeria environmental Law in Delsu Journal of Jurisprudence and International Law (DELJJIL) Vol. 1 No. 1. 2006

They affect the marine ecosystem adversely. The catalogue of environmental pollution and degradation are inexhaustible. The book though elaborate in the areas discussed, did not discuss anything on compensation. This work will fill the gap to compliment the various ideas elicited by authors.

EMMANUEL ONYEABOR: In his article titled; Addressing Pitfalls in Environmental Protection Laws in the Oil Sector for Effective Human Rights Protection. According to the author he said compensation is meant to bring an injured party as far as possible to his original position prior to injury. Few of the laws in issue expressly provided for compensation of victims. For instance, the Oil Pipelines Act provides for compensation in respect of surface rights and in respect of the loss of value of the land affected by the pipeliner.

The author base his article on the oil pipelines act which failed to mention any specific amount to their victims. The book though elaborate in the areas discussed, did not discuss anything on compensation. This work will fill the gap to compliment the various ideas elicited by authors.

JAMES BOYD: In his article titled; Financial Assurance Rules and Natural Resources Damage Liability: A Working Marriage? The author asserts that financial responsibility rules, also known as financial responsibility requirement, are an increasing common component of environmental regulation. The rules require potential polluters to demonstrate financial resources adequate to 'compensate society in the event of environmental damage. The author focuses on financial assurance for liabilities associated with natural resources damages. The author failed to mention how victims of oil pollution are to be compensated by their polluter. The author also failed to consider the communities who suffered the pollution caused by Oil Company rather he focuses on finance which are paid to communities' head thereby causing conflict in the communities. The book though elaborate in the areas discussed, did not discuss anything on compensation. This work will fill the gap to compliment the various ideas elicited by authors.

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10. Emmanuel Onyeabor.; Addressing Pitfalls in Environmental Protection Laws in the Oil Sector for Effective Human Rights Protection: Environmental and Planning Law Review Vol. 2 No. 4 2005 (Lagos, Reuben Theodore Okonkwo & Co.Publisher Ltd, 2005)
 11. James Boyd: Financial Assurance Rules and natural Resources Damage Liability: a Working Marriage?: Environmental and Planning Law Review Vol. 2 No. 4 2005 (Lagos, Reuben Theodore Okonkwo & Co.Publisher Ltd, 2005)

DOUGLAS HELTON AND TONY PENNI: In their book article titled; the cost of oil spills: Putting response and natural resources damage cost in perspective writes extensively on party liabilities for natural resources damages include the cost of restoring injured resources to baseline, compensating for interim losses, and assessing natural resources damages. They went further to state that oil pollution act allows trustees to recover their reasonable assessment cost, including the cost of conducting studies and designing restoration projects, and coordination cost. These authors went to mention third party claims for lost profits, property damage, or personal injury, for example, claims by fishermen and hotel and tourist operations to recover lost revenue or replace equipment damage as a result of spill. The authors failed to mention the fact that compensation is meant to be given to injured party as a result of Oil Spillage to the victims. In their article they did not state how compensation should be paid to their host communities. The above compensation issue arising from oil spillage were not highlighted or discussed by the authors. The book though elaborate in the areas discussed, did not discuss anything on compensation. This work will fill the gap to compliment the various ideas elicited by authors.

AMBROSE O.O. EKPU: In his article titled; The Polluter Pays Principle. A Review of Law and Policy. Define pollution to mean “man-made or man-aided alteration of chemical, physical or biological quantity of the environment to the extent that is detrimental to that environment or beyond acceptable limits”. Section 33 of the Federal Environmental Protection Agency Act) the international law association defines pollution as any introduction of man, directly or indirectly, of substance or energy into the environment resulting in deleterious effects of such a nature as to endanger human health, harm living resources.

The author went further to state that the polluter should pay for the pollution he causes. It seeks to determine and allocate the cost of pollution to the person who is causing it rather than allow the society at large to bear the cost, the author write extensively by ensuring that the polluter

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12. Douglas Helton and Tony Penni: The cost of Oil Spills: Putting Response and Natural Resources Damages Costs in Perspective: Environmental and Planning Law Review Vol. 2 No. 4 2005 (Lagos, Reuben Theodore Okonkwo & Co. Publisher Ltd, 2005)
 13. Ambrose O.O. Ekpu, The Polluter Pays Principle. A Review of Law and Policy in Commercial and Property Law Journal (CPLJ) Vol. 1 No. 1 2006 (Enugu, Chenglo Publisher Ltd, 2006)

bears the burden of compensating or reinstating the victim of the pollution to the state he was before the pollution. The book though elaborate in the areas discussed, did not discuss anything on compensation. This work will fill the gap to compliment the various ideas elicited by authors.

OVO IMOEDMHE: In his article titled Legal Regimes on Pollution control in Nigeria: the Way Forward: write extensively on how pollution of the stream reduced the income of other people as for example destroying aquatic life and making the water unsuitable, and so on, the author assert that there are additional costs borne by others, the costs to the individual company are termed private cost while the cost to every other person is called the social cost of waste disposal. There can be no doubt that the existence of these external effects would impact on an individual's behavior. The difference between social and private costs is frequently referred to as an externality (also spill over, or third party effect) pollutions takes place outside the market and therefore, no appropriate compensation is exchanged. The book though elaborate in the areas discussed, did not discuss anything on compensation. This work will fill the gap to compliment the various ideas elicited by authors.

AYODELE AKA KOR F.O.: In his article titled: Legal Control of Pollution Rehabilitation: the Poverty of Petroleum Law in Nigeria: writes extensively on compensation to oil victims, the author assert that there are specific statutory provision for compensation. Three ways have been recognized as the means of setting compensation claims, namely negotiation, mediation and litigation. The author opine that whatever the mode of settlement, a cardinal principle governing compensation claims is that it must be fair and adequate.

It is sad to note here that, there is till date, no comprehensive statutory provision on compensation for damage/injury suffered as a result of oil spillage. The book though elaborate in the areas discussed, did not discuss anything on compensation. This work will fill the gap to compliment the various ideas elicited by authors.

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14. Ovo Imoedemhe, Legal Regimes on Pollution control in Nigeria: the Way Forward: in Commercial and Property Law Journal (CPLJ) Vol. 1 No. 1 2006(Enugu, Chenglo Publisher Ltd, 2006)
 15. Ayodele Akaakor, F.O.: The Nigerian Journal of Public Law: Legal control of pollution Rehabilitation: The Poverty of Petroleum Law in Nigeria, Vol. 1 (Lagos, Department of Public Law, Faculty of Law, University of Lagos, 1997)

OLARENWAJU FAGBOHUN AND GODWIN UYI OJO: In their article titled: Resource Governance and Access to Justice: Innovating Best Practices in Aid of Nigeria's Oil Pollution Victims. They discuss the subsidiary functions of environmental which includes compensatory function. The authors asserts that the idea of compensation is indemnification aimed at restoring an injured person to a position as nearly as possible equivalent to his person to his position prior to the tort. The position of international human right law is that a person whose right has been violated is entitled to reparation in the form of compensation that will restore him to his original situation prior to the violation. In this regard, he is entitled to economically assessable compensatory damage, and where, applicable rehabilitation. Furthermore, those liable for the violation should also be made to face appropriate sanctions.

The book though elaborate in the areas discussed, did not discuss anything on compensation. This work will fill the gap to compliment the various ideas elicited by authors.

VIOLET O.O. AIGBOKHAEVBO: In his article titled: Environmental Damage Liability, Compensation and Restoration. The author asserts that in spite of the deleterious effect of oil on human health and environment and the fact, that it is presently the mainstay of Nigeria, economy. It was not listed as a hazardous substance requiring express, regulation by FEPA. The author opined that in an environment claim arising from damage occasioned by the discharge of the said substance was in "harmful quantities". In other words, expert evidence is required to prove that a discharge caused actual harm before liability can accrue to the discharge. In a country where many Nigerians lives increasingly impoverished lives and the monetary agencies have little or no resources at their disposal it is doubtful if victims of oil pollution can find soccour under this Act.

This is more so as small interstate rivers, streams and creeks which provide communal drinking water as well as water for use in other domestic activities are outside the jurisdiction of FEPA the implication of this

is that in spite of the continue hazards of oil pollution of these water's especially in the Niger Delta State, there is no recompense under the Act since the burden of proof on the regulatory agency can adequately described as insurmountable.

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16. Olarenwaju Fagbohun and Godwin Uyi Ojo: Resource Governance and Access to Justice: Innovating Best Practices in Aid of Nigeria's Oil Pollution Victims: Nials Journal of Enviromental Law Vol. II (Nigeria Institute of Advance Legal Studies, 2012)
 17. Violet O.O. Aigbokhaevbo: Environmental Damage – Liability, Compensation and Restoration (Lagos, Reuben Theodore Okonkwo & Co. 2005)

The author failed to mention how the victims of oil pollution are to be compensated, the author only discuss how victims of oil pollution required the service of an expert to prove their claim. These lacuna will be filled in this dissertation.

EMIRI O.F.: In his article titled: An Economic Analysis of the right to Compensation for Oil Pollution. He considers the cost of litigations in claims for compensation in Oil Pollution, the author refers to the case of Shell Petroleum Development Company Ltd v. Farrah where the supreme court applied strict liability principles of paragraph 36 of the schedule of the Petroleum Act with common law rules.

AWHEFEADA U.V. (MRS.): In her article titled: The Rules Governing Compensation for Environmental Degradation in Nigeria: writes extensively on the legislative provision and common law rules governing compensation for environmental degradation.

The author opined that oil companies prefer litigation to other means of settlement of compensation because of the advantage of delay etc the oil companies on their part, claim that they resort to litigation due to the fact that most of the claims for compensation are frivolous, speculative and fraudulent being unnecessarily high hence, litigation becomes imperative.

The author however did not mention the type of compensation to be given to victims of oil pollution, the author discusses all the types of compensation in oil pollution but failed to mention particular form of compensation either in cash or projects such as building classroom blocks or health care centers in affected communities. These shortcomings will be addressed in this dissertation.

DR. EDU O.K.: In his article titled Environmental Impact Assessment: Policy and Law in Nigeria. Writes on how environmental degradation is now one of the terrible problems affecting mankind in the world over today. The author opined that the drive of man for scientific and technological advancement has

left in its trail some very unpleasant and sometimes catastrophic consequences. These consequences include environmental degradation.

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18. Emiri , O.F.: Delsu Law Review: An Economic analysis of the Right to Compensation for Oil Pollution: Vol. 2 No. 2 DLR 2006 (Enugu, Chenglo Publishers Ltd, 2005)
 19. Awhefeada, U.V. (Mrs.)The Rules Governing Compensation for Environmental Degradation in Nigeria:
 20. Dr. Edu, O. K., Environmental Impact Assessment: Policy and Law in Nigeria in Gasiokwu (ed) Ecology: Concept, Politics and Legislation (Enugu, Chenglo Publisher Ltd, 2012)

EMILLY I. ALEMIKA AND A.T. SHETU: In their article titled Fundamental Right and Environmental Pollution in Nigeria: these authors wrote on the nature and extent of environmental pollution and human rights problems as a global phenomena which requires global solution.

Some of the challenges of environmental problems are the uncontrollable manmade problems which are responsible for the environmental pollution. The authors went further to state that pollution which can lead to environmental degradation is of three major areas of pollution.

- i. Air Pollution
- ii. Water Pollution
- iii. Soil or Land Pollution

IKPASA PATIENCE OCHUKO: In her article titled the Effect of Oil Pollution on the Ecology of Niger Delta of Nigeria. A Case Study of Delta State. The author writes on oil pollution as the ecology of Niger Delta in Nigeria as a recurrent decimal. According to the author, he said observations and report both in the print and electronic media reports indicate that continuous gas flaring and incessant oil spillage in the region have a number of effects that demand an appropriate legal framework to address the effects on the environment. The author suggested how individual and communities can be assisted through legal suits to make oil companies and multinational companies pay appropriate compensation through court of competent jurisdiction.

ITURU OGHENERUKEVWE: In his article titled: International Law and the Protection of the Environment for Oil Pollution. The author writes on gas flaring as contributing to atmospheric pollution and global warning. Oil spillage especially those spilled into the high sea poses hazards to the marine environment with the transboundary impact. The author went further to state that pollution cause by oil and its derivatives may occur in a variety of ways. It may occur at the exploration stage during which for example explosive or other drilling methods may be employed. It may also occur at the production

stage when used derivatives such as gas are flared into atmosphere. Oil pollution may also be occasion by an act of God. Finally oil may be intentionally released into the environment.

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21. Emilly i. Alemika and Shetu, A.T. Fundamental Right and Environmental Pollution in Nigeria: Issues, challenges and Options in in Gasiokwu (ed) Ecology: Concept, Politics and Legislation (Enugu, Chenglo Publisher Ltd, 2012)
 22. Ikpasa Patience Ochuko, The Effect of oil Pollution on the Ecology of Niger Delta of Nigeria: A Case Study of Delta State in Gasiokwu (ed) Ecology: Concept, Politics and Legislation (Enugu, Chenglo Publisher Ltd, 2012)
 23. Ituru Oghenerukevwe: International Law and the Protection of the Environment from Oil Pollution in Gasiokwu (ed) Ecology: Concept, Politics and Legislation (Enugu, Chenglo Publisher Ltd, 2012)

CHAPTER TWO

HISTORY OF OIL EXPLOITATION IN NIGERIA

2.1 A Brief Political History of Nigeria

The name Nigeria was British – invented, so also was the country itself three hundred ethnic communities comprising in what is today known as Nigeria existed at the time of British occupation, and indeed long before that, as independent countries. It was the British that brought them together and moulded and nourished them into a single unified country.

The Maritime Empire of Portugal was the first European Power to establish trading stations on the West African Coast in the 1400s for the next 300 years; the Dutch, British and other nationalities “molded” is Americanism with the Portuguese to control the lucrative slave trade that originated from points across the West African Shoreline including Nigeria¹. Popular uproar against the abominable trade by the Abolitionists particularly in Great Britain starting in the late 1700s, and achieving a feverish pitch by the 1800s, saw the slow dismantling of this evil trade in human cargo. By this time, the British controlled most of the coastal region that constitutes modern Nigeria. In response to a request for protection made by British traders, a British consulate was established in 1849 for the rights of Benin and Biafra, with headquarters in the Spanish Island of Fernandopo the area under the superintendence of the consular extended at first from Lagos in the West to Birimbia in the Cameroons². But in 1853 Lagos was made a separate consulate. In 1861 Lagos was made a colony. The British consulate exercised considerable jurisdiction over the territories and increasing jurisdiction over more territories was sought in conformity with International Law at the time a request was made to the chiefs of Niger Delta States to cede the necessary jurisdiction. The chief of the Area whom it appears have never been push over’s (neither then nor now), suspecting that the treaties might contain something insidious, refused to sign the treaties. This refusal to put “hand to

book” delayed the assumption of jurisdiction for more than a decade before they eventually caved in. An order in Council promulgated in 1872, thus brought the Niger Delta territories under British jurisdiction. The entire fulani empire in the North was brought under British rule by conquest for daring to repudiate an earlier treaty of 1885 in which they had ceded their sovereignty to the Royal Niger Company.

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1. Thomas Hugh, *The Slave Trade, the History of the Atlantic Trade 1440-1870*. Cited in Okonta and Douglas Okonta, *where vultures feast. 40 years of shell in the Niger Delta* (Benin City: ERA/FoEN, 2001) p. 18.
 2. Nwabueze, n I p.5

The territories covered by the treaties in the Delta area were established into Oil Rivers Protectorate renamed the Niger Coast Protectorate in 1893. In 1900 the Crown merged the Niger Coast Protectorate with the Protectorate of Southern Nigeria³. In 1906 the colony of Lagos was amalgamated with the Protectorate of Southern Nigeria. By 1914 Lord Lugard, the colonial Governor General, amalgamated the Northern and southern Protectorates. The name, Nigeria was given to this entity and it is believed to have been coined by the wife of Lugard from two words – Niger area. Lord Lugard is noted for his unique mode of governance called Indirect Rule which he evolved with excellent results in the North. There, he had employed existing hierarchies in the traditional society to govern. In the communities in the East through, he had to adopt direct rule through the British District Officer as there were no rulers or a centralized political organization through whom he could effectively pursue indirect rule as he had done in the North and West. However, for the sake of uniformity, he still introduced Indirect Rule to the Eastern territories in 1916 using the warrant chiefs and their native courts to replace the district officer. This brought about a cataclysm that culminated in the Aba Women’s riot of 1928. To remedy this, the system of Indirect Rule was from 1934 implemented through traditional authorities⁴.

By 1939 Britain stated a process of reorganization of its colony and protectorates. Nigeria was divided into three regions – Northern, Western and Eastern regions – each with an advisory assembly. By 1952 it was restricted as a federation. In 1957, fearing political and economic marginalization as well as ethnic domination. Leaders in the Delta began to agitate for a new region to be created for them. The Henry Willink commission was set up to look into their grievances while the commission accepted grievances as genuine it declined to recommend the creation of a separate region for them⁵ Independence for Nigeria followed in 1960 after years of anti-colonial protests 1963 saw the birth of the Midwestern Region.

The years after Independence were marred by Inter ethnic conflicts over political and economic control in January 1966, a military coup, led by Chukwuma Nzeogwu claimed the lives of several politicians among whom was the Prime Minister, Alhaji Abubakar Tafawa Balewa.

3. Ibid p. 6

4. Ibid p. 18

5. Nwabueze B.O. op. ct p. 23

6. Crowther Michael, The Story of Nigeria, (London: Feber, 1978) p. 242 – 244. Also Alamieseigha D. Oil Exploration and Youth Restiveness: The Bayelsa Example; The guardian Monday May 23, 2005 p. 28

Attempt by the new military Head of State General Johnson Aguiyi Ironsi to introduce a new unitary constitution in the country in May 1966, sparked a mutiny by young Hausa Fulani military officers who claimed that the January coup was an attempt by the Igbos to take over the political leadership of the country. Ironsi, was killed in a counter-coup in July and the killing of Igbos and other easterners began in northern towns and cities.

There was a massive exodus of the latter to the eastern region, and when Ironsi's successor Colonel Yakubu Gowon, proved incapable of stopping the genocide in the north, the military governor of the East Colonel Emeka Odumegwu-Ojukwu, called on his fellow easterners in other parts of the country to return home. A new constitution arrangement making for a loose confederation of the three regions was worked out for the country by the two sides in Aburi, Ghana as a last ditch effort to starve off civil war and subsequent disintegration of the country, but Gowon reneged on the agreement after realizing that the Aburi Accord effectively gave the eastern region political autonomy on 27 May, 1967, he announced that the country would henceforth be divided into twelve states. Ojukwu vied this as an attempt to bury the Aburi Accord and he responded three days later by proclaiming the former Eastern Region as the Sovereign Republic of Biafra.

2.2. What is Oil

The sediments transported by the rivers are gradually deposited in layers over the flood plains. As thousands of years roll by the organic materials disintegrate under high pressure in the absence of oxygen. They liquefy and migrate through the principle of mass transfer by capillary action through fault lines into certain pockets of oil bearing sands called oil traps or pay zones. Here they are encapsulated under pressure by a combination of the weight of the formation from above on the one hand and the continuous pull of gravity on the other,⁸ oil the black gold is thus formed.

In the oil trap there is always the presence of associated hydrocarbon gases which together with the oil have the tendency of escaping when their hold is punctured. This is, because they are under pressure as in a gas cylinder and so the contents of oil trap must be kept in under regulated exploitation by mechanical contrivances. Similarly, when it is to be brought to the surface, as in pipeline or storage tanks, it must be kept in leak proof confinement as it is also won't to stop escape⁹

8. Okonta Ike and Douglas Oronta, where vultures feast, 40 years of Shell in the Niger Delta. (Benin City: ERA/FOEN, 2001) p. 36

9. Nwosu L.E. Operations. A paper presented at the NBA Conference in Port Harcourt, August, 2006 p.3

To access these all important pay zones a lot of scientific procedures are adopted, first to locate the likely position of an oil trap through seismic surveys. And later by drilling which involves boring a hole sometimes 200 metres deep or more to create an oil well.

Before these are done massive logging and cutting through lush pristine vegetation takes place to create access roads for men and heavy duty equipment to reach the drilling sites. This has led to the bitter simile "as straight as a shell road," by the indigenes of some oil producing area.

Thus, from exploration by seismic activities. Exploitation by drilling and installation of oil rigs, to production, transportation, storage, exportation and refining, each stage is deleterious to human beings, the land, water, air and the fragile ecosystem of the surrounding wetlands.

2.3. Oil Exploration and Exploitation in Nigeria

In 1956 the first commercially viable oil field was discovered at Olobiri in the present Bayelsa State of the Niger Delta. Several other field were found and pipelines connecting these sites to the coast for export were constructed. By 1958 these fields were producing 4,400 barrels per day of oil. 1959 saw the construction of an oil terminal at Bonny in the mangrove swamps of Rivers State at the tip of the Delta near the gulf of Guinea. Nigeria's first refinery owned and financed by shell was built at Alesa-Elеме. In 1962 shell relinquished ownership of this refinery and future facilities as well as half of its acreage to international competition. By the late 1960's several off shore oil rigs were operational. Oil production now exceeded over 500,000 barrels a day.

Oil exports from Nigeria began in the late 1950's over 90% of this production came and still comes from the Niger Delta Area. The conglomerate, Anglo-Dutch shell, is the principal company involved in oil exploitation in this area. Here, it exists in the form of its local subsidiary Shell Petroleum Development Company (SPDC) by 1970 there were 14 companies

in the Niger Delta drilling for oil. These included Gulf, Texaco, Mobil, Eif and Agip, Mobil and Chevron. The late 1960's and 1970's ushered in a considerable acceleration in the exploration, discovery/development and appraisal of oil wells throughout the Niger Delta and offshore in the gulf of Guinea. This period also saw the oil embargo, skyrocketing oil prices. Extensive pipeline construction and oil output of over 1 million barrels per day. The price of oil per barrel had increased from \$20 to an astonishing \$35 by the late 1970's. By this time the Nigeria oil industry was producing from 2.2 million barrels of oil per

day shell's share of this total output was about 1.4 million barrels.¹⁰

New refineries were constructed at Warri and Kaduna in 1978 and 1980 respectively with a combined refining capacity of about 260,000 barrels per day. The length of pipelines now exceeded 5,600 kms, creating not only an eye sore but also a major source of environmental pollution. Between 1958 and 1983 the government owned Nigeria National Petroleum Company placed earnings from, oil at over \$101 billion; Green peace, the environment group quotes a figure closer to \$300 billion, highlighted governmental corruption and waste as the reason for the accounting discrepancy¹¹. Nigeria is thus the 9th largest oil producer in the world, the third leading in Africa and the principal oil producer in Sub-Saharan African.

It is the 5th most important exporter of petroleum to the United States. Nigeria's economy today is heavily dependent on the oil sector, which accounts for around 80% of government revenues, 90-95% of export revenues and over 90% of foreign exchange earnings Nigeria's real GDP growth was 2.8% in 2000 and was projected at 3.5% for 2001 and 3.9% for 2002. Nigeria's dependence on crude oil is expected to somewhat as the natural gas industry develops¹².

Nigeria contains estimated proven oil reserves of 22.5 billion barrels and produces 90 million tons per year of crude oil most of this is extracted from the oil rich Niger Delta region. The country also contains about 124 TCF of proven natural gas reserves mainly from onshore fields and the, swampy areas of the Niger Delta. 75% of associated gas produced during oil exploitation is flared and 12% re-injected into the walls. This practice occurs because of lack of infrastructure needed to liquefy and properly store the natural gas¹³ current in daily production of crude oil which is about 1.8 million barrels per day in the post? Oil export revenues reached an all-time high of

\$24.9 billion in 1980 balance very little of this wealth has trickled down to the communities of the Niger Delta where the oil is extracted.

The first oil-related legislation in Nigeria was colonial minerals ordinance, enacted by Lord Lugard in 1914 after the amalgamation of the Northern and Southern Protectorates¹⁴. The 1914 ordinance made oil prospecting a British Monopoly with ownership right rested in the Crown. Following this, the 1957 mineral ordinance gave shell D'Arey exclusive

10. Supra n 12p. 124

11. Okota Ike and Douglas Oronto, op.ct. p 52-53

12. Ibid

13. Energy Information Administration (Website: www.ciadoe.gov/emeu/cabs/Nigeria.html)

14. Khan Ahmed Sarah, Nigeria. The political Economy of Oil (Oxford University Press, 1994) p. 16

exploration and prospecting rights in Nigeria and colonial office followed this up a year later with a grant of an oil exploration license to the company covering the entire country. The colonial government also enacted the petroleum profits tax ordinance in 1959, putting in place a so-so profit sharing arrangement between the Nigeria government and foreign oil companies, section 134 (1) of the 1960 constitution gave 50% of royalties and mining rents to the federal government and the republican constitution of 1963 under section 140 (1) retained these provisions.

In 1969, General Yakubu Gowon changed all this by enacting petroleum decree No. 51 abrogating all the earlier legislations, thus effectively vesting ownership of oil mineral rights in the federal government and changing the profit sharing formula in favour, of the central government¹⁵. By the 1970' international oil prices began to rise from \$184 million in 1965, federal revenue surged to \$1561 million in 1975¹⁶ accounted for 82% of this new wealth as Nigeria joined OPEC and ranked the fifth largest producer in that cartel with the new 1969 petroleum decree, firm in place and oil prices increasingly on the rise,

the new military leaders found it expedient-for obvious reasons to discard the revenue allocation formula agreed upon by the regions in 1954, which formula divided mining revenue equally between the regions and the federal government. Decree 6 of 1975 increased the central government share of oil proceeds from 50% to 80% leaving the states with only 20%.

The only notable law the politicians of the short-lived second Republic under the leadership of President Shehu Shagari, passed with regard to sharing the oil revenue was the allocation of revenue Act No. 1 of 1982, amended by the military regime of General Muhammadu Buhari two years later through Decree 36 of 1984. This Act granted 55% of the oil revenue to

the federal government (down from 80% in 1975) 32.5% to the states and 10% to the local governments. One percent of the oil proceeds was set aside for disaster relief and another 1.5% established as a special fund for the oil producing area¹⁷. The revenue to the oil bearing states has since been reduced to 13% by the current government of Muhammadu Buhari.

Although two new states, Rivers and South Eastern States had been carved out of the now defunct Eastern region for the benefits of the people of the Niger Delta¹⁸. The inhabitants saw little of the country's new found oil wealth. In 1978 the Land Use Decree¹⁹ was passed vesting ownership and

15. Ibid

16. Supra n. 17. p. 39

17. Supra N 12 p.124

18. Okota Ike and Douglas Oronto, op.ct p 52-53

19. Ibid

control of all land on the Federal Military Government. The military also supervised the drafting of the 1979 constitution, section 40 (3) of which vested control of minerals, minerals oils and natural gas in and under any land in Nigeria in the federal government and also conferred upon the National Assembly the power to make laws regarding revenue allocation by these two crucial pieces of legislation the people of the Niger Delta discovered that in spite of state creation and the assurance by the earlier Willinks Commission report 1958, they were hamstrung and could not effectively challenge the expropriation of their land and exploitation of the natural resources therein by the central government.

2.4. The Impact of Oil Exploration in Nigeria

2.4.1. Seismic Survey

The use of sound waves to perform geo-physical exploration for oil and gas is referred to as seismic exploration. This involves the detonation of explosive and electric charges underground at periodic intervals while recording the resonances and resistivity electrically on a chart²⁰.

Marine seismic exploration involves a ship towing a sound source such as an "air gun" and a receiving source such as hydrophones ²¹ 80% of oil exploration in Nigeria is on land. Most seismic surveys are therefore conducted on agricultural land, through fresh water creeks and mangrove swamps. Extensive areas of land are cleared to create paths through which seismic waves will travel and this means cutting thousands of miles of seismic line through delicate mangrove swamps and fragile ecosystems ²².

The dire consequences of these seismic activities include the expulsion or destruction of rare bird species and roots of tall, ancient mangrove trees which take up to three decades to regenerate are often cut down.

As the mangroves die, other plants and animal life dependent on them also perish²³ where the detonation takes place in a swamp or river environment a whole generation of aquatic life are instantly wiped out. On land shock waves and tremors are transmitted in oil directions. Hair line cracks and sometimes gaping holes appear on buildings including homes, churches and schools²⁴. The hopeless inhabitants are left to ponder what is happening to their environment and to cope as best they can in the face of such sudden devastation.

20. Energy Information Administration (Website:www.ciadoe.gov/emeu/cabs/Nigeria.html)

21. Green Peace Media Briefs "Seismic Exploration" www.qpuk.org/atlantic/library/oil/seismic.htm/2001/A1

22. Supra n. p. 91

23. Ibid

24. Supra n. I

2.4.2. Drilling

Drilling for oil subjects the environment to severe stress. First the drilling site which is typically lush mangrove swamp or rainforest is cleared of all vegetation. Access roads are constructed for the transportation of men, heavy materials, machines and drilling rigs. The site and access and a dredged to a stipulated depth and width using bucket drudgeries and a dredging barge which allows the rig to be towed to the site and in the case of mangrove swamps by tugboats²⁵.

Dredging is particularly harmful to Delta ecology the sludge from dredging is often mounted on the sides of dredging canals. With time the organic materials in the sludge undergoes oxidation and conversion into harmful organic acids that are toxic to the environment run off from these sites flow into canals end nearby creeks and seep into the water table. The run off also increases turbidity of the water and sedimentation blocking the penetration of light into the creeks and swamps. Phytoplankton is often affected first leading later to a cascading ecological disaster as organisms above it in the food chain begin to starve.

Increased turbidity also affects the ability of birds such as the kingfisher to feed. As they are dependent on clear water to hunt for aquatic life forms for substance²⁶.

The oil companies have created thousands of wastes pits throughout the Niger Delta region where they have dumped drilling waste. The toxins in these pits are suspended to be among the causes of the contamination of ground water in the area and may be directly linked to rising cancer rates throughout this region ²⁷.

2.4.3. Oil Spills

Between 1986 and 1996, 25 million barrels of crude oil have been spilled in the Niger Delta region. The burning of 8 million cubic feet of natural gas everyday compounds the environmental catastrophe²⁸. Green Peace avers that many oil operations and especially that of shell petroleum are outdated. In poor conditions and would be illegal in other parts of the world ²⁹. The oil pipelines are old, rusty and leaking leading to massive oil spills and blow outs which spew fountains of emulsified oil into the surrounding area farms, drinking ponds, fisheries and the entire ecosystem are despoiled.

25. Supra n. I p. 93

26. Supra n. I at 94

27. AFSC the Effect of Oil on Ogoni Women www/asfc.org/CN/SH/Su2ko/htm

28. CIA unclassified study of the Oil Industry in Nigeria "<http://www.electrifyingtimes.com/deltadown.html>

29. Rowell Andrew "Shell Shocked. The environmental and social cost of living with shell in Nigeria" July 1994. 9

These spills have also polluted the ground water leading to outbreaks of diarrhea epidemics. Birth deformities are on the rise as are certain soft tissue cancers. This is because crude oil contains thousands of different chemicals many of them toxic and some known to be carcinogenic with no determined safe threshold for human exposure³⁰. The fish in these waters are contaminated by the lethal poison in the crude oil which poison easily enters the food chain of men from the consumption of such fish caught from the polluted waters.

The city sheen can be seen on the water which most times are the same water that the people of the area drink. Bathe in and use for other domestic needs. As an inhabitant of the area solemnly intoned to reporters. "If you bath in this water, it will give you disease if you drink it. You will die³¹. These riverine communities are thus caught in the unfortunate paradox of "water, water everywhere but not a drop to drink" They buy pure water in sachets at ₦10.00 double the price for which it sells in other parts of the country, and must be exorbitant in the eyes of people in such cash-strapped, impoverished communities.

Soil fertility is completely eroded by the spills leading to poor yields. This in turn has led to this displacement of farmers and their families into the surrounding urban centres as internal environmental refugees. These urban centres are already ill-equipped to deal with the economic social and health requirements of their burgeoning populations. Most of the new migrants in these cities then become trapped in the vicious cycle of poverty and penury³²!

Oil spills onto soil lead to water logging and flooding as the oil forms an impenetrable film on the land surface. This decreases soil fertility and top soil formation which is rich in nutrients³³. The end-result of this has been ecological disaster and famine in certain parts of Niger Delta, leading to “environmental refugees” as landless farmers flee the poisoned land.

Nigeria’s crude oil is light crude. It is therefore quickly absorbed by the soil or easily evaporates. The light crude which makes Nigeria crude oil very attractive in the oil market is ironically a huge minus at home. This is because the fast absorption/evaporation rate makes it difficult to locate the oil spill and therefore reaction time in which to clean up the spill or regenerate the environment which becomes almost impossible. Spill can either be of refined or

30. Sagay, I. E. the Niger Delta and the case for Resource Control” Vanguard Politics June 13, 2005 p.9 filei/IE/Sagay.htm

31. Saturday Vanguard (Lagos) March 18, 2006 p. 14. Also see comments of Dr. Difini Datubo-Brown, Professor and erstwhile Provost of the College of Medicine, University of Port-Harcourt
Infra n. 17

32. Achebe Ike (MD) Nigeria Conservation Foundation Briefing notes p.7

33. Staney, W.R. Socio-Economic impact of Oil in Nigeria Geography Journal pp 66-78 cited in Supra n. 15

unrefined petroleum products. Ironically the latter is far more toxic as it contains added toxins such as phenol cyanide, sulfide – suspended solids, chromium and arsenic. These toxins have adversely affected the neurological, Cardiovascular, renal and musculo skeletal system of the inhabitants of Niger Delta. Birth defects are also recorded which medical experts attribute to environmental pollution from crude oil³⁴.

2.4.4. Gas Flaring

Apart from the menace of oil spillage and other forms of environmental pollution, the people of the Niger Delta are also tormented by the impact of gas flaring which they rightly call the devil’s fire! It is reported that Nigeria flares more gas than any other country in the world. Approximately 75 percent of associated gas which is produced as a by-product of crude oil extraction is flared. In comparison only 21 percent is flared in Libya and just 0.6 percent in the U.S.A.³⁵ World Bank records state that the Niger Delta atmosphere receives 80 billion cubic feet of gas from shell’s flaring activities.

Due to the low efficiency of many of the flares much of the gas is released as methane which has a high warming potential, rather than Carbon dioxide.³⁶ In January, 2001 an internal signal seminar on Air pollution in Nigeria was jointly organized by a Lagos-based Non-governmental Organization, Community Conservation and Development Initiatives (CCDI) and the German Cultural Centre, Goethe institute.

As part of a ten point communiqué issued at the end of the conference, the Executive director of CCDI Mr. Ako Amadi³⁷ made a call to shell Nigeria to put an end to it flaring of natural gas. He equally lamented the fact that shell and other multinational oil companies operating in Nigeria have continued to flare natural gas despite several broken promises to desist from so doing. According to hind? “Some two billion standard cubic feet (scf) of gas is flared daily, to produce 35 million tons of carbon dioxide in the Niger Delta and offshore” this, he said is almost equivalent to 25 percent of all flaring on the planet. Thus giving Nigeria the dubious distinction of being one of its world’s chief contributions of global warning. He opines that “it is a poor

34. Difini Datubo – Brown, Professor and erstwhile Provost of the College of Medicine. University of Port Harcourt explained that the unusual congenital malformations in children in the Niger Delta are a direct result of Environmental pollution by crude oil. He was commenting on the case of a 6 years old boy whose brain was growing outside this head. Cited in 'O' Itara K. op.p 305 see also CIA: “Unclassified study of the oil industry in Nigeria” (<http://www.electrifyingumescom/deltedawn.html>)

35. Okota Ike and douglas Oronto op. cit p 67

36. Ibid.

37. Mr. Ako Amadi is also the Environment and rural Development Adviser to the Canadian International

report card that Nigeria, the seventh largest producer of crude oil in the world, has a 25 percent share of global air pollution through gas flaring³⁸.

The gas wasted is enough to generate electricity for the whole west Africa region but Bayelsa State from where the bulk of the oil is extracted is the only state yet to be connected to the natural grid³⁹.

A direct consequence of gas flaring is a phenomenon known as acid rain. The inefficient technology associated with the flares means that many of them burn without sufficient oxygen or with amounts of oil mixed with the gases emitted. The high levels of sulphur, carbon and acid rain which is deposited on roofs, land and vegetation. The roofs are corroded by this devil’s cocktail of acid fumes and the surrounding vegetation rots and dies leading to crap failure and deforestation.

The adjunctive effect on human beings is no less devastating. The people of Iko in Akwa Ibom State aver that having to breathe in this polluted air on a daily

basis for years has led to many respiratory ailments, skin and lung cancers thereby lowering life expectancy in the area⁴⁰ other ailments recorded are damage to the eyes by permanent clouding of the eye lens, reducing clarity of vision and even leading to blindness. Skin damage affecting the natural immune system with an increased potential to succumb to infections is also recorded. The heat value generated by the flares amounts to about 1000, thermal units/sd which is enormous and makes the people in the oil producing area sweat perpetually. The glare of the flames means that they live in an un-natural state of permanent day light leading to sleep disturbances. The shameful response of some of the oil companies to calls to stop gas flaring was to reduce the height of the flares below the level of the treetops in order to hide them from the view of investigators! This only meant that the heat and garish light were now closer to the inhabitants, scorching their surroundings.⁴¹

38. Development Agency (CIDA) Nigeria-Canada corporate office, Abuja, Nigeria

39. The Guardian January 1, 2001.

40. Niboro Ima, "off to A staggering start" Tell, January 6, 1997. P. 17. Also Sagay I.E. Supra n. 13. See also, Okonta Ike and douglas Oronto p. 135.

41. Personal interviews with indigenes and in particular. Architect Nnimmo Bassey, who hails from Akwa Ibom State and who is also Executive Director of Environmental Rights Action/friends of the Earth (Nigeria) FOEN)

2.4.5. Deforestation

Deforestation is another unforgiveable environmental sin caused during logging and "planking", seismic surveys, exportation, dredging, drilling, creation of composites and destruction by acid rain and the scorching heat of gas flares. Pristine forests which have taken centuries to grow are cut down indiscriminately to construct access roads for the heavy duty truck to move in equipment to site. In a bid to access oil locations cheaply, the companies resort to "planking" which involves cutting down thousands of timber. Slashed to dimension of 12ft x 1ft x 2 in planks which are then laid end to end on jungle tracks for the trucks to drive on. The access roads serve no useful purpose to the indigenes as they lead to nowhere except the far flung oil wells in remote geographical locations. In the words of Lucius Nwosu (SAN) ⁴²

Even where the treks inevitably traverse tangentially through some 'luck' villages they only provide easy access for the invasion and violation of the hitherto healthy sex lives of the unfortunate host communities by sex "starved workers of diverse nationalities" The consequence, he posits is that "the purity of the ethnic nationalities is diluted by the cross mutation of alien genetic traits. Similarly, alien diseases are transmitted like the Christopher Columbus team did with syphilis in the West Indies. Social values are truncated with the children of unidentified oil worker paternity growing to dislocate the social equilibrium of his mother's village of nativity, mean while the oil worker has moved on to yet another village to sow more wild oats"

Further logging takes place as forest are cut and burned to make camp sites for the worker more trees are blown to smithereens by the detonation of explosives during exploratory seismic survey and mapping. This leads to the natural habitat. This intrusion into their habitat leaves and undesirable human imprint on the environment.

2.4.6. Human and Domestic Waste

With so many transnational oil companies operating in the relatively small land mass known as the Niger Delta there is an infuse of people into the area. The oil workers and other service providers. All these people are crammed into the camp sites which have no sewage treatment and disposal plants.

42. Interviews with some Isoko indigenes of Delta State of Nigeria and employee of NNPC.

What then happens to all the human excrement and other domestic waste generated? These pollutants are deposited underground which is unfortunate since it is a well-known hydro-geological fact that the water table in Niger Delta is very shallow⁴³. The indigenes do not have pipe borne water and depend on shallow dug out holes for water to drink, and other domestic needs. The health implications of this situation are better imagined.

2.4.7. Militarization

The relationship between militarization and the environment appears to have received relatively little scrutiny. But there exist a causal link between military presence/activity and environmental stress. In the case of the Niger Delta the relationship is too glaring to be overlooked.

The Nigeria security forces in the form of the police and the Joint Task Force (JTF) made up of the Navy, the Air Force and Combatant Soldiers on the one hand, their adversaries, the various militia group of the local area on the other have left an unforgettable military imprint on the environment, one of the ways in which the people of the Niger Delta have reacted to years of deprivation and environmental degradation by forming youth , militia groups to resist the unwholesome activities of the oil companies, the Government on its part, in collaboration with the private security outfits.

The forces have massacred unnamed civilians and razed whole villages. The military have moved in with heavy armoured equipment subjecting the land to great physical stress. This has led to soil instability, deforestation to create access and expulsion of wild life and human beings⁴⁴. Heavy bombardment during combat between opposing forces means that the surrounding area is laid waste and the villagers themselves are too scared to come out or remain in the area to carry out their normal daily activities which are their source of sustenance. This has led to hunger, poverty and dislocation as the people leave in droves to neighboring communities where there is a semblance of peace and stability. The pressure they put on available resources as they swell the population of these communities exacerbates the spiraling cascading environmental and ecological disaster enveloping the entire region in a miasma of hopelessness misery and object of poverty.

43 Supra n. ta p.9

44 Alamieyeseigha D. "Environmental Pollution in Bayelsa State (2001)" speech of Bayelsa State Government press

2.4.8. The Political Perspective

In the face of such environmental and ecological devastation, as well as the stark human suffering, the attitude of those in government to the plight of the Niger Delta is baffling. It is possible though that the antipathy exhibited by government towards the condition of the people in the oil producing area may well be an index that ideologically speaking and in the psyche of the peoples of

Nigeria, we are not really one country, as long ago as 1947 the late Chief Obafemi Awolowo, one of the founding fathers of the Nation posits.

Nigeria is not a nation: it is a mere geographical expression. There are no 'Nigeria' in the same sense as there are English, 'Weish' or 'French'. The Word Nigeria is merely a distinctive appellation to distinguish those who live within the boundaries of Nigeria from those who do not It is a mistake to designate them (the ethnic groups) 'Tribes'. Each of them is a nation by itself with many tribes and clans. There is as much difference between them as there is between Germans, English, Russians and Turkeys for instance. The fact that they have a common overlord does not destroy this fundamental difference⁴⁵.

Surprisingly, in spite of great political stress and social strife, this geographical expression called Nigeria has hung and continues to hang precariously together for the past forty six years since independence from the Britain Colonial masters in 1970. The simple reason is oil. The oil of the Niger Delta. The oil revenue is indeed a source of conflict but paradoxically it is also a rallying point. Ken Wiwa Jnr, son of the late human rights activist Ken Saro Wiwa cynically remarks that, the "Kola nut that binds the agreement at the heart of the Nigeria constitution is known as the derivation formula⁴⁶.

Oil constitutes more than 90 percent of Nigeria's export earnings and 80 percent of Federal Government revenues. Since oil production first started in 1958, Nigeria oil wells have yielded up to \$300 billion to the Nigeria treasury. So lucrative is this trade that President Muhammadu Buhari decided supervise the Petroleum Ministry himself by not appointing a substantive minister⁴⁷.

45. Article 8,2 (m/w) of the Rome Statute. States that militarization which causes wide spread, long term severe damage to the environment

46. Path to Nigeria freedom (London, faber, 1947) p. 47 - 48. Also Nwabueze B.O. op ct p. 79

47. Guardian Unlimited Special Reports. Death, rules the Delta in battle to control oil (2006) p.2 (<http://www.guardianco.uk/oil/story10.1725945.00.html>)

Nigeria has between 24 and 31.5 billion barrels of proven, reserves and currently produces over 2 million barrels per day. it also has the tenth largest proven gas reserves in the world: some 300 trillion cubic feet of gas has been discovered⁴⁸.

In the face of such fabulous wealth it would be cross for any of the majority ethnic groups namely the Hausa-fulani in the North. The Yorubas in the west and the Igbos in east to secede. These groups have severely harbored ambitions for a

separate state but the problem has been that their traditional territory does not include the Delta region where the oil is unless a move to secede also somehow become a war of conquest of the Niger Delta, any breakaway state would be a nation without oil. And having tasted the spoils of being a major oil producing nation such a condition is an unattractive option. The Igbo whose territory is closest to the Niger Delta made a bid to secede in a bloody civil war between 1967 and 1970. The secessionist territory called Biafra annexed a large portion of the Niger Delta to itself but the minority groups there sided with the Nigerian Federal Government as they did not want to place themselves under the Igbos. On the part of Nigeria government catchy slogans such as “to keep Nigeria one is a task that must be done” were borne out of a desire to win back. The lucrative oil fields of the Niger Delta from Biafra as much as they were to maintain the unity and territorial integrity of the Nigeria nation state. The Igbos failed in that bid to breakaway leaving at least one million of their own deed⁴⁹.

The problem therefore is this! Despite the great lakes of oil beneath their feet and off their shores, the people of the Niger Delta are the most deprived and among the most impoverished in the country. There are no motorable roads, schools, hospitals proper housing, pipe-borne water and other social infrastructure enjoyed by citizens very far from where the oil is extracted. The area generated 80 percent of the country electricity supply and yet 70% of its 3000 communities are not connected to the national grid. As a BBC report put it in 2002. The oil wealth that comes out of the land represents more than \$100,000 each year for each resident of the province. A psychological hunger is when your house has view of an oil rig and you still battle to feed your family each day⁵⁰.

48. He closely monitored the ministry since his assumption in office 7^{1/2} years ago, only relinquishing hold of it in the dying days of his administration. He promotes Dr. Edmond Daukoru from minister of state to full minister to head the newly created ministry of energy, which is a merger of the former ministry of petroleum resources and that of power and steel. This day. January 11, 2007 front page.

49. Hadden Peter, Nigeria: A country in class socialist view, spring 2004 p.2
(file //E/ Nigeria%20A%20country%20in%20criseshtm)

50. Madiebo Alexander. The Nigeria, Revolution and the Biafra War (Enugu: fourth Dimension, 1980) p. 17

In the words of Nnimmo Bassey, provocative unemployment is rife here in the face of fabulous wealth⁵¹. With regard to the wind fall gains from oil for the people of the Niger Delta the lucrative oil wells might as well be on Pluto. All that oil has meant to these people is pollution, environmental degradation suffering

and death. The Willink's commission report of 1958 described the Niger Delta as a poor backward and neglected region"⁵² and it still is.

According to Ken Saro Wiwa, late environmental, poet and civil rights activist of Ogoni extraction, the notion that the oil bearing areas provide the revenue of the country, and yet be denied a proper share of that revenue is unjust, immoral (and amoral) un-natural and ungodly. Why should the people on oil bearing (land be tortured)⁵³ that is the big controversial question. At independence in 1960, each of Nigeria's three regions was entitled to half (50%) the revenue from the minerals found there. Over the next thirty years fiscal gerrymandering reduced the sharing formula so that the regions received as little as 1.3 percent and the central government got the rest: as a result of the outcry from the minority groups in the Delta the government shifted some group and in the early 1970's the federal government took control of 100 percent off shore revenue and on shore revenue stood at 20 percent in 1982, the government of President Shehu Shagari tried to ameliorate matters by amending the revenue sharing formula from 20% to 32.5% to the states and 10% to local government while another 1.5% was established as a special fund for the oil producing areas ⁵⁴.

by the Niger Delta delegate who were asking for an increase from 15% to 25% or 50% from the National Political Reform conference in June, 2015.

Even, though oil prices continue to rise internationally, poverty continues to rise in Nigeria, especially in the Niger Delta much of the oil wealth that has flowed in has also flowed out either to pay interest on crushing foreign loans or to swell bank accounts of corrupt government officials, former military elite, However the 1999 constitution now set state allocation at 13 percent and the refusal of the government to give more than 17 percent led to the walkout

51. Cited in Nigeria: A country in crises supra n. 31 p. 2 Emphasis mine

52. Cited in Booker S. and Minter W. the US and Nigeria: thinking Beyond Oil" (2003) correct decisions <http://www.greatdecisions.org> p.3

53. Crowther Michael, the story of Nigeria (London's faber: 1978) p. 242-244, see also Alamiyeseigha D. op. c.t. p. 28.

54. Cited in supra n. 30 parenthesis mine

politicians and their networks. It has also built beautiful cities from the source of the oil and bridges in towns that have no water, whereas there are very few bridges in the Delta Region that is basically made up of riverine communities⁵⁵.

The frustration/aggression theories of conflict suggest that people become hostile when they perceive a wider gap between the level of satisfaction that they have achieved and the level they believe they are entitled to. It is not therefore surprising that the natural fall out of years of indifference and neglect by successive government is that the people of the Niger Delta have been forced, out of sheer exasperation, desperation and frustration, to react. If for no other reason but to arrest the attention of the powers that be. This reaction has found expression in both violent and non-violent forms, ranging from protest marches, blockades, occupation of flow stations and copious vociferous publications, to oil pipeline vandalization, hostage taking, forcible shutting down of production and outright armed confrontation with government security forces accompanied by various calls by the militants for cessation of the Niger Delta from the Nigeria Federation. One such movement led by Isaac Boro, an Ijaw army officer, declared a Federal Republic of Niger Delta in 1966 with himself as head of states⁵⁶. It lasted twelve days. Boro was killed in mysterious circumstances during the Nigeria-Biafra war but his memory continues to fan the flames of self-determination in the breasts of the Niger Deltans, especially those of his Ijaw people⁵⁷, who are the largest ethnic group in the region and the fourth largest in Nigeria⁵⁸. Other such movements are the Icelanders Greenlanders, KKK and Vultures. The notable ones are the Niger Delta Peoples Volunteer Force (N.D.P.V.F.) led by Mujahid Dokubo – Asari, the Niger Delta Vigilante (NDV) led by Ateke Tom, the Ijaw Youth Council (IYC) led by Felix Tuodolo and the Movement for the Emancipation of the Niger Delta (MEND) most of these groups claim to be fighting for redress in the situation of the Niger Delta. They have been met by stiff state violence and repression in the form of military attacks and reprisals⁵⁹. Many prominent Deltans have been eliminated in the struggle.

55. Okonta Ike and Douglas Oronto p. 42

56. Okonta Ike and Douglas Oronto p. 42

57. Alamieyeseigha D. "Oil Exploration and Youth Restiveness: the Bayelsa Example" the Guardian, Monday May 23, 2005 p. 28-29. Also according to Chief E.K. Clark the Youth of the Niger Delta become restive and started making demands after their trip to Abuja to attend the government sponsored two million man march in support of General Sani Abacha in March 1998 politics: THISDAY : Sunday July 27, 2003 p.14

58. Onduku Akpobibibo "Environmental conflicts – the case of the Niger Delta " p. 2 <file:///E:ENVIRONMENAL%20CONFLICTS.htm>. Also Okonta Ike and Douglas Oronto p. 186

59. Ijaw National Alliance of the America's (INAA). Celebrated the 18th Annual "Boro day in New jersey USA. The Guardian, Wednesday, July 12, 2006 p. 71

These include Isaac Boro, Dr. Obi Walli, Pa. Rewane, Chief Marshal Henry, Chief Dikibo amongst others Chief Ibru narrowly escaped death having been shot in the head during the terror reign of General Sani Abacha⁶⁰. Ken Saro Wiwa formed the movement for the survival of the Ogoni people (MOSOP) in 1992. In

November, 1995 he was tried along with nine others by the Abacha military junta for the murder of four Ogoni Elders. He made the following closing statement at the tribunal.

*Appalled by the denigrating poverty of my people, who lived on a richly endowed land, distressed by their political marginalization and economic strangulation, angered by the devastation of their land, their unlimited heritage, anxious to preserve their right to life and a decent living, and determined to ushered into this country as a whole a fair and just democratic system which protects every one and every ethnic group and gives us all a valid claim to human civilization. I have devoted all my intellectual and material resources, my very life, to a cause in which I have total belief and from which I cannot be blackmailed or intimidated*⁶¹.

Ken Saro Wiwa did not survive the trial as he was hanged along with eight of his compatriots on November 10, 1995⁶². The efforts of the peoples of the Niger Delta to get out of their perceived predicament has found expression in a concerted and dire struggle for environmental justice which is the concise expression of the link between environmental protection and human rights.

2.5. The Concept of the Environment

The environment is as old as man but probably began to receive attention from the early initiative of the United Nation Organization established in 1948. Concern for the environment and the damage it suffers today as a result of man's deleterious activities such as industrialization, technological advancement and the imperatives of self-attained a heightened level of

60. There have been several such military attacks as follows: November (1895). Iko (1987), Umuecham (1990) and Odi (1998), Okonta and douglas p. 49. Also the Joint Task Force (JTF) set up by President Obasanjo bombarded Ijaw communities, namely, Ukpogbene, Perezuoweikregbene, Seighbene and Seitturububor, Amaize Emma, "A foray into the creeks" Saturday Vanguard: March 18, 2006 p.14, see also Wikipedia, the free encyclopedia, "Conflict in the Niger Delta: p.3 http://en.wikipedia.org/wiki/Niger_Delta_conflicts.

61. "Resource control" <file:///E:/Resource%20control> htm. Accessed 4/30/2006

62. Okota Ike and Douglas Oronto p. 275, see also Ken Saro Wiwa. <http://nativenet.uthsca.edu/archive:ni/9511/0379/0379.html>

importance such that global concern culminated in this establishment in 1972, of the United Nations Environment Programme (UNEP) as "the principal body within the UN system in the field of the environment" following this, the United Nations also declared the 1990's "the decade of the environment"⁶³.

Environment has been defined as: the totality of physical, economic, aesthetic and social circumstances and factors which surround and affect the desirability and value of property or which also affects the quality of people's lives⁶⁴.

For the purposes of the law the environment has been defined as

The system of a biotic, biotic and social-economic components with which man interacts and simultaneous to which adopts and transforms and uses in order to satisfy his needs⁶⁵.

The Federal Environmental Protector Agency (FEPA) Act of Nigeria echoes these definitions by stating that the environment includes water, air, land, all plants and human beings or animals living therein and the inter-relationships which exist amongst any of them ⁶⁶.

The above definitions present the environment as a state of affairs which is based upon the activities of man in his natural habitat and the relationships he has with his immediate surroundings in terms of water, air, fauna and flora. These definitions indicate the need to protect human health, safety and interests they require the maintenance of a certain level of environment because of human use and enjoyment of nature⁶⁷.

In June 1988, harmful toxic was dumped in the small port of Koko town, in delta state. This incident raised awareness about environmental hazards and the urgent need to protect the environment and that of human beings which are an integral part of the environment. The response of the Nigeria Government to this incident was the promulgation of a series of laws to protect the environment, notable among which is the Federal Environmental Protection Agency Act 1988.

63 Ibid p.16 see also amnesty international ten years on: injustice and violence haunt the oil Delta November 3, 2005 [http:// web amnesty org/library/index/engaf440222005](http://web.amnesty.org/library/index/engaf440222005). Also Niger Delta Peace Foundation "thumbs up for Reconciliation in Ogoni land" The Guardian Friday June 1, 2005 p.38

64 UN Pub, series No. E 11A 14

65 Black's Law Dictionary, 6thed.

66 331, DHL 1982 p. 103 as quoted in Atsegbua el op. cit p 4

67 Section 38 FEPA Act 1988, cap, 131 now cap. F

In 1989, the government wants to step further in its efforts to Protect Nigerians and their environment it issued the National Policy on the Environment with the following policy goals:

- a. To secure for all Nigerians a quality of environment adequate for their health and well-being.

- b. To conserve and use the environment and national resources for the benefits of present and future generations.
- c. To restore, maintain and enhance the ecosystem and ecological processes essential for the functioning of the biosphere to preserve biological diversity and the principle of optimum sustainable yield in the use of living natural resources.
- d. To raise public awareness and promote understanding and essential linkages between environment and development and to encourage individual and community participation in environmental improvement efforts, and
- e. To co-operate in good faith with other countries, international organization/agencies to achieve optimal use of trans-boundary natural resources and effective prevention or abatement of trans-boundary pollution.

2.6. What is Pollution?

According to Oladele⁶⁸ pollution comes from the latin word pollure which means to defile or make unclean or unwholesome. It is the process of making dirty or destroying the beauty-freshness or purity of a place surrounding or environment. It is the undesirable change in the physical, chemical or biological characteristics of an environment that will be harmful to man. It can also be seen as the introduction by man, directly or indirectly, of substances or energy into the environment culminating in deleterious effects harmful to human health.

Adeyanja⁶⁹ has defined oil pollution as the introduction by man, directly or indirectly, of any hydrocarbon material, especially crude oil and refined product into the environment. The foregoing definitions of are in agreement with the statutory definition of pollution under section 38 of the Federal Environmental Protection Agency Act⁷⁰ and section 259 of the mineral and mining act. However,

68. Cited, Adeyanju, J.A. Government and Oil Pollution Crises in Nigeria, (2004) International Journal of Environmental Issue. Vol. 2 No. 182 @ 218.

69. Umozurike U. O. Introduction to International Law (Ibadan: Spectrum Books Ltd 2001) @ 254

70. Atsegbua et al, supra n. 4, p 131

it should be emphasized that the man-made or aided alteration of the environment must be to the extent that it is detrimental to the environment or beyond an acceptable limit. It follows, therefore, that the

issue is not that there should not be pollution or discharge of deleterious and noxious substances to the environment as that would amount to cessation of all legitimate economic and industrial activities. It is that environment should be carefully used such that the pollution arising there from can be confined within manageable limits and not undermine the sustainability of the environment vis-à-vis the growing demands on it. It is also with the caveat that minerals do not reproduce themselves indefinitely after they have been exploited and that the world's mineral resources are progressively on the decline and the imbalance in the ecosystem arising from unregulated exploitation and pollution may have far-reaching consequences in the long run⁷¹.

2.7. Sources of Pollution

Nzemeka and Erhagbe⁷² have identified seven major sources of pollution. Firstly, degradation waste which is mainly organic and is subject to bacterial decay. This class of waste includes industrial chemical waste and oil spillage. Secondly, is dissipating waste, this class includes gas flaring. Thirdly, is particular waste this includes dredging soils, clay waste, hydrocarbons and sulphur. Fourthly, is gaseous waste which includes burning of coals, gas oil, acid rain, global warming and greenhouses effect. Fifthly, conservative waste including non-degradable waste like heavy metals, lead, zinc, copper, tin, halogenated hydrocarbon and radioactive waste. Sixthly, man-made chemical waste arising from industrial activities like flavourings, preservatives and colourings and lastly, is noise waste.

2.8. Effect of Pollution

Effect of pollution can be viewed from the concept of the three environmental media of air, water and land. This compartmentalization is however for purposes of analysis for it is difficult to determine where land pollution ends and where water and air pollution start, in fact, they are interwoven⁷³.

71. Cited, Adeyanju J.A. Government and Oil Pollution crises in Nigeria (2004) International Journal of Environmental issue. Vol 2 No. 182 @ 218

72. Umuzurike U.O. Introduction to International Law (Ibadan: Spectrum Books Ltd 2001 @ 254

73. See Thomson Justice and beck with Silas, Environmental law, London Sweet and Maxwell 1997 @ 3.

CHAPTER THREE: LAW REGULATING POLLUTION AND COMPENSATION INNIGEREIA

3.1. The 1999 constitution

By virtue of the constitution of the Federal Republic of Nigeria, 1999 no movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily except prompt compensation is paid and right of access to court is given for the determination of his interest in the property and the amount of compensation.

3.2. The Land Use Act

By virtue of section 28 (2) c of the Land Use Act, it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest for mining purpose or oil pipeline or for any purpose connected therewith, but the occupier there of shall be entitled to compensation under the appropriate provisions of the petroleum Act and where the occupier is a community, the compensation may be directed to be paid to the community or to the Chief or Leader of the community to be disposed of by him for the benefits of the community in accordance with the applicable customary law or into some fund for the purpose of being utilized or applied for the benefit of the community¹.

3.3. The Criminal Code

Section 245 of the criminal code makes it an offence to foul water by rendering it less fit for the purpose for which it is ordinarily used. Section 247 equally makes it an offence to vitiate the air or spread the infection of any disease dangerous to life, whether animal, plant or human.

3.4. The Petroleum Proof Act

The Act provides for the exploration of petroleum from the territorial water and the continental shelf of Nigeria and vests ownership of all offshore and onshore revenue on the federal government. Section 17 of the Act prohibits oil based activities in any area held to be sacred; any area set aside for public purposes; any part occupied for any purposes by government, any part situated within a township village is the site cemetery etc. any part which is the site of or is within 50 yards of any building, institution, reservoir, dam, public road or train way, or which is appropriated for or situated within 50 yards of any rail way, any part consisting of private land, and any part under cultivation².

1. Section 29(3) of the Land Use Act.

2. Okaba, B.O. The Petroleum Industry and the Paradox of Rural Poverty in the Niger Delta (Benin Ethiope Pub, corp.2005) @ 120

Section 36 of schedule 1 of the petroleum act provide that the holder of an oil exploration license, oil-prospecting license or oil-mining lease shall, in addition to any liability for compensation to which, he may be subject, under any other

provision of the Act, be liable to pay fair and adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased lands.

For Okaba³ the petroleum Act may be well intended but in practice recourse to the foregoing provisions for the authority to recognize or certify an area as sacred lies within the discretion of the state and not the community which is affected and what constitutes 50 yards and private land can be undermined by the company seeking the written consent of the state against that of the indigenous community which does not also determine the commercial value of economic crops and trees. Section 25 of the Act deals with the prevention of pollution while section 36 requires the license to control the flow and prevent the escape or avoidable waste of petroleum discovered in or obtained from the relevant areas and to cause as little damage as possible to the surface of the relevant area of its economic value. Okaba argues that the petroleum act is relatively ineffective in relation to the people but seemingly effective only to the extent of protecting the oil companies from irate individuals and communities who seek to redress the devastation of their natural production and distribution (Anti-sabotage) Decree No. 35 now an Act which prescribes death penalty for obstruction or prevention of the production or distribution of petroleum products in any part of Nigeria⁴.

3.3. Minerals and Mining Act

Under section 65, no person shall in the course of mining or prospecting for minerals pollute or cause to be polluted any water or water course in the area within the mining lease or beyond, the area. The holder of a mining title shall in exercise of its rights under the license or lease have regard to the effect of the mining operations on the environment and take such steps as may be, necessary to prevent pollution of the environment resulting from the mining operations⁵.

3. Cap: p 12 LFN, 2004

4. Cap of LFN, 2004

5. See section 99 of the minerals Act

3.6. Petroleum Refining Regulation

This regulation provides for adequate management of waste arising from refining operations provides for physical quality and the use of permanently

placed petroleum storage facilities, and provides for approval from the inspectorate before disposal of petroleum waste.

3.7. Mineral Oil (Safety) Regulation

This regulation provides that pressure vessels used in oil field and, platform installations should meet international standard and those of the Department of Petroleum Resources⁶. It provides for safe discharge of noxious of inflammable gases and prompt report of discovery of hydrogen sulphide gases in oil wells to the Department of Petroleum Resources.

3.8. Oil in Navigable Waters

This Act prohibits the discharge of oil into waters, punishes failure to install oil pollution prevention equipment in ships failure to keep record on oil matters⁷. Failure to provide oil reception facilities and failure to report oil pollution in harbour waters etc.

3.9. Oil Pipelines Act

Section 11 (5) of the oil pipelines Act provides that the company shall pay compensation:

- a. To any person whose land or interest in land is injuriously affected by the exercise of the rights conferred by the license.
- b. To any person suffering damage by reason of any neglect on the part of the company on its agents to protect or maintain any work or structure.
- c. To any person suffering damage (other than on account of his own default or on account of the malicious act of a third party) as a consequence of any breakage or of leakage from the pipe or an ancillary installation having regard to any damage done to any building, crops or profitable trees, any disturbance caused; any damage suffered any person by reason of any neglect on the part of the company or its agents, and loss in value of any land or interest in same.

By virtue of section 19 a court can award such compensation as it consider just in respect of any damage done to any building, crops or profitable trees by oil company and in addition may award such sum in respect of disturbance if any as it may consider just in assessing the loss in value at the land or the interest injuriously affected the court shall determine the value at the date immediately before the grant of the license

6. See section 99 of the Minerals Act

7. Cap:06 LFN 2004: see section 1,3,5,7,and 8

to the company. The compensation shall be a sum of money payable forthwith or shall consist of periodic installments or, partly one and partly the other, provided additional compensation not originally in the contemplation of the parties may be awarded by the court if course is shown. The payment to any person to whom any compensation shall be paid or the payment into court of any compensation upon a decision of a court shall discharge the person. Making such payment from being to the application or being answerable for the misapplication thereof.

3.10. Petroleum (Drilling and Production) Regulations

By virtue of regulation 21 of the petroleum (Drilling and Production) Regulation, a license or lessee shall not cut or take any “protected tree” except with the consent of the state and on the payment of appropriate fees and royalties but if it is a “production trees”, the company shall pay fair and adequate compensation to the owner. By virtue of regulation 25 of the company exercise the rights conferred by the license or lease in such a manner as unreasonably to interfere with the exercise of any fishing rights, the company shall pay adequate compensation therefore to any person injured by the exercise. It has been conversed by Kanije Ebeka that a limitation is placed on this provision by the expression “unreasonably to interfere” which appears to place a high evidential burden on a victim, regulation 25 makes the lease or licensee to adopt all practical precautions and up-to-date equipment to avoid pollution of water’s to drain waste brine, sludge or refuse so as to prevent land or water pollution, to restore an affected environment to satisfactory conditions after operations to avoid pollution.

3.11. Environmental Impact Assessment Act

This Act provides for a systematic approval of the environmental consequences of a project on its locality before execution. It also advances programmes and policies alternative to the project⁸. It provides for a more proactive and preventive approach to limiting environmental harm rather than consideration of commercial criteria.

3.11.1. Other Statutory Regimes and Policies

There are other statutes and policies regulating arbitrary pollution of the environment⁹. These include the national policy on the Environment with the goal of sustainable development, national guideline and standard for environmental pollution in Nigeria, National Effluent Limitation Regulation which requires installation of anti-pollution equipment, pollution Abatement,

8. Cap 1 E12 LFN 2004

9. Adeyanju, J.A. Op. cit P 222 – 223

in industries and facilities generating waste which imposes restrictions on release of toxic waste to permissible limits, sectoral guidelines for environmental Impact Assessment which provide guidelines for conducting EIA for projects on sectoral basis others are Petroleum Project Tax Act, Hydrocarbons Oil Refineries Act, Petroleum Control, Act, Petroleum Drilling and Production (Amendment) Regulations, NNPC (Amendment) Act, etc.

In 2006, respite was said to be on the way for communities in the Niger Delta as a bill seeking to compel oil companies to pay ₦10 million as compensation, for spillages passed a second reading in the House of Representative. Sponsored by J.H. Agoda ¹⁰ in 2006, the bill is for an Act to establish the oil spills hazardous pollution compensation superfund to recompense individuals, groups of persons, communities etc, who are affected, injured or have otherwise suffered any damage to their health, property, business, crops or economic trees.

By the bill owners and operations of crude oil drilling rigs located onshore or offshore within the territorial waters of Nigeria shall each contribute the sum of ₦10 million per annum to the compensation super fund. The bill also sought to compel owners and operators of deep-craft super tankers serving crude oil pumps or flow station or delivering refined crude oil products to pay ₦5 million per annum, while owners and operators of tankers and barges carrying crude oil products rendering varying services in that regard, and which negotiate Nigeria shallow waters, barbour, rivers and canals shall each pay ₦2.5 million per annum to the superfund canvassing that it was the responsibility of parliament to dislocations in the polity. Agoda submitted that the bill was an avenue for government to continue to exercise its duties over the oil servicing companies.

However, the international oil pollution convention bill has been domesticated by the President Olusegun Obasanjo Administration to enable Nigeria and Nigerian benefit from the international oil pollution compensation fund to which it had been contributing funds over the years compensation for oil pollution damage is governed by an international regime developed under the auspices of the international maritime organization, the frame work for the regime is the 1992 civil liability convention and the international oil pollution compensation fund the fund was established to enable victims get compensation for pollution that could not be fully obtained under the civil liability convention of 1992. However, the ship owner is entitled to limit his liability to the amount which is linked to the tonnage of his ship¹¹ the NAMASA

¹⁰ See Tordue Salem: shell others to pay Host Communities N10 million. Vanguard: Thursday February 1, 2007 P 9

11 See Godwin Orise, Federal Government signs International Oil Pollution Convention into Law, vanguard, Thursday February 8, 2007 P 19

DPR and NPA had formed an alliance to monitor vessels operating in the nations coastal waters to ensure that ships comply with the international oil pollution fund convention in the event of making a claim on pollution the move to form the alliance was borne out of the fact that Nigeria as a member of the fund but was not benefiting from same because it lacked records of pollution with which it could make claims for compensation. In fact, it become clear that no oil spill report had been received from the few operational floating production storage offloads (FPSO) and that for the past 8 years, no report on oil spills had been made and received, from the NNPC besides, the non-availability of records of spills and pollution, another factor which could have militated against Nigeria in the event of applying for compensation would have been the non-domestication of the convention in Nigeria municipal law ¹².

3.11.2. Common Law Regulations of Pollution and Remedies for Compensation

The common law is not left out in the regulation of pollution. The rule in **Ryland vs. Fletcher**¹³ and the common law torts of trespass, nuisance and negligence are all relevant in pollution control, prevention and punishment when applies in appropriate cases.

3.11.3. Institutional Machineries for Pollution Control

A number of institutional frameworks have been set up by the government to check pollution and tackle its adverse consequences.

This Agency is responsible for the protection of the Nigeria environment and the conservation of its Natural resources including the establishment of guidelines and standards for the qualities of air, water and protection of land against pollution. It prescribes methods of removing oil related pollutions and formulates national contingency plans for oil spillage and environmental emergencies.

3.11.4. The Niger Delta Development Commission

This, commission tackles ecological and environmental problems¹⁴, that arise from the exploration of oil mineral in the Niger Delta Area and advises the Federal Government and member states on the prevention and control of oil spillages, gas flaring and environmental pollution, it liaises with the oil companies and the oil bearing communities on all matters of pollution prevention and control. It plans and implements project and programmes for the sustainable development of the Niger Delta.

12. See Godwin Oritse, NAMASA, DPR, NPA, form Alliance, on Oil pollution fund Vanguard, Monday January 8, 2007 P 19
13. (1866) LR 1 Exch 265
14. Cap F10 2004

3.11.5. Critique of the Legal Regimes and Institutional Machineries

Harsh criticisms have greeted the legal regimes and institutional machineries that have been put in place to check and control environmental degradation and pollution arising from mineral oil exploration in Nigeria. The conclusion reached by **G. Angaye et al**¹⁵ their study revealed that oil producing countries of the third world lag behind the industrialized world in the provision of much-needed laws to protect their citizenry and control oil companies. Third world citizenry equally lag behind in green peace initiatives.

As it is put by Nwankwo and Ifeadi the industry is still confronted with problems in pollution control and enforcement because of the lack of Adequate legal, Administrative technical and other necessary infrastructural facilities.

The shortcomings of these legal machineries have been well articulated by **Okorodudu – Fubara**¹⁶ who has canvassed, among others that the fines imposed by the laws and regulations are not deferent enough and there appears to be a motley of exceptional circumstances, escape routes and loophole defences for the polluters in the events of natural disasters, war, sabotage, vandalization, preservation of life, accident non-fault of the company, act of third parties, necessity of refinery effluent, and exercise of statutory powers, the learned author has equally submitted that the common law of torts and negligence, trespass, nuisance and the rule in Ryland vs Fletcher have almost become stultified and have gradually proved to be too weak to cope with modern day realities of complex petroleum operations.

In a specific appraisal of FEPA, **Othe Ewoma**¹⁷ has submitted that although the Act is a codification of government policies on pollution, its effectiveness in the resolution of dispute arising from oil pollution is a mirage as it does not only lack the appropriate machinery to enforce its sanctions, it has two mutually exclusive streams in the determination of liability. The first is as to whether the pollution occasioned is one of hazardous waste in which case liability is fixed by the agency and the second is as to whether the discharge is as a result of a breach of a regulation on standard for industrial effluents in which case liability is fixed by the court, apart from public ignorance of the activities of the agency, **Othe Ewoma**¹⁸ has also observed that the public cannot sue polluters without the consent of the agency which is at

15. Cap N86 LFN 2004

16. Cited Ikem A.A.: op cit, P 134-135

17. Cited Othe E.O. cit P 91

18. Okorodudu – Fubara M.T. op cit P 818

violent odds with the decision of the supreme court of Nigeria in *Adediran and Anors vs Interland*¹⁹. In fact, a debilitating problem arising from the foregoing is the conflicting and overlapping state of law, the laws regulating oil mining and pollution generally appear quite prolix yet unapplied, unexecuted and ineffective.

3.11.6. Institutional Remedies and Development Agencies Petroleum Revenue Administration

One of the most significant natural resources that Nigeria is endowed with is it, twin vast reserves of crude oil and gas that has become so pivotal to the economy²⁰oil and gas jointly contribute about 70% of the gross domestic product and the highest foreign exchange earner of about 25% according to the Central Bank of Nigeria Annual report for the year ended December 31st, 2006 oil and gas jointly contributed 1,707 trillion to the federation account while the non-oil sector contributes 524.1 billion in 2001. In 2002, oil and gas contributed 1,731 trillion to the same account while the non-oil sector contributed 501.0 billion in 2003, oil and gas also contributed 2,576 trillion while the non-oil sector contributed 500.8 billion in the year 2004 and 2005 respectively, oil and gas contributed 3,920 trillion and 5,547 trillion respectively while the non-oil sector contributed 565.7 billion and 785.1 billion to the same account.

The questions that are to be answered are: who keeps the money? Who disburse it? How transparent is the disbursement and management of the money? These huge revenue realized annually from oil and gas is expected to be shared and or administered between the federal, the state and the local government councils in Nigeria in line with the extent laws both statutory and case laws.

By virtue of section 162 of the 1999 constitution of the federal republic of Nigeria provisions have been adequately made as to where and how the entire revenue (including the one from oil and gas) is to be banked and disbursed amongst the three tiers of government of Nigeria. However, as revealed by the cases of attorney General of Bendel State v Attorney General of the federation and Ors²¹ also in Attorney General of the Federation and Ors v. Attorney General of Abia State and Ors²² there has continued to be bickering among the three tiers of government over control and management of the huge revenue from oil and gas.

19. (1999) 6 LRCN 2035

20. A.O. Ajineh, Petroleum Revenue Administration in Nigeria Seminar Paper presented for L.L.M Degree Programme: Delta State University, Oleh Campus 2006 P 1
21. See sections 3 and 162 of the 1999 constitution
22. (1983) All NLR 1

3.11.7. Derogation from Fiscal Federalism

A federalism according to **Nwabueze**²³ is an arrangement where powers of government with a country are shared between a national government and a number of regions in such a way that each exists as a government separately and independently from the others operating directly on persons and property within its territorial area with a will of its own and its own apparatus for the conduct of its affairs and with an authority in some matters exclusive of all the others situating the earliest fountains of the concept of federalism in the independence constitution of 1960, Ajineh²⁴ opines that it granted powers to both the regions and the federation in fiscal terms.

Thus section 134 to 136 of the said 1960 constitution provided that there shall be paid by the federation to each region a sum equal to 50% of the proceeds of any royalty received, by the federation in respect of any minerals extracted or mining rents derived by the federation during the year.

The federation shall equally credit to the distributable pool account a sum equal to 30% of the proceeds of any royalty received by the federation in respect of minerals extracted or any mining rents derived by the federation from any region. The federation shall pay to the regions at the end of each quarter, sums equal to the following fractions of the amount standing to credit of the distributable pool account at that date: to the Northern Region, forty, Ninety-fifths: to the Western Region, Twenty-four Ninety-fifths: and to the Eastern Region, Thirty-one Ninety-fifths furthermore, each region shall in respect of each financial year, pay to the federation an amount equal to such part of the expenditure incurred by the federation during that financial year in respect of the department of customs excise of the government of the federation for the purpose of collecting the duties referred to in section 130 to 133 of the said constitution. Also significant are the provisions to the effect that the parliament was to prescribe the periods in relation to which the proceeds of any royalty or mining rent shall be calculated for the purposes of the section and that for all purposes, the continental shelf of a region shall be deemed to be part of that region.

Ajineh²⁵ has forcefully opined that over time, these vital constitutional provisions on true federalism have been systematically abolished from the subsequent constitutions of Nigeria by successive military regimes to the extent that the federating states are no longer financially autonomous of the federal government. To buttress this claim the learned scholar cited a welter

23. (2002) FWLR (pt 102) P 1

24. B.O. Nwabueze, *federalism in Nigeria under Presidential constitution*. 1st Edition, (London/sweet and Maxwell, 1983) P 1. See also B.O. Nwabueze *Presidential constitution of Nigeria* 1st Edition (London: C. Hurst & Co., with Nwamife publishers, (1982) P 37.

25. id @ 7

of authoritative legislation including but not limited to the following: section 44 (3) of the 1999 constitution of the federal republic of Nigeria to the effect that the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under exclusive economic zone of Nigeria shall vest in the government of the federation and shall be managed in such a manner as may be presented by the national assembly. The land use Act²⁶ which vest all land comprised in the territory of every state of the federation in the Governor of each state to be held in trust and administered for the use and common benefits of all Nigerians. The territorial waters Act²⁷ that has extended the limits of the territorial waters from twelve to thirty nautical miles of the coast of Nigeria measured from the low water mark of the seaward limits of the inland waters.

Cited also in the exclusive economic zone acts²⁸ that vest in the federal government, the sovereign and exclusive rights with respect to the exploration and exploitation of the natural resources of the seabed, subsoil and sub-adjacent waters of the exclusive zone. The Act further extended the exclusive economic zone to 200 nautical miles seaward from the coast of Nigeria and the rights so conferred are exercisable by the agents or agencies of the federal government so designated other statutory laws that have centralized the control or ownership of all mineral resources found or discovered in any part of Nigeria.

This retinue of obnoxious and repressive legislation were rolled out to strengthened the federal government's illegitimate grip of the oil revenue and disallow the communities to protest while empowering the police, the military and the oil companies to ignore the legitimate dissent from the oil bearing communities. In fact, the petroleum Act abolished the derivation principle and expropriated all petroleum resources under the sole control of the federal government²⁹ Osoba and Oyerinle³⁰ have pointedly canvassed that the proper context of studying the predicament of the Niger Delta in the epoch of the hydrocarbons is the political economy of a travesty of a state with a rigid fiscal federalism bequeathed by colonialism. These authors are ready to insinuate that there is an ethnic coloration to the legislations it is argued that the elites of the big three were united in their agitation and outrage against the principle of derivation because the source of wealth had shifted from agricultural products to oil and gas and therefore resisted the

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26. Section 1
27. Cap 428 LFN, 1990
28. Cap 116 LFN 1990

review of 13% to 50% derivation and resource control. A former minister of petroleum resources, Morris Akobo³¹, was no less from the point when he posited that in 1995 the rents and royalties from oil production stood at nearly 4 billion naira per month but only 1% of these proceeds were shared among the state of the southern minorities he argued that before exchange earner, the derivation principal for sharing money paid into the federation account was guarded jealously by the marketing boards but when oil was discovered in commercial quantities in the southern minority areas a new revenue formula which left the oil producing states with little or nothing became evolved.

3.11.8. Constitutional Provision for Revenue Sharing

As held in **AG federation vs AG Abia state and Ors**²⁹ there is a clear difference in the awarding of section 149 (2) of the 1979 constitution and section 162 (2) of the 1999 constitution. While section 149 (2) of the 1979 constitution made no provisions for the derivation principle in respect of revenue allocation as it related to revenue accruing from mineral operation section 162 (2) of the 1999 constitution makes provisions for sharing of revenue accruing on derivation basis.

By virtue of section 162 of the constitution of the federal republic of Nigeria, the federation is to maintain a special account to be call the federation account to which shall be paid all revenues collected by the government of the federation except proceeds from the personal income tax of the personnel of the Armed Forces of the federation, the Nigeria police force, the ministry or department of government charged with responsibility for foreign affairs and the residents of the federal capital territory. The president, upon the receipt of advice from the revenue mobilization allocation and fiscal commission, shall table before the national assembly proposal for revenue allocation from the federation account, and in determining the formula, the national assembly shall take into account the allocation principles especially those pollution, equality of states. Internal revenue generation, land mass, terrain as well as population density provided that the principle of derivation shall be constantly reflected in any approved formula

as being not less than 13% of the revenue accruing to the federation account directly from any natural resources³⁰.

By virtue of section 162 (3) of the 1999 constitution, any amount standing to the credit of the federation shall be distributed between the federal, state and the local government councils in each state on such terms and in such a manner as may be prescribed by the National Assembly³¹. The amount standing to the credit of the states in the federation account shall be distributed among the state on such terms and in such a manner as may be prescribed by the National Assembly. Each state shall maintain a special account to be called state joint local government account into which shall be paid all allocations to the local government councils of the state from the federation account and from the government of the state³². Each state shall pay to the local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly. The amount standing to the credit of the local government councils of a state shall be distributed among the local government councils of the state on such terms and in such manner as may be prescribed by the House of Assembly of the state³³.

Ajineh³⁴ has submitted that by the community reading of the provisions of section 162, payments from commercial activities connected with the oil and gas sector fall within the definition of revenue under section 162 (10) of the 1999 constitution. Thus all revenues from oil and gas transactions are to be paid into the federation account. These include rents from leases, licenses, royalties, petroleum profit, tax oil and gas sales receipt etc. Figures made available to the vanguard³⁵ showed that the department of petroleum resources in the last 5 years generated a total of 1.067 trillion naira from oil companies for the federal government.

3.11.9. Litigating the Revenue Sharing Formula

With the elaborating provisions sections of section 162 of the 1999 constitution, it would have been thought that there should be no controversy surrounding the payments into and the disbursement from the federation account.

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30. Section 162 (3) of the 1999 constitution
 31. See section 162 (4) Id
 32. See section 162 (5) Id
 33. See section 162 (6)
 34. See section 162 (7) Id and A.O. Ajineh o.p cit, P 12
 35. Vanguard newspapers October 3, 2006 P 1 and 15, see also A.O. Ajineh, Id

However, the reverse is the case. The oil and gas revenue accruable to the federation account its disbursement have been managed in such a manner that the component states of the federation have been short-changed especially with the brazen illegal and unilateral withdrawals from and charges on the account by the federal government without due procedure, the permission of the state joint owners and the National Assembly.

In 2006, the National Assembly queried the withdrawal of 201 billion naira from the excess crude account by the Presidency outside the 2006 appropriation Act similarly; the revenue mobilization allocation and fiscal commission have expressed concern over the unconstitutional and unilateral withdrawal of revenue from the federation account by the federal government without following due process. These withdrawals were 12.259 billion dollars to exit Nigeria from the Paris revenue mobilization allocation and fiscal commission pointedly alleged that the presidency was operating three illegal accounts (excess crude oil, excess petroleum profit tax and excess royalty accounts) and a revenue formula unknown to the 1999 constitution of the federal republic of Nigeria.

According to **Ise-Oluka Ige**³⁶ the commission even sued 2.2 trillion naira from the federation account within 2 years (2006-2007) and sought injunction to restrain the federal government from further deductions. The federal government responded by applying that the suit be terminated as the commission lack locus standing to maintain the action and the court equally lack jurisdiction to entertain it.

The state have not been left out in the agitation against the sharing formula to avoid questionable dealings, the federating states had equally called on the revenue mobilization allocation and fiscal commission for the establishment of a neutral body for the sharing of the nation's revenue querying the superintendence of the federal government officials like the Accountant General of the federation, Minister of finance, the Chief Executives of the NNPC, the customs and the federal inland revenue in a matter in which they were interested. The 36 states equally demanded from the RMAFC other sources of

revenue that accrue to the federation account besides oil money and how judiciously these revenue had been shared overtime because the states got beclouded by the oil money and forget other sources of income of the nation ³⁷.

36. Ise-Oluwa Ige, Federal Government ask court to terminate RMF/AC's suit on 2.2 trillion Federation Account, vanguard, Wednesday June 6, 2007 P 5

37. Mathias Okwe, states want neutral body to share revenue, the guardian July 4, 2007 P 1-2

In other words, frequent squabbles between the federal and the states government over the management and operation of the federation account have been the other of the day. Attorney General of Bendel State vs Attorney General of the Federation & Ors³⁸ which was decided under the 1979 constitution of the federal republic of Nigeria, the supreme court held that the amount in the federation account is a public revenue accruing to the federal government, the state government and the local government councils in each state and it was contemplated that the amount standing to credit of each state government shall be distributed to them as the provision was mandatory and did not impliedly or expressly authorize the federal government to retain on behalf of the beneficiary.

State any portion of the revenue duo to the states from the federations account, it was further held that once the federation account was divided amongst the three tiers of government, the state become the absolute owner of its share with which to exercise full control over the same in keeping with the principal of fiscal autonomy and that the position of the federal government in maintaining the federation account was that of a trustee for the states and local government councils. It was therefore the duty of the federal government as a trustee, to keep a proper account of the trust and it was the right of the government for a rendition at regular intervals of accurate information as to the trust.

In Attorney General of the Federation & Attorney General of Abia State & Ors the two principal issue that came up for determination were the seaward boundary of the littoral states for the purposes of calculating the amount from mineral oil resources and the legality or otherwise of the various unilateral withdrawals and disbursement by the federal government from the federation account. While the supreme court held that the seaward boundaries of the Cross River, Delta, Lagos, Ondo, and Rivers within the federal republic of Nigeria for the purposes of calculating the amount of revenue accruing to the federation account directly from any natural resources is the low water mark of the land surface thereof, it was held that the unilateral withdrawals etc.

3.11.10 The Commissions

Having attempted to identify the levels of government that are in custody of the revenue derivable from oil and gas and how the revenue is disbursed in terms of formula, it falls to be determined the machinery through which the levels of government reach the citizens with the proceeds.

38. See section 2 (1) (b) and 4 of the Niger Delta Development Commission (Establishment etc) Act cap N86 LFN 2004

3.11.11. The Revenue Mobilization Allocation and Fiscal Commission

This commission was established by the 1999 constitution of the federal republic of Nigeria. It is composed of a chairman and member from each state of the federation and the federal capital territory who in the opinion of the president are persons of unquestionable integrity. The commission shall have power to monitor the accruals to end disbursement of revenue from the federation account, review from time to time, the revenue allocation formula and principles of derivation in operation to ensure conformity with changing realities provided that any revenue formula which is accepted by an Act of the National Assembly shall remain in force for a period of not less than five years from the date of commencement of the Act. The commission is equally to advise the federal and states governments on fiscal efficiency and methods by which revenue can be increased.

However, apart from the revenue mobilization allocation and fiscal commission, government has equally established various commissions to apply the funds from petroleum revenue towards the development of the Nigerian Society. These commissions include the defunct NNDC, OMPADEC, defunct PTF NNDC and NPDF.

3.11.12. The Challenging Setting of the Niger Delta

The Niger Delta as known today has undergone a transformation engendered by the presence of oil mineral resources in the area. The area was originally limited to the geo-political zone occupied mainly by the minorities of southern Nigeria, which currently comprises of the six states of Akwa-Ibom, Bayelsa, Cross River, Delta, Edo and Rivers with time, the area has been redefined to include the contiguous oil producing states of Abia, Imo and Ondo³⁹ the challenging setting of the area includes the fact that the terrain has been geographically described as one of the largest wetlands in the world. Covering an area of 70,000 square kilometers, its other peculiarities include sandy mangroves, permanent and seasonal swamp forests as well as low land rain forest with the entire area criss-

crossed by a large number of rivers, rivulets, streams, canals and creeks. The coastal lines are buffeted throughout the year by the tides of the Atlantic Ocean while the mainland is prone to flood by the various rivers particularly the Niger – Benue⁴⁰.

Going judgmental on the origin of the problems of the Niger Delta region, the Vice President (former) Goodluck Jonathan has been reported by

39. See towards rebuilding the Niger Delta 1999 – March 2004. (Marina Lagos: NNPC, Dillis's)

40. See Abraham Ogodo, Re-inventing South-South Solidarity. The Guardian, Sunday July 8, 2007 P 44

Abraham Ogodo as canvassing that some people make erroneous remarks as if the Niger Delta crises started some eight (8) years ago, that some people make allusions to the issue of government being given monies and that such monies were not properly utilized hence the crisis in the region. The problem of the Niger Delta did not start from the last eight (8) years even.

According to **Okaba**⁴¹, the subjugation and exploitation of the Niger Delta during the colonial era created serious droughts and concern among the inhabitants of the region about their stake in post-colonial Nigeria. To allay the fears of continuous subjugation coterminous with internal colonialism led to the Sir Williams commission. The commission in unequivocal terms agreed that the fears of the Niger Deltans were real and genuine and recommended the establishment of Niger Delta Development Board to undertake the physical development of the area.

However, it may be held as good argument that the problem was aggravated by the military incursion into the political leadership of the Nigeria states in a preface to the work of Ekabo, *A legacy of Restoration: Donald Emayomi* captured the argument when he opined that the people of the Delta region went through a protracted period of acute social, political and economic problems under military rule in Nigeria. During the period, the people suffered from governmental insensitivity and outright neglect despite the fact that the huge oil resources of their states were being massively exploited to provide revenue for the Nigeria nation.

Owing to the lack of governmental attention, the overall situation of their states was adversely affected and it also degenerated steadily. Many areas were touched as, for instance, education; environment public works and utilities, health, commerce and youth development, schools in the states were in poor state both in terms of physical structure and availability of resources and quality of education. The health institution did not fare better. The environment both in

urban and rural area was devastated by waste and pollution roads were very bad, while supply of utilities like power and water was either poor or sometimes the case, totally absent. Economic activity and productivity were hindered by un-conductive environment factors and in addition government did not act meaning fully to create jobs and economic opportunities.

According to Emayomi with these adverse conditions, the general mood among the people was one of dissatisfaction and disaffection. Many people then become restive and agitated. The scenario that emerged become one of

41. Id, @ 16

tension particularly in the oil producing communities. There were conflicts between communities and multinationals. Things sometimes got very serious as when Ken Saro-Wiwa and other Ogoni agitators were killed in 1995 during the regime of Late General Sani Abacha with repression, coupled with the already adverse conditioning. There was indeed hardly anything the people could happy about in their perception of government and their overall situation. Many people became very disenchanting.

The oil companies have equally acknowledged the military government neglect of the oil communities. In the words of Maarten Wink⁴², the activities of shell in the Niger Delta had been uneasy within the past several years especially during the military era. The company had to contend, over so frequently, with enormous demands by host communities which had been marginalized over the years.

The Niger Delta is characterized with abject poverty and lack of most basic social amenities that could make life meaningful like portable water, health care, schools, roads, electricity and other infrastructures.

3.11.13. The Challenging Setting of the Delta Area Makes Its Routine Development Almost Impossible

The debilitating conditions regarded as the most challenging in Nigeria Attracted the Sir Henry Willink's commission that was set up to recommend the best strategies for the development of the area. The commission turned in its report in the 1958 and specifically recommended that the area deserved to be a focus for special development effort directly by the Federal Government. It has been argued that this recommendation was made even when oil and gas had not become the pivot and nexus of the national economy. The commission's report led to the establishment of the Niger Delta Development Board (NDDDB) in 1960

by the federal government to cater for development needs of the area. The Board was however, almost non-existent before the civil war broke out⁴³

3.11.14. The River Basin Development Authority

It has been canvassed that what came after the civil war never took account of the Willink commission's report instead an all-embracing body called the river Basin Development Authority was established for the development of the entire country. Ironically, at the time the authority was established, the Niger Delta was already producing crude oil in commercial

42. Cited. Shell: A model in partnership. Tell January 14, 2002 P 28

43. See Ekabo, C.V. op cit. @ 6

quantity accounting for the highest advantage of the national income and revenue. It has been further canvassed that the development opened a floodgate of agitations for the restoration of the willinks commission's recommendation by requesting for a special attentions to be paid to the development of the area. The agitation led to the setting up of a presidential task force that devoted 1.5% of the federation account to the development of the Niger Delta area; but like the board before it, not much impact was made on the area's development though it lasted from President Shehu Shagari administration (1979-1983) to the early year of the General Ibrahim Babagida's administration (1985-1993)⁴⁴.

3.11.15. Petroleum (Special) Trust Fund

This development agency or fund was established for the purpose of managing the monies received from the sale price of petroleum products less the marketers margin, its disbursement to the federation account and the Nigeria National Petroleum corporation and the utilization of the balance in the fund for the general improvement of social infrastructures and services in all the states of the federation and the federal capital territory Abuja⁴⁵. The fund was located in the presidency and was subject to the direction, control and supervision of any other authority or person in the performance of its functions other than the Head of State. The fund however, had a board that consisted of a Chairman, eight other members and a secretary who were to be persons of proven integrity and appointed by the Head of State who was equally to determine the tenure of the members of the Board⁴⁶.

The Board was responsible for receiving money accruing to the fund in the form of annual subvention from the federal government. Such monies as may,

from time to time, be lent, deposited with or granted to the fund by the federal, states or local governments and shall disburse such monies monthly to the federation account. The NNPC and such other beneficiaries as may be determined by the Head of State. The Board was to scrutinize and approve projects in the following sectors: road to road transportation including provision of vehicles for mass transit, railway, transportation and water ways, education, health, food supply, water supply, security services, alternative sources of energy rural development programmes etc⁴⁷.

44. Id

45. See section 1 of the Petroleum (Special) Trust Fund Act Cap p14 LFN 2004

46. See section 2, supra

47. See section 3, supra

Subject to the approval of the Head of State, the Board has power to allocate percentage of monies accruing to the fund to each of the section outlined above, it should however be pointed out that while the other commissions before it except RBDAs had direct bearing and or were limited to the Niger Delta area, the petroleum trust fund has the entire country as its constituency.

In June, 1999 President Obasanjo ordered the scrapping of the PTF. The order however, raised a constitutional question because the PTF was set up as a situtory institution under Decree No. 25 of 1994, under the constitution, the fund can only be dissolved by an act, an act of the National Assembly which is empowered under section 315 to amend or repeal existing legislation. To avert a constitutional crisis with the National Assembly, the President appointed Haroun Adam to head a new board to liquidate the fund⁴⁸.

3.11 16. The Oil Mineral Producing Area Development Commission

With sustained agitations assuming all sorts of frightening dimensions, the military regime of General Ibrahim Babangida set up the Belgore commission to identify the root cause of the intractable communal crisis and discord in the oil producing area and proffer solutions to them. The commission, in response, recommended the establishment of a developmental body to address the problems arising from oil production. That gave rise to the Oil Mineral Producing Area Development Commission (OMPADEC) in 1993.

More than any other body before it, the oil mineral producing area development commission was better placed to make significant impact on the development of the area. However, it had a number of fundamental problems, it leaked a master plan that could its developmental objectives and strategies, suffered inadequate funding made worse by corruption. It generally operated

against a backdrop of popular dissent that eventually consumed it, leaving in its trail, many abandoned projects throughout the area. According to *Okaba*⁴⁹ the Nigeria state and oil companies operating in the state have initiated programmes and projects to quell the tensions and discontents in the Niger Delta and OMPADEC was one such gigantic but wasteful project in which billions of dollars disappeared into private pockets of the operators. The failure of the federal governments' intervention agencies worsened the economic plight of the people and many close watches of the area blame the

48. See Wale Akin Aina showdown: President Obasanjo on a collision with the legislators; Newswatch, September 6, 1999 P 13-14

49. Okaba, B.O. op cit, @ 121

OMPADEC for not assuaging the egecruciating hardships foisted on people by the ecological and environmental hazards of oil exploitation. Yet from it sale. The nation earned so much from oil⁵⁰.

3.11.17. Niger Delta Development Commission

With the collapse of OMPADEC, the spectre of violent agitation and youth restiveness grew in the area resulting in hostage taking, kidnapping of oil workers in multinational oil companies as well as vandalization of equipment pipeline and laying siege on oil platforms and installations. The violent turn of events and the tendency of military government to suppress rather than address the perceived opposition brought about coalition of youths under the umbrella of Egbesu boys, Ijaw youth vanguard, Bakassi boys and Niger Delta youth. They unleashed terror and made the area ungovernable and unsafe for any meaning economic development while the ecological debasements of the area continued. The foregoing was the background before 1999 when the Olusegun Obasanjo's administration established the Niger Delta Development Commission⁵¹. According to Okaba the Act establishing the NDDC was another attempt to defuse the persistent demand for resource allocation and control. But to Ugochukwu Onyeama, its mission which can be gathered from the instruments setting up the commission is to facilitate the rapid, even and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable, ecological regenerative, bringing together all the agencies, mediating, speeding up the processes of development. It was not ask to develop the Niger Delta alone not take over the functions of other agencies of development of the federal state and local governments and the oil companies nor is it to cork in isolation⁵².

Under section 7 of the Act, elaborate provisions are made for the functions and powers of the commission. The commission is to formulate policies and guidelines for development of the area conceive. Plan and implement projects and programmes for the sustainable development of the area in the field of transportation, health, education, employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications. Cause the area to be surveyed in order to ascertain measures that are necessary to promote it

50. Id

51. Id @ 7

52. Cited Ibim Semenitari @ al NDDC: A Catalyst for Niger Delta Progress, Tell February 25, 2002 P 15

physical and socio-economic development. Prepared master plans and schemes designed to promote the physical development of the area and the estimates of the costs of implementing them, identify factors inhibiting the development of the area and assist the member states, in the formulation and implementation of policies to ensure sound and efficient management of the resources of the area. The commission assesses and reports on any project being funded or carried out in the area by oil and gas producing companies and any other company including non-government organization and ensures that funds released for such project are properly utilized. It tackles ecological and environmental problems that arise from exploitation of oil mineral in the area and advises the federal government and the member states on the prevention and control of oil spillages, gas flaring and environmental pollution.

Under section 14 of the act, there shall be paid and credited into the accounts of the commission from the federal government, the equivalent of 15% of the total monthly statutory allocations due to member state of the commission from the federation account, this being the contribution of the federal government to the commission, 3% of the total annual budget of any oil and gas producing company operating onshore and offshore in the area; 50% of monies due to member states of the commission from the ecological fund, such monies as may from time to time, be granted or lent to or deposited with the commission by the federal or a state government, any other body or institutions whether local or foreign like the world bank and UNDP, all monies raised for the purpose of the commission by way of gift, loan, grants-in-aids, testamentary

deposition or otherwise, and proceeds from all other assets that may, from time to time, accrue to the commission.

According to **UgochukwuOnyeama**⁵³, NDDC has a formula for allocating its resources, 20% is allocated on the basis of equality of the state, 35% is allocated on the basis of oil production, 25% for regional projects and 15% for ecological problems. He submitted in fact that the NDDC is funded by the federal government and the oil companies. The state governments are not contributing any money to the commission. He argued that the constitution of the Federal Republic of Nigeria provides for 13% from the federation account to address the problems of the Niger Delta region but it become a

53. Cited: Okafor Ofiebor and Desmond Utomwen, We are Transparent-Ugochukwu. The News, April 29, 2004 p 36

constitutional issue because the 13% was constitutionally meant for the states and the commission which was established by the Act of the National Assembly and thus cannot appropriate the 13% meant for the state. The logjam resulted in the establishment of state agencies like DESOPADEC, OSOPADEC, and ISOPADEC for Delta, Ondo and Imo states etc.

Under section 21 of the Act, there is established for the commission a monitoring committee to monitor the management of the funds of the commission and the implementation of the projects of the commission the committee is to have access to the books of account of the commission at all times and submit periodical reports to the commission directives of a general nature or relating generally to matter of policy with regard to the performance by the commission of it functions and it shall be the duty of the commission to comply with the directives.

A critique of the Development Agencies by the end of June, 2007 the total sum of 3.3 trillion naira had been allocated to the nine states of the Niger Delta area in eight years⁵⁴ minister of information; **FrankNweke**⁵⁵ put the allocations in clearer perspectives. According to him about 2.40 trillion naira was allocated from the federation account to the 6 states of the South-South geopolitical zone between 1999 and 2007, but in spite of that the region remained undeveloped about 176 billion naira was allocated to NDDC between 2000 and 2006, six times the total allocations to previous development commission on the Niger Delta, yet it remained a flop, in 1961, the NDDB was created to facilitate development of the region but the board failed in 1970 to 1980, out of 214 billion naira meant for all

River Basins Development Authorities (RBDAs) only 227.2 million naira went to the six RBDAs in the Niger Delta. Also in 1981, a petroleum trust fund was established and allocated 1.5% of the federation account to develop the Niger Delta region, but the PTF failed in 1992, OMPADEC was established for the rehabilitation and development of the oil producing areas and between 1992 and 1998, OMPADEC received 23.2 billion naira but also failed to change the situation in the region. According to Okaba, the NNDC has been described as a monumental distraction, a major deceit, the state has been accused of denying it operation of funds. It is claimed that the commission is grossly under-funded by the federal government. According to Ugochukwu Onyeama, the commission had received 80 billion naira in 3 years translating to about 32 billion naira per annum going to a state which leaves about 2.6

54. Daily Independent, Friday 29th June, 2007 P A7

55. Frank Nweke, cited, Nkechi Onyedika, five year plan for the Niger Delta to cost N20 trillion

billion naira per state per annum which is obviously not enough to develop the states. There has also been crisis of accountability and the claim that it is evident that an insignificant part of the allocation to the states and local government council from oil revenue is actually spent on genuine development projects as the system lacks proper control and sincere audits, for Ugochukwu Onyeama, the commission exists in a petition zone where wicked rumours are more important than the truth otherwise the commission publishes its audited accounts annually. For **JohnOwubokiri**⁵⁶, the public outrage and international concern for the stability of oil prices, threatened by the Niger Delta struggle, have produced two attempts at charting a restructuring agenda for the Delta but these attempts manifested in OMPADEC and NDDC have proved to be more avenues to advance cronyism that real efforts to repair the devastated ecology of the Delta. Between these two commissions were 4 to 15 years and above of wasted funds, posturing and bogus rhetoric. The people are convinced that these were not sincere efforts to bring them back into human federal government to redress the problems.

From a close study, it is, clear that the NDDC is not radically different from other interventionist agencies, according to **UgbochukwuOnyeama**⁵⁷ NDDC's departure from other development agencies is the fact that it has a master plan. In terms of methodology, it equally does not differ from similar agencies in the past, it discusses with the Governors of the 9 Niger Delta States, the communities, the oil companies and other stakeholders. The formal launch of the ₦6.4 trillion Niger Delta Regional Development master plan was considered to

have consolidated the role and position of the commission as a capable catalyst of development in the beleaguered oil rich region the plan being considered as goal driven and result or contend being a definitive handbook on how the development of the area should proceed. The plan was said to have provided the nation with a comprehensive development guide which experts believed should pull out the poverty ridden region from its age long squalor if well implemented. The plan's launch was probably the first time in Nigeria when all ambassadors and foreign missions publicly gathered together for the cause of the Niger Delta.

According to **Odili and Akande**⁵⁸ the plan was based on a comprehensive analysis of Life, development imperatives, challenges and opportunities in the Niger Delta, Twenty-five sectors ranging from

56. John Owubokiri militancy: defining the Niger Delta struggle, vanguard, Tuesday January 3, 2007 P 23

57. Cited Ibim Semenitari, et, p 16

58. Paul Odili and Ben Akande can N6.4 trillion master plan bail out Niger Delta: Vanguard Tuesday April 3.

demography, education, health, environment, hydrology, biodiversity, natural resources and financial instruments etc. were subjected to detailed study. The plan was said to be aimed at addressing poverty and community needs growing a robust economy: developing physical infrastructure: developing human capacity and providing adequate care for the natural environment. Though the cost of the full implementations of the project in its 15 years period is put at ₦6.4 trillions, there appeared to be a general feeling amongst stakeholders that with the singular determination of purpose and abiding political will, the realization of the plan is possible and that a lot was at stake, and government was determined to organize an orderly and visionary development of the region as if and the industry derive sustainable revenue from the area and the people of its region have suffered under an unjust and inequitable federal system that gives them very little in turn for the degradation of their environment. By making the master plan a national issue, Odili and Akande submitted that the federal government may have triggered off a surge of local and international attention to monitor how seriously and faithfully, those charged with its implementation would carry out the national assignment but will the launching of a plan bring about an end to militant insurgency and assure the people that their neglect is over only time will tell.

3.11.18. The Paradox of Oil Resources and Nation Building

Nigeria is a nation endowed with enormous mineral resources capable of transforming any society in the world into greatness. Yet about 80% of her population lives below the poverty line. The Niger Delta area is the home of the

oil and gas industry in Nigeria and petroleum exploration accounts for over 80% of the country's foreign earnings. The petro-dollar wealth translates into a big curse to the people and environmental degradation to the Niger Delta⁵⁹. As stated by **Tunde Okoli**⁶⁰, watchers of the Nigerian oil industry have concluded that Nigeria oil has been curse rather than a blessing to the mass of the people of the country while a few profit and live lives of affluence from its proceed. For **George-Hill Anthony**, one would have thought that when a nation is wealthy in mineral resources, its people would enjoy rising levels of income and development. But the truth is actually the reverse in the Niger Delta region. He has canvassed that studies have shown that countries lacking oil and mineral resources have stronger GDP growth per capita than countries rich in mineral resources. He claimed that between 1960 and 1990, countries with less mineral resources experienced growth rates 2 to 3 times higher than those with abundant mineral resources and that looking at 48

59. Okaba, B.O. *Petroleum Industry and the Paradox of Rural Poverty in the Niger Delta*. (Benin: ethiope Pub. Corp., 2005) P V

60. See Tunde Okoli, *Nigeria's Drops of Sweet Bitter Oil*. The Guardian, Monday July 16, 2007 P 70

countries for which oil composed more than 30% of total exports between 1965 and 1995, nearly half of these scored in the bottom of 3rd of the United Nations 2002 Human Development Index. One quarter of them scored in the top one third and many of such as Norway and Canada, were wealthy long before oil exports became a major source of their income. In fact, according to him, 12 of the world's most mineral-oil dependent States and 6 of the most oil-dependent states are on the World Bank's list of HIPC, the most destitute nations of the world.

For **Okaba**⁶¹, an ungrateful Nigerian state characterized by monumental inequality and naked injustice has imposed mass poverty and misery on the people. As one of the world's largest exporters of oil, Nigeria has earned about 400 billion dollars since production began about 40 years ago. Yet, living standards have plummeted and 70% of the population lives on less than a dollar day. For the states of the Niger Delta region, from 1999 to 2005, funds running into trillions of naira have been allocated to various tiers of government as follows: Akwa-Ibom State: N313,574,638,229.36 billion; Bayelsa State: N285,636,494,323.50 billion; Cross River: N126,756,427,854.65; Delta State: N387,431,716,797.69; Edo State: N131,539,515,167.39 and Rivers State: N357,506,042,459.77. Even as the oil Producing states have had more funds under the 13% derivation principle, how have these huge allocation impacted on the people? Negatively⁶².

Thus, the Niger Delta question remains the most delicate, critical and vexatious agendum in the political and economic history of Nigeria. In fact, no national and international intellectual discourse on the paradox of poverty and anguish in the midst of splendor can be adequately articulated without reference to the unfortunate dilemma of rural poverty in the region⁶³. The situation raises urgent question of human rights, equity, justice and federalism. The long-suffering people of the area have been disenchanting for too long and their attempts to draw attention to their plight through specific demands about what should be done have met with the brick walls of official indifference. The resort to violence and self-help in the area have made the situation more problematic with the proliferation of desperate militant groups such that each passing day features the kidnapping of foreign nationals, the killing of innocent souls, protests about lack of development in the area, in addition to the crises of environmental degradation, widespread poverty and relative absence of government in the region⁶³.

61. See George-Hill Anthony, *The Guardian*, Sunday July 15, 2007 P 46.

62. Okaba, B.O. Loc. Cit

63. See George-Hill Anthony, Loc. Cit.

Yet another paradox for **Zik Gbemre**⁶⁴, is the certainty that oil resource would not last forever. It is not perennial. It surely would get dried up someday. According to the views of experts, the Nigerian crude oil reserve is put at 35.3 billion barrels and if production continues at the current rate, it would not last more than a decades - a matter of 40 years. Saudi Arabia, the country with the largest crude oil reserve of 261.9 billion barrels has 66 years in which its oil could go and get exhausted. Also, Iraq with a reserve quantity of 115 billion barrels has 100 years of its oil to go. United Arab Emirate having a reserve of 97.8 billion barrels may cease on for another 97 years. Iran's oil reserve put at 125.8 billion barrels may cease to have a flow in about 93 years henceforth. In this scenario, Nigeria should have more cause to worry because it ranks lowest in terms of quantity and production life span. The question as to what happens to its economy after expiration of oil in 40 years' time inspires a bleak future⁶⁵.

Zik does not only suggest that Nigeria and Nigerians should redirect their focus away from crude oil to renewable resources which are more environmentally friendlier such as wind, solar and hydro-energy which is in abundant supply in the country, but he believes that after 40 years, the Niger Delta people and the entire region would have been abandoned and forgotten in the nation's scheme of things politically, socially and economically because what

has consistently attracted the primary interest of all subsequent governments to the oil and gas rich region is the presence of oil. For **Zik**, the people of the Niger Delta would not only have to resort to the ghetto lives, they would become miserable and hopeless. Therefore, the various governments in the region would make wise use of their state funds for meaningful projects that would enhance their local economics rather than embarking on frivolities. They should plan ahead for the post-oil era by investing on healthy and viable programmes that will enhance the living conditions of their people.

3.11.19. The concern of Stakeholders

What then are the concerns of the stakeholders? The oil industry is a capital intensive one. It is subject to chance in that the way in which it is discovered and exploited is essentially a chancy activity. It is an industry with several layers and levels of operation spanning exploitation, production, transportation, refining and marketing with locations in different and diverse places. It does not only present in a multifaceted industrial operations and

64. See The Guardian Editorial. [President Yar'Adua and the Niger Delta](#), The Guardian, Sunday June 10.

65. Zik Gbemre, [Crude Oil: Not a Renewable Resources](#), Vanguard, Thursday June 28, 2007 @ 31

relations, it is a multifarious product one; and above all, a politically industry. According to **Jean-Marie chevalier**⁶⁶, its profits are so great and so vital a material that the political powers cannot ignore it. Great powers seek to set up and maintain in the producing countries political regimes which they subsidize and arm depending on how submissive they are; and as it is, the countries concerned receive vast annual revenues and can threaten the prosperity of others far more powerful simply by cutting off their exports and supplies. For example, the real reason for the second Gulf or Iraq war was America's desire to install a malleable Iraqi government through which the US could exercise control over Iraqi oil supplies and destroy OPEC solidarity so as to force and keep oil prices down for as long as it pleases the west⁶⁷.

To **Tugendhat and Hamilton**⁶⁸, the producing areas, in general, have virtually no other natural resources. They are usually either deserts, mountains or swampy jungles (as in the case of Nigeria) and without oil, their peoples are amongst the poorest and the most backward in the world. The lots of these communities are discontentment arising from exploitation by the oil producing companies in collaboration with the Nigeria State. According to **Abusa**⁶⁹, in most of these communities, there is little or nothing to show for the exploitation of oil. In a report submitted by the Chiefs of Rivers State to the **World conference of**

Indigenous Peoples on Environment and Development at Rio Earth Summit in June, 1992, the Chiefs stated:

Apart from the basic fact that contaminated soils are rendered relatively and seriously infertile and polluted, sometimes and for at least 30 years, the farmers and fishermen who have thus been dislocated observe with great anger the extremely wide gulf between the lifestyles and incomes of oil industry workers and themselves rendered economically impotent by the same industry. Confrontation in the oil producing areas occasionally explode into calamities⁷⁰.

Within the oil bearing communities themselves, there are polarizing tendencies. According to **Onigu Otite** and **Isaac Olawale albert**⁷¹, the militant and violent youths in the Niger Delta operate independently of their traditional rulers who are considered to be “sell outs”. To the average youth, the traditional rulers and elders are easily compromised and settled either by the state or the oil producing companies.

66. Jean-Marie Chevalier, The Oil Stakes, (London: Allen Lane, 1973) P 8-9

67. See Between the United State and OPEC, The Editorial, The Guardian, Monday July 23, 2007 P 18.

68. C. Tugendhat and A. Hamilton, Oil: The Biggest Business. U (London: Allen Lane, 1979) P 2

69. Abuza, A. E. Problem of Vandalization of Oil Pipelines and Installation in Nigeria: a Sociological Approach, Delsu Law Review, vol 2 no. 2, 2006, P 260.

70. Chief Dr. Dappa-Biriye H.J.R., chief Briggs R.R., Chief Dr. Idoniboye-Obu B., Prof. Fubara D.M.J., 1992 The Endangered Environment of the Niger Delta: Constraints and Strategies. An NGO Memorandum, P 59-60.

71. Onigu Otite and Isaac O. albert, Eded, Community conflicts in Nigeria: management, Development and Transformation, (Ibadan: Spectrum Books Ltd, 1999) P 39.

The circumstances culminating in the death of 12 Kula chiefs was a simple and common scenario but it dovetailed and backfired on the oil company workers and expatriates. The oil rich Kula community had long been enmeshed in crises over oil revenue accruing to the area. Sharing formula had polarized the community. There were those labeled favourites of the oil companies and another group that wanted a reversal of the disposition of the oil companies and those who were just indifferent to the oil politics of the area which boasts of 4 flow stations: Robert Kiri, Belema, Ekulama 1 and Ekulama 2; 2 gas booster plants, Ekulama 1 and Ekulama 2; and one gas injection plant with a total of 70,650 mmcf generated per day⁷².

With the huge investments of multinational oil companies in Kula and presence of a large population of oil workers in the area, the oil politics of Kula became fierce and impacted on the industrial and community relations between the oil companies, oil workers and the natives. A youth leader who had been on exile banished from the community about 2 years earlier in 2005 made a bid to stage a comeback which generated serious disagreement between the various polarized groups which later snowballed into an orgy of violence leading to the

assassination of 12 Kula chiefs while on a voyage to a meeting around Kula from Abonema along the creek where Shell Petroleum Development company pipeline facility was located. Moves were being made to address and remediate the violence in the Kula community when gunmen attacked a boat belonging to Hyundai Company killing on board, 2 Dutchs, Gideon Lapre and Kumpas; a Korean, C.W. Moon; and a naval Seaman, S.M. Gambo, Two Nigerians, A.A. Datak and Obiana Anyawa, were fatally wounded and one of them later died in the hospital⁷³.

Responding to the two related events, the commissioner for chieftaincy and Local Government Affairs, Clapton Ogolo, in a bid to curb the restiveness and further mayhem in the communities in the state banned all elections and nominations into community leadership and chieftaincy portfolios in all parts of the state as well as community development committees⁷⁴.

The concern of the host communities therefore, is conterminous with the concern of the victims of pollution and thus the claimants. It is, as much as possible, to resist the “plundering and degradation” of their environment and to claim fair and adequate compensation if pollution does occur. As it captured by **Kaniye Ebeku**⁷⁵, the Niger Delta people have for long suffered

72. See Jimitota Onoyume, Oil War: How 12 Niger Delta chiefs were Assassinated, Vanguard, Sunday January 21, 2007 P 15.

73. Id.

74. Id, @ 16.

75. Kaniye Ebeku, Compensation of Damages Arising from Oil operations: Shell Petroleum Development Company of Nigeria V. Ambah Revised, Nigeria Law and Practice Journal, Vol. 6 No. 1 March (2002) P 15-16

injustice in the hands of the industry and the state bordering on environmental devastation, unemployment by the industry, under-development of the area, violent suppression of inequity protest by the state, judicial murder of their articulate leaders. All these despite the enormous revenue derived by the industry and the state from the lands of the people. According to the learned author, the proper role of the judiciary in the present circumstances of the Niger Delta is to redress injustice and not to perpetuate it for presently, there are indications that the people are demanding equity and fairness. Likening the case of the Niger Delta to that of an Indian environmental victim, **Kaniye Ebeku** canvasses the people do not want to be victims anymore but want all available help, and expect the state and the industry to come to their aid urgently. Summarizing the concern of the oil communities, **Yinka Omorogbe**⁷⁶ submits that they are inadequately protected and provided for by the law and this is the major reason for the various extra methods which they have adopted in settling

scores with the oil companies including the taking of hostages, forcible closures oil installations, sabotage and vandalization.

According to **Mathew Hassan Kuka**⁷⁷, during the **Oputa Panel**, the Ogoni people through MOSOP had presented a list of items that they wanted the Federal Government and SPDC to address if the reconciliation achieved was to succeed. SPDC on the other hand, simply stated in their single item that they wanted to return ton operations in Ogoni land. The issue of the criminal destruction of Ogoni environment by SPDC had been at the heart of the struggles of the Ogoni people. The second issue had been the disempowerment and impoverishment of the Ogoni people and their inability to access the resources exploited from their lands The **United Nations Rapporteur's report** in 1996 had listed the condition of the Ogoni environment as one of the most important indictments against the Nigerian State.

The state is no less pretentious of its concern. For instance, while receiving 10 Indian hostages (including 3 Indorama Managers and 3 Engineers, 2 Women and 2 children) abducted on 1st June, 2007 **Governor Celestine Omehia** of Rivers State condemned the abduction of the innocent women and children describing same as preposterous and unconnected with the struggle of the people of the region for equity and justice and appealed to

76. Yinka Omorogbe, op. cit, @ 192

77. Mathew Hassan Kukah, I Have Done Well on Ogoni, The Guardian, Sunday June 17, 2007 P 41.

the company, Indorama, whose managing Director, Arun Hueetene, was equally among those kidnapped to consider the immediate reopening of the petrochemical plant which had been closed for over three weeks⁷⁸.

Yet the struggle has remained unabated. An agenda facilitated by Community Defence Law Foundation (CDLF) has quoted the Niger Delta people as saying that only restricting of the Federation to guarantee self-determination, true federalism, resource control, political autonomy, community control over development strategies and the protection of the environment can guarantee peace and justice in the region. According to **Kayode Ogunbunmi**, the agenda claimed that the issues had been contained in the Ogoni Bills of Right, Kaiama Declaration, Akalaka Declaration, Bill of Rights of the Oron people and the Resolutions of the First Urhobo Economic summit. Termed the Manifesto of the Niger Delta, the agenda encompassed the following:

Dialogue with the Federal Government by the ethnic nationalities in the Niger Delta; Creation of a peaceful mechanism for the restructuring of Nigeria to guarantee self-determination and true fiscal federalism; States and communities should retain the right to resource control which involves exercising political power over resource production, management and utilization within their territories; implementation of a minimum of 50% derivation; Abrogation of laws that rob the Niger Delta peoples of their lands and resources; Abrogation of off-shore and on-shore dichotomy; Creating of framework for unfettered political participation by citizens and communities in resource management; A halt to the development of new oil and gas fields pending the complete clean up of the despoiled Niger Delta environment and the resolution of the issues of resource control and self-determination; De-militarization of the Niger Delta; Clean up and environmental remediation of polluted sites since commencement of oil exploration in 1956; An end to environmentally damaging extractive activities and immediate cessation of gas flaring; Provision of social security schemes for populations in the Niger Delta; Community shareholding in the extractive sector⁷⁹.

In a similar report by Emma Amaize, the militants desired to hold talks with the Presidency and demanded two states to be called Oil Rivers and Toruebe and an additional Local Government in Bayelsa State as part of the conditions for justice and peace reign in the region.

78. See Kelvin Ebiri, [Kidnappers Release 10 Indorama Hostages](#), The Guardian, Sunday June 17, 2007 P 1 and 6

79. See kayoed Ogunbunmi, [Niger Deltan Set Peace Agenda For Yar'Adua](#), The Guardian, Sunday June 10, 2007 P 6. 29. See Emma Amaize, [Militants Holds Talk with Yar'Adua](#), Vanguard, Tuesday July 10, 2007 P 10.

Owing to the state's and the oil companies' inability and insincerity to address the issues at stake and after the brutal killings of its freedom agitators in the evolutionary struggle, there has been a systematic upsurge in the struggle informing the formation of the Movement for national reformation led by Anthony Enahoro, Union of Niger Delta led by David Dafinone, Delta Peoples' Academy led by D. D. Dara, on the non-confrontational league and the Delta People Volunteer force led by Asari Dokubo leading the militant wing⁸⁰.

To these various organizations and movements, the concern of the Niger Delta is significant to the state and the industry only as the major money-spinner-the cash cow-of the economy. The environmental impact of the activities of the oil companies is treated un-seriously and ecological funds meant

to mitigate the environmental hazards are most often misdirected and diverted⁸¹. Stating the concern in other words, **Okaba**⁸² argues that government's concern in the Niger Delta is basically the security of oil operations and installations. Government is convinced that rather than device civilized and democratically designed method of dialogue and mutual understanding among the stakeholders, 'absolute peace and protection of its interest' can be achieved through the continued militarization of the Niger Delta and the rolling out of obnoxious and repressive laws. On the part of the oil companies, it is claimed that instead of investing in genuine and sustainable development projects in the host communities, the oil companies have been launching various policies of 'divide and rule'. The roles played by elf in the Egi Woemn Uprising, Agip in Epubu Crisis, shell in Andoni-ogoni crisis, Nembe-Bassambari crisis, and chevron in the Itsekiri-ijaw-Urhobo native wars were cited in which one ethnic group was played and incited against the other.

On the part of the state and by extension the legislature, the crave appears to be the desire to frame legal regimes that can combat the ever increasing spate and incidences of vandalization and sabotage of oil installations arising from the perceived dissatisfaction of the host communities from the operations of the oil companies. It is therefore not uncommon for the state to claim that the activities and the reactions of the natives of the host communities, so-called militants, have moved and shifted from the level of registration of dissatisfaction to civil disobedience,

80. Okaba, B.O. Id, @ 85

81. Id., @ 117.

82. Id., @ 122.

criminality, armed conflict, struggle and the treat of disintegration. The resultant state of emergency in the Niger Delta is the resultant effect of establishing such state machineries as Task Force on Pipeline Vandalization and the Niger Delta Peace Keeping force.

On monopoly of use of violence and force, **President, Olusegun Obasanjo**, had told a presidential forum on the coastal states that hostage taking was not due to marginalization, was not lack of opportunity to air views but simply criminality. He stated, 'we have used carrots, we have used kid gloves, but we cannot continue indefinitely like that.' But MEND responded, 'it is we who have been handling the Nigerian military and oil workers with kid gloves in the hope that the Nigerian government will understand the futility of its military option in solving the unrest in the Delta'. MEND queried, 'what does government plan to

do that the military has not already attempted? Government should talk less and act more as it is evident that government has been unable to calm the fears of the expatriate population in the Delta with all the talks'⁸³.

On 18th January, 2007 when MEND released Robert Dieghi, 64, he arrived Italy on 19th January, 2007. He was released as an 'act of goodwill' by MEND in return for the release of the former Governor of Bayelsa State, Alameyeseigha and the militant leader, Asari Dokubo. MEND contended that even if it managed to trade the three remaining hostages for the imprisoned former Governor and Dokubo, it would not let up on its campaign against oil interests in the region. Claiming that it was campaigning for oil firms exploiting Nigeria's multimillion dollar oil reserves to relinquish some control over the black gold to poverty-stricken local communities and compensate them for oil pollution blighting their lives, MEND stated, 'we will rather change tactics, desisting from kidnapping and concentrate on acts of sabotage, including bombings, aimed at crippling the oil sector. We will continue until we succeed in driving out the oil companies from the delta and permanently halt Nigerian exports to the world oil market'. MEND also boasted that there was no discussion on going with regards to the release of the remaining three Italians and the Lebanese still in their unlawful custody and they would continue to be indefinitely⁸⁴.

In Nigeria, the Federal government may have devised military strategies to promote safety in the Niger Delta but the tactic has not stopped the militants from perpetuating anti-social acts against innocent immigrant employees even in the cities of the Niger Delta. Thus there must be social democratic corporations fulfil their corporate social responsibilities.

83. See We'll take as Many Hostages as we Want, MEND Threatens, Vanguard, Saturday January 20, 2007 P 5

84. Id.

On the part of the oil companies, the concern is for the provision of an enabling environment within which the "legitimate and lawful" business of prospecting can take place. And because they operate in a political environment, the concern for business must be fostered by the concern of the political state. And because the Nigerian state largely depends on oil to run its craft, the destinies of both appear to be mutually co-joined and fused. The partnering of the state and the industry becomes for once inexcusable and therein lies the political economy of oil operations in Nigeria.

According to **Bibora Bello Orubebe**⁸⁵, oil companies carry out their operations in collaboration with the state through "dubious" legal trust concepts based on instrumentalities which include joint ventures, leases and profit sharing enterprises which create virtual oligarchies so much so that oil companies make

all the profits leaving the communities poverty stricken and the environment ecologically devastated. Yet, it is not as if the oil companies do not have obligations towards their host communities and the state within which they operate. As a matter of fact, the whole region of the concept of corporate social responsibility borders on the obligations of the oil companies to their host communities. However, according to **Etikerentse**⁸⁶ the dominant obligations of an oil company to the host state and community are to give due prior notice its intentions to commence operations; to provide alternative accommodation in the event of any dislocations, evacuations, displacements and resettlements of human and material structures; to pay compensation for any damages thus resulting; and to make good any damages caused on the termination of the life of a license.

According to **Peter Voser**⁸⁷, Chief Financial Officer of Shell, crude oil exploitation and production activities in Nigeria is now one of the most unprofitable among developing countries of the world owing to the activities of militants in the Niger Delta who engage in kidnappings, arson, sabotage of product pipelines which rob on cost of production, insurance, security and sustained community development.

On the other side of the coin, the youths have, according to **Okaba**⁸⁸, resorted to other covert non-confrontational tactics of driving home their demands in the form of pipeline vandalism, kidnapping of expatriates, seizure and closure of flow stations. The state and the industry have lost much from these acts of sabotage yet, the formation of ethnic militias are on the increase with vows to hold the state and the industry to a standstill.

85. Orubebe, B.B. Environmental Impact Assessment Law and Land Use: A Comparative analysis of Recent Trends in Nigeria and USA Oil and Gas Industry. Delsu Law Review, Vol. 2 No. 2 (2006) P 378

86. Etikerentse, G. Nigerian Petroleum Law. (London: Macmilian Pub. Ltd, 1985) p 91-92.

87. Cited, Hector Igbikiowubo, E&P Operations in Nigeria among Most Unprofitable, Vanguard, Tuesday June 5, 2007 p 22.

88. Okaba, B. O. Petroleum Industry and the Paradox of rural Poverty in the Niger Delta. (Benin: Ethiope Pub. Corp., 2005) p 86.

According to the **Vanguard**, more than 200 foreigners, mostly oil workers or members of their families, have been abducted in the Niger Delta since January, 2006 when separatists-agitators took up arms against the Nigerian oil and related industry⁸⁹.

In fact by 2007, another twist to the unfolding scenario had fully developed with shut in oil output in Nigeria hitting a total of 1,000,000 b/d indicating a 35.6% loss spiked by the shut in of 150,000 b/d output from the shell operated joint venture by Kedere youths in Ogoni land who shut the valve on the Bomu manifold located on the Trans-Niger pipeline. Shell had equally announced a

shut in output of 150,000 b/d at its Bonny light terminal after pipelines were sabotaged. Statistics indicated that the shut in output from shell operates Forcados terminal and the EA platform was 477,000 b/d. affected output from Ekulama – 1 flow-station accounted for 9,000 b/d. shut in output from chevron operated Olero Creek accounted for 70,000 b/d while that from the Obite Flow-station accounts for 6,000 b/d. the Nigeria Agip Oil was also negatively impacted by shut in output put at 15,000 b/d in the Bayelsa area; 65,000 b/d at the Okono and Okpoh facilities, and 98,000 b/d at the Brass terminal⁹⁰.

Business activities virtually came to a halt and the Niger Delta states were virtually on their knees appealing and prevailing on the oil companies and the international community not to withdraw from the region. While **President Yar'Adua** had to meet with the Governors of the 9 Niger Delta states to brainstorm on the issue of budgeting coordination and implementation of the Niger Delta Master Plan launched in March, 2007 by President Olusegun Obasanjo, the Rivers State Deputy Governor, **Tele Ikuru**⁹¹, was lamenting and raising concern about the lull in business activities due to the spate of hostage taking in the Delta region. The situation according to him had taken a very worrisome dimension that about 80% of the oil companies and the international community had stopped operations and were threatening to leave the region. But rather than withdraw and leave their business interests in the region, **Ledum Mitee**⁹² had canvassed that they should facilitates the peace process as it would be wrong for them to provide arms and ammunitions to the Nigerian Armed Forces to eliminate the militants only to withdraw when the chips are down as if that was the way it was being done in their countries.

89. See Vanguard, Tuesday July 10, 2007 p 8.

90. See Ben Agande, Presidency to Meet Niger Delta Governors, Vanguard, Thursday June 21, 2007 p 9.

91. See Ikuru Laments Low Business Activities, Vanguard, Wednesday June 29, 2007 p 10

92. See MOSOP Wants International Community to Facilitate Peace Process, Vanguard, Id.

However, international oil firms are not yet dissuaded from chasing after Nigeria hydrocarbon resources to satiate the hunger for sources of energy supply for their fast paced economies. As predicted by Oil and Gas analysts, because of the giant discoveries of the late 1990s and early 200 in the deep off-shore areas, the region has shot into the position of being one of the leading stable hydrocarbon frontiers in the world indices point to heightened activities in the region because of the volatile nature of the Middle East region where crises occasioned by various factors have become the norm⁹³. According to **WoodMackenzie**, in an annual review of the African oil industry, a record 106 oil and gas exploration

licenses were awarded in sub-saharan Africa alone in 2006 and the figure could be surpassed in 2007. The tens of billions of dollars flowing into the continent's oil industry partly reflects a global surge in exploration prompted by high prices and increasing resource nationalism in the Western and Asian countries. African oil fields are more open as against other parts of the world that are restricted. For instance, the world's biggest oil reserves in the Middle East such as Saudi Arabia and Kuwait have been hostile to investment from foreign oil companies for decades. The Kremlin's drive to bring the Russian natural resources sector-back under state control and the nationalization of oil and gas fields in South America make investments in those regions difficult while Europe and United States offer diminishing opportunities. These make Africa oil fields particularly, Nigeria oil, one of the few for bright spots on the globe for oil investors.

3.11.20. Outcrops of Oil Pollution Politics as Pseudo-Alternative Remedies

3.11.21. Struggles for Resource Control and State Repression

The Niger Delta has over the years become the major theatre of bloody confrontations. The region has experienced the highest rate of violence and repression of various categories including outright civil and political rights violations of its indigenes chiefly in response to the peoples' agitation and protests against political marginalization, economic exploitation, social neglect and environmental degradation. The evolutionary struggles and the bloody and heroic sacrifices of the people span over five centuries making the region a potential political caldron, attracting the attention of national and international civil liberty organizations, the press, the academia and development agencies⁹⁴.

93. See Victor Ahiuma-Young, Sale of EPCL, PH, Refinery, Others: Agenda against South-South - OISSIBA, Vanguard Tuesday June 12, 2007 p29.

94. See Okaba, B. O. The Petroleum Industry and the Paradox of rural Poverty in the Niger Delta, (Benin: Ethiope Pub. Corp., 2005) p 69

Resource control is the concept of controlling and managing the natural resources found or exploited from a given community or state by the people themselves. According to Governor Peter Odili⁹⁵, resource control does not mean taking from one man and giving to the other. It means ensuring equity. It says work hard, explore the resources available to you and contribute to the centre. It is a general misconception when you say resource control is to exclude others and hang on to it. So, it is a matter of repositioning focus in terms of who get s what in what proportion and based on what principles.

In historical perspectives, the agitation for resource control can conveniently be traced to the February, 1996 revolution of Isaac Adaka Boro. It was, according to Okaba⁹⁶, a clear manifestation of the frustration of the Niger

Delta people. The revolution that lasted for 12 days was intended to emancipate the Niger Delta from regional hegemony under the auspices of the Niger Delta Volunteer Service and it did not only declare the Niger Delta Peoples' Republic at Kaiama, on 14th February, 1996, Isaac Adaka Boro and his men invaded the Abosere Shell BP drilling location and closed it down.

Although the revolution was quelled and Adaka Boro was tried for treasonable felony, the revolution resurfaced in December, 1998 the youths convened again at Kaiama, formed the Ijaw Youth Council, and there and then, made the famous Kaiama declaration calling for self-determination and demanding an end to oil exploration activities until the affected communities were consulted. It declared that all land and natural resources within Ijaw land belong to Ijaw communities. On 28th December, 1998 the IYC announced the Operation Climate Change by which all gas flares in Ijaw land were to be extinguished. The Council demanded the immediate withdrawal of all military occupation and repression forces in Ijaw by the Nigerian State and declared as enemy of the Ijaw people, any oil company engaging and enjoying military security services.

The Ijaw agitation reached a crescendo with the arraignment of Asari Dokubo. The militant leader of 13 Agudama Street, D-line, Port-Harcourt, was arraigned on the allegation, that on 28th August, 2005 at Samsy Hotel, Benin City, Edo State within the jurisdiction of the Federal High Court, Abuja presided over by Justice Binta Murtala Nyako, he and others at large conspired to commit treasonable felony by forming the intention to remove, during his tenure of office otherwise than by constitutional means, President Obasanjo as Head of State and Commander in Chief of the Armed Forces of the Federal Republic of Nigeria and to levy war in order, by force, constraint, to

95. Marcel Mabamalu, Privatisation: Few Men Who Bought Nigeria, The Guardian on Sunday, July 8, 2007 p 16.

96. Okaba, B. O. OP. Cit, p 76-77.

compel the President to change his measures, counsel and manifested such intention by over acts and the by committed an offence contrary to Section 41 and punishable under Section 516 of the Criminal Code Act Cap 77 Laws of the Federation of Nigeria, 1990. Asari Dokubo was also accused of belonging to Militant Groups known as the Niger Delta People Volunteer Force (NDPVC); Congress for the Liberation of Ikwerre People (COLIP) and Chikoko Movement which threatened to intimidate and overawe the President and Government of the Federal Republic of Nigeria and manifested such intention by over acts and

thereby committed a felony contrary to and punishable under Section 41 of the Criminal Code Act Cap 77 Laws of the Federation of Nigeria, 1990⁹⁷.

As canvassed by **Okaba**⁹⁸, the oil bearing states and communities have consistently rejected the derivation principles and instead, have been demanding for full control over their natural resources and pay tax from these revenue to the Federal Government and the repeal of all 'obnoxious' laws that give control over and mineral resources to the Federal Government. For the author, the Federal Government to interpret the issue of off shore oil fields revenue and won same to its favour.

Elsewhere like the Ijaws, the Ogonis consisting of about half a million people had been in the forefront of the struggle against developmental neglect by the State and the oil companies and the demand for a positive increase in the allocation of oil revenue. In its famous Ogoni Bill of Rights, **Ken Saro Wiwa** had claimed that Ogoni land had provided the state with revenue to the tune of 40 billion naira and in return for little or nothing. The Ogonis formed the Movement for the Survival of the Ogoni People (MOSOP) to fight for greater resource allocation, control and the right to protect the Ogoni environment and ecology from degradation that drew international attention. Between 1993 and 1998 when the Ogoni struggle reached its highest peak, the military junta responded to the outcry for social justice with a reign of terror and the judicial murder of its leadership⁹⁹.

For instance, **Abubarka Alhaji Alhaji** had in June, 1993 painted, in a usual government style, a rebellious picture of Ogoni as a people who, due to their membership of the Unrepresented Nations And People Organization UNPO at Hague, set in motion machinery for secession. He claimed that the Ogonis started flying their own national flag, formulating an anthem, printed their

97. See Ise-Oluwa Ige, *I'm Ready for Trial Now - Dokubo*, Vanguard, Thursday February 1, 2006 p 14.

98. See Okaba, B. O. Op Cit., p 81

99. Id., @ 77-78.

own currency which approaches were treasonable. According to **Uche Maduemesi**, Abubarka Alhaji alhaji misinformed the British Parliament that the Federal Government had been more attentive and responsive to the genuine demands of all oil producing areas including Ogoni. More or less, government had continued to paint similar pictures to international communities and communities while environmental degradation and eco-terrorism continued unabated in Ogoni and other oil producing communities¹⁰⁰.

Confuting further the claims of Alhaji Alhaji, a military apologist, Donald Emayomi in a preface to *A Legacy of Restoration*, had submitted that the people of the Niger Delta went through a protracted period of acute social, political and economic problems under military rule in Nigeria. During this period, the people suffered from government insensitivity and outright neglect despite the fact that the huge oil resources of their states were being massively exploited to provide revenue for the Nigeria nation. Owing to the lack of attention, the overall situation of their states was adversely affected and it also degenerated steadily. Many areas were touched as for instance, education, environment, public works and utilities, health, commerce, and youth development. Schools in the states were in poor condition both in terms of physical structures and availability of resources and quality education. The health institutions did not fare better. The environment was devastated. Roads were bad, while supply of utilities like power and water either poor or absent. Government did not act meaningfully to create job and economic opportunities. Indeed, hardly could the people be happy about anything in their perception of government and their overall situation. Many people became disenchanted¹⁰¹.

3.11.22. **Vandalization, Bunkering and Sabotage**

According to **Aniko**¹⁰², while state participation may have brought 'smiles' on the faces of 'many', it has continues to inflict hardship on the 'poor'. Yet, serious environmental problems arising from the sector are yet to be addressed. The pipelines have been constantly subjected to blowouts that destroy lives and properties tendering vast wetlands and water bodies unproductive and useless. Debates have continued to rage on the issue of vandalization of the pipeline. According to **Abuza**¹⁰³ there is hardly any time that a report of incidence of pipeline vandalization is not on the front page of the news in Nigeria. NNPC annual report of 2000 showed that about 900

100. Uche Maduemesi, *Turning the Law on its Head*, Tell Magazine, June 13, 1994 p 24

101. See Ekabo, C. V. *A Legacy of Restoration*, (Lagos: Intraprints Lagos, 2003) p15-16

102. Aniko, A. T. Op. Cit., @ 8

103. Abuza, A. E. *The Problem of Vandalization of Oil Pipelines and Installations in Nigeria: A Sociological approach*, Delsu Law Review, Vol. 2 No. 2, (2006) p 258.

cases of vandalization were reported¹⁰⁴. The menace of vandalisation has rendered pipelines unusable leading the corporation to rely mainly on road tankers in the distribution of petroleum products.

However, as to the victims of the criminal act of vandalization there is a consensus of opinion that all the stakeholders (the state, the oil company, the host communities, the individuals) are affected in varying degrees. While it may amount to loss of revenue to the oil companies and the state, life may also be

involved in another dimension touching on all the stakeholders. As to the perpetrators of the crime and the reasons and causes of this activity, the debate is interminable. While **Abuza** appears to hold the strong view and the persuasion of the state and the industry that the vandals are basically community elements and individual youths perhaps with the collaboration of the industry workers and state agents due to ignorance, illiteracy, lack of awareness of anti-vandalization laws, greed, inadequate compensation or lack of same, and lack of employment etc. Aniko¹⁰⁵ on the other hand, appears to hold an opposing strong view and the persuasion of the host communities and indigenous youths contending critically that given the quality of the pipes used, the pressure of crude, the technology and the technical knowhow involved to tap from a pipeline, it is doubtful to finger the 'average' community youth or leader when it is common knowledge that there are well paid security agents monitoring the pipelines yet, not even a vandal has been convicted. Emma **Amaize**¹⁰⁶ has for instance reported that suspected pipeline vandals had ruptured two shell petroleum pipelines at Ighwrenkan and Out-Jeremi communities in Delta State. Villagers of the Ighewrenkan community were busy for 3 days scooping condensate from the ruptured pipeline at the Utorgun Gas Plant in Ughelli south Local Government Area. And the people of Out-Jeremi flocked the burst pipe at Out-Jeremi Secondary School with containers of varied shapes and sizes to siphon condensate to sell to motorists before State Security Agents and Shell could arrive the sites.

For Obetan Obetan, House of Representative chairman on Petroleum, the cause of incessant vandalization is the level of negativity arising from the decay in infrastructure in the host communities and the level of unemployment. While there are too many idle hands who think that the products are produced in their communities without any benefit accruing to them, there are workers that had been employed and trained by the

104. See NNPC: Report on Operations January-December 2000, Policy, April 30-May 6, 2001 p 19.

105. Aniko, A. T. Op. Cit., @ 14-15

106. Emma Amaize, Thieves Repture SPDC Pipeline in Delta, Vanguard Monday June 18, 2007 p10

multinationals and oil servicing companies who had been laid off because of absence of engagements who are not helping matters. Because they have technical knowledge, they can afford to join the vandals and subject the pipelines and trunk lines to vandalization to make ends meet¹⁰⁷.

Yet, crime is not committed by 'average persons' nor in normal circumstance but under a dark cover and in dubious, suspicious circumstances and happenstances and in an organized manner whose bizarre nature beguiles the average person. Community leaders have sometimes been frontal in leveling the accusation elsewhere. For instance, in the Daily Independent of 17th May, 2006 the Oba of Ilado, **Mobadanle Oyekan** indicted the police and the NNPC over the pipeline vandalization and explosion in Lagos. Earlier in 2003, **Musikilu Mojeed**¹⁰⁸, had reported that the people of Ilado village, a riverside community in Alimosho Local Government Area of Lagos State were horrified after vandals triggered off a pipeline explosion near their community when Emmanuel Ighodalo, Lagos State Police Relations Officer confirmed that two policemen were among those that died in the inferno but were on a rescue mission. According to **Musikilu Mojeed**, the discovery set tongues wagging that security operatives were, often than not, masterminds or supported of those vandalizing the NNPC lines. **Mojeed** gathered that vandals had been visiting the Ilado pipeline for a long time before the disaster struck and that a few times that the youths of the community had had the courage to confront the vandals, the youths found, to their chagrin, that the vandals were actually led by fully armed policemen decked in full riot gear.

In 2004, a report by Adekunbi Ero showed that a syndicate involved a Local Government Party chairman, a former Transition Committee Chairman, a Divisional Police Officer and a Traditional Ruler in Ekpoma and Okpella in Edo State. The syndicate vandalized and stole oil from NNPC and PPMC pipelines with the backing of policemen in the area as their trucks were always accompanied by police escorts. Confirming the activities of the bunkerers, the Benin depot manager of NNPC, **Emmanuel Umoren**, regretted that it was the same traditional ruler (Enojie) appointed as the NNPC guard to monitor the pipelines that was aiding and abetting the vandalization of the pipelines with the community operating an illegal toll gate where money was collected from tankers on illegal business¹⁰⁹.

In 2001, the police and the officials of the NNPC in Edo state were engaged in a war of words over the vandalization of the multi-product pipe at

107. Obetan Obetan, Quoted, [Habib Yakoob, The Forces Behind Fuel Scarcity](#), Vanguard, Sunday January 21, 2007 p 16.

108. Musikilu Mojeed, [The Unseen Hands of Death](#), Tell, October 13, 2003 p 34

109. See Adekunbi Ero, [In the Net](#), Tell, March 22, 2004 p 34-35

Idoa in Esan West Local Government Area. While the NNPC alleged that the police had not been transparent in its handling of the matter, the police on the other hand, was accusing the officials of the corporation of being part of the

system that was behind the spate of pipeline vandalization in the country. The Traditional Ruler of the community, **Onogie Momoh**, even fingered the police in the matter alleging that when money had passed between the police and the culprit he handed over to the police, he was asked by the police to change his story to the effect that the culprit was a hunter with a promise that he would be given a huge sum of money. When the NNPC had expressed dissatisfaction with the conduct of the police in the matter, the police claimed that the NNPC officials were part of the system-syndicate warning that it was police policy to take vandalization very seriously¹¹⁰.

In 2007 for instance, seven naval officers including the Intelligence Officer of NNS Pathfinder were ordered to be detained following their suspected negligent conduct at the Nigeria Navy Operations Base Port-Harcourt concerning the arrest in June, 2007 of two illegal bunkering ships, MT BALLE and MT ALRUHULA which were placed under close watch and custody of the officers before they sailed out of the dock loaded with crude oil by the Patrol Vessel, NNS Kyanwa while they were still being investigated. A Board of Inquiry was set up by Chief of Naval Staff, Vice **Admiral Ganiyu Adekeye**, who had warned officers and ratings of the Navy that personnel caught indulging or conniving with illegal bunkerers would be tried and sanctioned in accordance with military law. The two ships, later found to belong to ex-naval officers were later arrested by the Western Naval Command by which time their body names has been changed with highly complicated chemicals to new names. According to Tunde Okoli¹¹¹, the bulk of the oil that exits from the country does so through illegal bunkering carried out by the functionaries of the state.

3.11.23. Militants, Separatists and Oil Politics

Home to Nigeria's multi-billion-dollar oil and gas industry, the Niger Delta has seen an upsurge in violence with more than 180 foreigners kidnapped¹¹².

According to Hector Igbikiowubo¹¹³, the militant attacks in the Niger Delta had cut peak Nigerian crude production by 25% for more than a year and the attacks were coming on the heels of the change from the Obasanjo's

110. See Anslem Okolo, Pipeline vandals Put Police on Trial, *Tell*, September 3, 2001 p 72

111. Tunde Okoli, *Nigeri'a Drops of Sweet Bitter Oil*, *The Guardian* Monday July 16, 2007 p 70

112. See Simon Ebegbulum, *As shell Production of 150,000 bpd in Niger Delta*, *Vanguard*, Wednesday June 6, 2007 p8

113. Loc. Cit.

to the Yar'Adua's Administration which later government had found militants receptive to its conciliatory inauguration speech raising hopes of increased stability in the crude-rich region. Early in the year 2007, a group called

Movement of the Niger Delta People had claimed responsibility for the June 2007 abduction of 4 expatriates in Rivers State. The spokesman of the group, Preye Amazo, gave the names of the hostages as Messrs Salman Ahmad (Pakistan), Massaoud Ahmadi (France), James Thorburn (Edinburgh Scotland) and Jan Van De Mortel (Netherlands) all workers for Schlumberger. Reasons given for taking the hostages were the deplorable state of the region; the lease of Asari Dokubo held in custody for treasonable felony and separatist tendencies, and Alamiesiegha a former Governor of Bayelsa State caught in London and held in custody in Nigeria for money laundering¹¹⁴.

As reported by the Vanguard¹¹⁵, kidnappings of foreign workers had become increasingly frequent in the region with 24 British nationals seized in 11 separate incidents since January, 2006. In November, 2006, British worker, David Hunt, was killed during a rescue attempt after being taken Hostage from a ship. In the same month, Martin Maddieson, from Norfolk was kidnapped from the vessel HD Commander while anchored near the Funiwa Platform off the coast of Bayelsa State. He and an American colleague were released 5 days later. In October, 2006 four Scots were kidnapped from a group of foreigners from a residential compound near Eket in Akwa-Ibom State. The British were Paul Smith, Graham Mclean, Sandy Cruden and Graeme Buchan, all from the north-east of Scotland. They were told that they were going to be killed or sacrificed at a festival but they were later released. In February, 2006 security expert, John Hudspith, from south-east England was one of 9 workers seized in a raid on a boat contracted by shell. He was released more than 5 weeks later unharmed. In June, 2006 six Britons including Philip Morris, 38, from Formby, Merseyside were kidnapped on an oil rig off Nigerian south coast and released 2 days later. Early in April, 2007 a Scottish oil worker was kidnapped from the Bulford Dolphin Rig, 40 miles off the coast of the Niger Delta.

Within the same period, Joshua Maciver¹¹⁶, leader of a militant group in Bayelsa State which had seized 9 oil workers from a vessel lying pipelines off the Atlantic Coast of Sangana in Brass Local Government Area had raised

114. See Jimitola Onoyume, MONDP Calims Responsibility over Abduction of four Expatriates, Vanguard Tuesday June 5, @ 2007 p 9

115. See Energy Briefs: Scot's Oil Workers Abducted From Rig in Nigeria, Vanguard, Tuesday April 3, 2007 p 24.

116. See Samuel Oyadongha, Militants Speak on Failing Health of Hostages, Id, p 10

alarm over the failing health of their captives. The embattled expatriates, 3 Americans, 4 Britons, a South African, and an Indian were working for United States based Transcoastal Corporation contracted to a Nigerian oil drilling and

servicing firm, Conoil. Joshua Maciver had vowed to deny the hostages any form of medical treatment claiming that the Nigerian State had similarly denied its hero and Ijaw minority rights campaigner, Asari Dokubo, same. The group gave the Federal Government a three-day ultimatum to release Asari Dokubo failing which they threatened to kill the oil workers. Earlier, 6 expatriates, staff of Chevron kidnapped in May, 2007 by armed men belonging to the dreaded Movement for the Emancipation of the Niger Delta (MEND) had been released at the Atlantic Coast of Koluama in Southern Ijaw Council Area of Bayelsa State. On the day MEND released the six hostages, John Stapleton, Ignazio Gughotta, Alfonzo Franzo, Raffaele Pascariello, Mario Celentano and Jurica Ruic, it announced a freeze on attacks on oil workers and facilities for a month and accused the Yar'Adua Administration of toeing the path of its predecessor by staging carnivals and dialoguing with individuals from the Delta who have been proven to be incapable of assisting in quelling the unrest in the region. MEND posited that as long as indigenes of the Niger Delta were held by the Nigerian State unjustly, it would continue with the abduction of oil workers and encourage all groups in the delta to do likewise¹¹⁷. In a similar vein, the Ijaw Youth council (IYC) had state that genuine leaders in the Delta were ready to assist the government in finding a lasting solution to the crisis in the region if it shows commitment and sincerity in resolving the demands of the people. In a situation where the people were getting poorer, their resources mismanaged, environment Destroyed, these factors do not give the will to tackle these societal ills. Government must show sincerity.

About the same period, the Akwa-Ibom State Governor, Godswill Akpabio¹¹⁸ had called on the militants holding 6 expatriates workers of a Russian oil firm to release them and give the Yar'Adua's Federal Government the room to address the problems of the Niger Delta stating that without peace, security and social stability, there can be no development as investors' confidence wane with every incident of kidnapping. The governor was making the appeal or pledge just as the neighbouring Rivers State's Commissioner of Police was confirming the release of 2 Filipino hostages, Carlo Sinajam and Domingo Malinao.

117. See the Guardian, Sunday June 3, 2007 p 1.

118. See Jimitola Onoyume and Timmy Solomon, [Akpabio Urges Militants to Release Hostages](#), Id.

In June, 2007 less than 24 hours after the release of the militant Ijaw leader, Asari Dokubo, Niger Delta militants kidnapped a Polish national at Kaiama in Kolokuma-Opkuma Local Government Area of Bayelsa State. The

Pole, identified as Adams Likowski was working for a construction firm, Dredging Atlantic when he was taken hostage by armed gunmen who shot their way into the company premises situated near the River Nun, overpowered the security men on guard duty and disappeared with him through the river in a double engine Yamaha 150 horsepower speedboat. The foremost militant group in the region, Movement for the Emancipation of the Niger Delta (MEND) did not claim responsibility but laid the bulk on criminal elements giving the struggle a poor image¹¹⁹.

In June, 2007 gunmen suspected to be Niger Delta militants sacked the Ogboinbiri oil factory owned by the Italian energy giant, Nigeria Agip Oil Company (NAOC) in what was described as a reprisal attack in that nine militant had been killed by men of the Joint Task force a state military apparatus coded 'Operation Restore Hope'. MEND equally denied involvement laying the 'sketchy' bulk on the doorsteps of the Ogboinbiri community¹²⁰. Two days after the sack, residents of communities along the Ogboinbiri waterways in Southern Ijaw Local government Area of Bayelsa State were fleeing their homes following fears of a possible sack of the communities as was done to Odi and Odioma some years ago. The heightened tension was, according to the reports of **Samuel Oyadongha**, due to 14 soldiers who were missing at the Nigeria Agip Oil Company flow station which had earlier been sacked by militants in retaliation for killing nine of their kinsmen. Fleeing came on the heels of 48 hours Federal Government ultimatum to Bayelsa State Government to produce the soldiers dead or alive. As nobody could ascertain the conditions of the 14 soldiers and 16 civilians trapped in the facility, a floating and decomposing body of one of the production staff of Agip was found at Ogboinbiri creek. While residents were fleeing, militants were also moving into the embattled community in droves from as far as Warri, Burutu and Bomadi in Delta State and Okrika and Ijaw speaking communities in Rivers State in response to the reports that the Federal Government had deployed several troops to Ogboinbiri to rescue the soldiers and civilians trapped in the facility by militants¹²¹. The frequency became quite alarming that two Nigerians were kidnapped in Buguma while

119. Samuel Oyadongha, Militants Kidnap Polish National at Kaiama, Saturday Vanguard June 16, 2007 p 9.

120. Samuel Oyadongha, Southern Ijaw Communities Flee Over Fear of Federal Government Attack, Vanguard, Thursday June 21, 2007 p 9

121. Samuel Oyadongha, Militants Sack Agip's Facility, Vanguard Monday June 18, 2007 p 1 and 15.

working on the Soku Buguma Shell facility. According to SPDC spokesman in Lagos, Precious Okolugbo, the truck line where the two Nigerian hostages were

kidnapped had been sabotaged 16 times within 60 days. Shell had finished repairing the 16th leak on July 2, 2007 when it got information that there were three fresh leaks. It was when a team went to repair the fresh leaks that the incident occurred.

According to **Jimitola Onoyume**¹²², Rivers State parades the highest number of militants groups in Nigeria and to **Okaba**, Bayelsa state has overtime displayed the greatest impetus for popular initiatives for resource control and self-determination.

But more often than not, these groups are at cross-purposes. For instance, **AtekeTom**, the leader of the Nigerian Delta Vigilante Movement had urged the state to desist from sponsoring one group against the other as that would only heighten the chaotic situation in the region. The National President of Gbaramatu Youth Council in Delta State, **Comrade Sheriff Mulade**¹²³ had equally appealed to the governors of the Niger Delta to stop negotiating and identifying with the hostage takers as kidnapping was a criminal act not part of the Niger Delta struggle. He urged the Governors to closely monitor the activities of some of their aides who were very close to the militants and could, one way or the other, be supporting them in order to rip millions from the government. For instance, the claim that the militants who kidnapped 2 Indians at Sapele demanded 12 million naira from the government was disclaimed. They claimed that the government mediators wanted to use them to make quick money from the government as they demanded for only employment, infrastructural development and social amenities. The militants' states: 'we did not demand for 12 million naira. Therefore the people who called themselves mediators are telling lies'.

Yet, the Delta Waterways Security Committee set up by the Delta State Government to recommend ways through which the activities of militants in the waterways could be checked was, at the material time, in manhunt with the Joint Military Task Force on the Niger Delta, on how to release tow Indian nationals identified as Murughan Gopal and Anthony Marian, kidnapped by militants at Sapele in Delta State in retaliation for 2 militants captured moments after Asari Dokubo was said to have been released. Yet, while the militants had demanded for a ransom, both the Niger Delta Peoples Volunteer

122. Jimitola Onoyume, Leader of Militant Group Warns Omehia, Vanguard, Friday June 8, 2007 p 10

123. See Kidnapping: Stop Negotiating. Youths Tell Governors, Vanguard Wednesday 20 June, 2007 p 10

Front and Niger Delta Freedom Fighters (Egbema One) had disclaimed responsibilities. **Egbeme One** had stated: 'we are innocent about the kidnap in Sapele. We have direction in whatever we do. When we kidnap, we write to let the world know our reasons. The government should not intimidate or maltreat our people and leaders¹²⁴'.

The spate of hostage taking and kidnap seemed to have reached its peak in July, 2007 when British girl, Margaret Hill, was kidnapped on her way to school. Although she was released 4 days later, a year earlier, August 2006, militants had attacked her mother's Soprano tavern kidnapping 5 expatriates and killing 2 guards. President Yar'Adua had regretted that such incidents were still occurring in spite of the firm commitments of his administration to solving the Niger Delta problem. The President noted very significantly that 'no political or economic grievance could justify the kidnap of a 3 year old girl'. Addressing foreign affairs correspondents in the Ministry of Foreign Affairs, **Hakeem Baba Ahmed** noted that Nigeria was not unmindful of the terrible damage that hostage taking was doing to the image of the nation. The criminality involved in the Niger Delta violent scenario far outweighs the political demands being made. The British High Commission in Nigeria had issued a statement directing all Britons working in the Niger Delta to leave Rivers, Bayelsa and Delta State because of incessant banditry and kidnappings in the area as the level of consular assistance it can provide was limited¹²⁵.

In the British girl's kidnap case, the militants responded. **Asari Dokubo** of NDPVF pushed the blame to the doorsteps of officials of the Federal Government. He accused them of paying militia groups in the region to carry out kidnappings. He had equally proclaimed that he cannot stop hostage taking in the Niger Delta since it was precipitated by the Federal Government canvassing that it was the responsibility of the Federal Government to take appropriate measures to stop the trend. **Professor Kimse Okoko** of the Ijaw National Congress described the kidnapers as criminals and not fighters of the cause of the Niger Delta which is being painted in the bad light in the eyes of the world. **Ledum Mitee** of MOSOP described the abduction of children as a frightening dimension in the hostage taking crisis in the region as there could never be any justifiable reason for Margaret Hill's kidnap agencies involved in negotiation and payment of ransom to kidnapers for the release of expatriates and abducted persons¹²⁶.

124 See Emma Amaize, Kidnap of Indians: Delta Waterways Gives Militants Ultimatums, Vanguard, Monday June 18, 2007 p 9

125 See Kelvin Ehiri, Kidnapped British Girl May Region Freedom today, The Guardian, Sunday July 8, 2007 p 1 -5. See also The Guardian, Saturday July 7, 2007.

126 See Azu Akanwa, I Can't Stop Hostage Taking in Niger Delta - Dokubo, Vanguard, Wednesday June 20, 2007 p1

3.11.24. Definitions and Object of Separatism and Militancy: the Way forward

In the words of the Executive Secretary, National Human Rights Commission, **Kehinde Ajoni**¹²⁷ the situation in the Niger Delta had over the years led to various violations of human rights including loss of lives, extreme poverty and general security. While a stakeholders meeting was a realistic step towards addressing the issues, she canvassed that such initiative must adopt a right-based approach in solving the problems of the Niger Delta. For **Okaba**¹²⁸, the way forward and the major challenge of the State is build an Appreciable degree of confidence in the Niger Delta people by ensuring some discipline within the ranks of the corrupt elite, ménage the economy equitably in the interest of the masses and construct the much needed platform for inclusion, tolerance and mass participation. For the **Guardian**¹²⁹, any peace move must revolve around physical development of the creeks and the entire Niger Delta as a short-term measure. In the long term, affirmative action will be required in realizing the Niger delta Development blue print including NDDC master plan for the region. Turing Nigeria into a proper and a true federalism in which the rights of minorities are not violated by more privileged groups is part of what is needed to be done.

According to **Grace Alele Williams**¹³⁰, a continuation of hard fighting, hostage taking, the army, the navy, the gun boats, air surveillance is not the way to real peace in the Niger Delta. That appears to be an Iraqi solution. More of the carrot and less of the stick is better way. The carrot will mean immediate activities that can affect the vast number of the people who have been disenfranchised. As it is put by a former President of the Federal Republic of Nigeria, **Alhaji Shagari**¹³¹, perhaps I can be excused to dare that the biggest problem Nigeria faces today in my humble opinion is the problem with the militants in the Niger Delta area. This problem in my own estimation can be resolved amicably through dialogue where the opposing sides can exchange views and ideas on the same level peacefully with a view to finding solutions acceptable to each side'. For **President Yar'Adua**, 'the crisis in the Niger Delta commands our urgent attention. Ending it is a matter of strategic importance to our country'.

However, despite official acknowledgment of the regions plight, there has been little concerted effort to successfully reverse its misfortunes. This can be attributed, according to the **Guardian**, to the lack of strong political will

127. See Inalegwu Shaibu, *Rights Group Hails Yar'Adua Preference for Niger Delta*, Vanguard Tuesday June 5, 2007 p 10

128. Okaba, B. O. Loc. Cit

129. See the Guardian Editorial, Guardian on Sunday, June 10, 2007 p 12.

130. See Grace Alele Williams, *Lit Up the Niger Delta, Don't Burn it*, The Guardian, Tuesday May 29, 2007 p 10

131. See Jimitola Onyume, *Shagari Calls for Dialogue to end Niger delta Crisis*, Vanguard, Monday May 28, 2007 p 8

on the part of successive governments. Official efforts in the past in terms of the setting up of interventionist structures such as OMPADEC and NDDC have been severely limited by under achievement, corruption and a greater emphasis on politics rather than development. For the guardian therefore, government should avoid the mistakes of the past whereby commissions and agencies were set up and given huge funds that did not achieve the expected effect of social transformation. Unfortunately, many governments of the states in the region were corrupt and lacked accountability. Waste and corruption in the region are the two issues that should be tackled.

But it may be tempting and faulty to treat the Niger Delta as a regional issue and a localized protest. It is the approach, according to **Moyibi Amoda**¹³², that presently informs conflict resolution in the Niger Delta. The regional approach addresses the grievances as articulated but leaves untouched, the structure of the conflicts. A regional approach treats the Niger Delta as an issue within the Nigerian polity and economy. This is why the grievance Method has been adopted and that is why a regional development master plan has been crafted and hawked by the NDDC in the Niger Delta States. He canvasses that the insufficiency and ineffectiveness of 'thinking within the box' options should be recognized and that all stakeholders – the Nigerian Government, the Niger Delta State Governments, the Politicians, the Project Oriented Agencies, the Criminal Militants, and the Armed Insurgent Movements – are thinking in 're-distributional within the box frameworks'.

While much that is good would be accomplished in terms of development, it would only escalate and fuel more militancy in the region. Developmental – regionalist approach would at best create a divide between the armed militants and the developmental interest groups. The issue of mass poverty that highlights the regionalist development through projects and job creation still emerge as the strategic question that justifies armed insurgency and militancy. This is because the majority economy which is an enclave extractive economy. For **Moyibi Amoda**, the Niger Delta is a foundation or structural problem and no structural problem is solved without making the entire edifice the object of analysis, prescription and solution. The solution that would endure would be a Nigerian solution not a Niger Delta Region Solution. Derivation formulas would not be sufficient as the problem is beyond a 'justice and greater equity problem'. It calls for a 'radical restructure of a society whose economy is intrinsically international'.

What then are the pictures of the object of the struggle and the instruments of same? Coming down upon these issues, **John Owubokiri**¹³³ submits that while all agree that the region deserves better attention than it is getting, some view the struggle as the break point for pseudo-criminality and opportunism while others have percolated to accepting whatever merits the struggle presented as being tainted by the commercialism of taking and freeing hostage for money. But there are those who are avowed to violence for punitive and vindictive reasons and those who deploy violence for attracting the sympathy and cooperation of stakeholders. Claiming to know the strategies, instruments and signatures of all the violent groups in the Niger Delta **John Owubokiri** claims that his group, Initiative for Non-Violent Change (INVC), has interfaced with those who, like Ghandi of India, believe in non-violent struggle driven by passive resistance and those who like Mandela of ANC of South Africa, believe in and push the agenda for change through intellectual arguments supported by necessary and reasonably directed acts of violence.

The object and instrument of the struggle for the Niger Delta region therefore, must find a place among those who seek to change government policy and attitude to the Niger Delta by the assault on the public and the international community with the picture of eco-terrorism and eco-devastation in the region, the statistics of violence, death and destruction that have emanated from the cycle of poverty in which illiteracy and hunger have driven the engines of desperate pseudo-criminality. The object and instrument of the struggle must seek to place before public judgment, the deliberate patterns of managing the extraction of crude oil from the Niger Delta by the operators and the superior modes employed in doing same in other climes which have impacted less negatively on the people affected by the operations. this, for **Owubokiri**, is the domain of what is regarded as the international best practices. The object and instrument of the struggle must seek to invite Nigerians and the international community to compare and contrast the data on the oil industry in other countries with that of Nigerian and evaluate the outrage from the region against the despoliation and neglect. It must collate materials on the legal regimes operational in the states and monarchies of the Persian Gulf and the democracies of the west in relation to crude oil ownership and control and compare and contrast same with what is obtaining in Gulf of Guinea, Nigeria¹³⁴.

133. John Owubokiri, Militancy: Defining the Niger Delta Struggle, Vanguard, Tuesday January 30, 2007 p 23

134. Id.

The supervision and inspection of the territory in which exploration and extraction of crude oil take place in Nigeria are non-existent, poor and highly compromised. The result is the maximization of corporate after-tax-profit and the deployment of the cheapest and crudest methods in operations thereby exposing the territory to self-correction which is the precursor of geological, ecological and metrological tragedies. Because the prevailing scenario is unacceptable to the critical mass of the people of the Niger Delta and because they lack the contractual privities to enforce international best practices, they recourse to finding expression in activism, militancy and violence of which sabotage, vandalization and hostage taking are mere out-crops¹⁴⁵.

Yet, hardly had any struggle manifested itself in the acts of violence. The struggle of the Niger Delta people predates the independence of Nigeria and was acknowledged by the colonialists. The Nigeria state must therefore re-strategize its handling of the issues that gave rise to it because the passions that flow in the rivers of the Delta cannot and can no longer be expressed and defined in civil and civilian terms. The flared gas and the continuous degradation of the ecology have become commingled with the gun fire of protest against the display of insensitivity by the Federal Government and there may be no reserve gear in militancy¹⁴⁶.

3.11.25. Industrial Relations and the International Politics of Hostage Taking

The issue of hostage taking and kidnapping in the Niger Delta concerns labour, international trade and politics and it is clear that there is politics in labour relations management and this affects contracts of employment and creation of decent and safe work environment. Since there is a linkage between politics, industrial and community relations, the Ministry of Labour has a role to play in proffering solutions and providing career-path-goals and employment opportunities for the indigenes of the host communities of the multinational oil corporations. The Ministry should help government to adopt caring attitude towards political management of people in the context of human development, safety at work and good industrial and community relations practice. The Ministry should improve on its best ways of achieving results in labour and industry matters and address factors that take immigrant workers less attractive to hostage taking and hostage takers. In other words, what is the phenomenon of the industrial and safety implication of the politics that makes immigrant workers vulnerable to hostage taking in the Niger Delta?

The state of insecurity in the Niger Delta makes the offerings of the multinational oil companies less attractive to highly skilled personnel in the

145. Id.

146. Id.

international labour market. If the human cost of tension and stress on the employees, the hostages, their families, employers, home governments, and the Nigerian state are evaluated, their implications for human resource development and labour relations management in Nigeria cannot be valued. It is also trite to canvass according to **Roberts Krukrubo**¹⁴⁷, that in employment contract it is the duty of the employers or the oil company to ensure the safety and welfare of all cadres of workers so far as is reasonably practicable and in international trade, the host government assures the multinational oil corporations that the environment is safe and investment friendly barring force majeure. This can be cleared from the position of the United States ambassador to Nigeria. John Campbell had stated that it was wrong for anyone to speculate that the American government was planning to establish its military base in the Delta area because of its oil interest and as a way of stopping hostage taking of foreign nationals in the area, pointing out that it was duty of the Nigerian government to provide security for lives and property in the area¹⁴⁸.

Oil workers under the auspices of PENGASSAN and NUPENG in February, 2007 gave the Federal Government 2 weeks to secure the freedom of all the 35 hostages held then by militants to ensure the safety of its members across the country otherwise, the 2 unions withdraw their services from the region. The ultimatum was given at a stakeholders meeting which was anchored by the Minister of Energy between the Ministry of Energy, Ministry of Labour, Nigeria Labour Congress, NNPC, and Oil Producers Trade Group, Labour and Service Contractors. Others at the stakeholders meeting were the Trade Union Congress, Nigerian Immigration Service, Nigerian Employers Consultative Association (NECA) and the Nigeria Association of Recruiters and Employers. In the meeting, **PeterEsele**, PENGASSAN representative, stated that members (labour) were not feeling safe and secured in the environment they were carrying out their duties and were in a quandary how to explain the situation 'again and again' to members on an issue that had a direct bearing on their lives. He stated, 'we want all workers that are being held hostage in the Niger Delta whether black, white, purple or whatever to be released. That is the minimum condition and the only avenue for us to know that the environment is conducive to work.' **Esele** argued, 'if we have about 35 people who have taken hostage and they are still in captivity

and you are telling us that you are providing security for us to go back there, what guarantee do you have for us that we will not be taken hostage?’¹⁴⁹

147. Roberts KruKrubo, *Politics of Hostage Taking*, Vanguard, Monday April 30, 2007 p 39.

148. See Emeka Mamah, *No Us Military Base in Gulf of Guinea*, Vanguard, Wednesday February 7, 2007 p 14.

149. See Emmanuel Ulayi, *Oil Workers give Federal Government Two Weeks Ultimatum*, Vanguard, Friday February 2, 2007 p

A resumed stakeholders meeting anchored by the Secretary to the Government of the Federation between the Federal Government, Ministry of Employment, Labour and Productivity, Managing Directors of Shell, Mobil, Total, NUPENG and PENGASSAN to further avert the planned pull out of the oil workers from the increasingly volatile region also failed to achieve anything nor sway the oil workers who enthused that since the matter bothered on security of lives, there was nothing the labour unions and their leaderships could do to prevail on their members to reconsider their position which had the potentials of throwing the nation into unimaginable socio-economic and political crisis¹⁵⁰. As canvassed by Peter Akpatason¹⁵¹ of NUPENG, the problem of youth restiveness and increasing militancy was not an oil industrial relations issue but a failure of government to positively address a political problem. The oil industry only became the playing field, a scapegoat.

An international forum on the Gulf of Guinea energy Security Strategy (GGESS) was also held in The Hague, Netherlands where the restiveness among Nigerian oil bearing communities and the need to secure the Gulf of Guinea topped the agenda. It was attended by representatives of the United States and the United Kingdom. The British High Commissioner, Richard Gozney, the Managing Director of Shell, Basil Omiyi as well as his counterparts in ExxonMobil and Total attended. Also present at the meeting were the Deputy Managing Director of Nigeria Agip Oil Company (NAOC), Akin Aruwajoye, and the Managing director of the NDDC, Timi Alaibe. The Federal Government delegation was led by Alhaji Kingibe who was later joined by the Governors of the four Niger Delta States of Delta, Akwa Ibom, Rivers and Bayelsa. In the forum, **AlhajiKingibe**, the Secretary to the Government of the Federation, did not only note the heavy toll restiveness was having on the revenue of the nation which was put at N5 billion daily with a daily short-in of 500,000 barrels of oil per day but the impact the development was having on major cost escalations ranging between 30 and 40 percent across some key upstream projects as contractors factored into their contract bids, ‘a Niger Delta Premium’ which covered community expectations, kidnaps, and higher insurance premium. **AlhajiKingibe** noted that government understood clearly the need to establish normalcy and bring development to the region and adopt sustainable initiative by engaging the

militants in economic empowerment initiatives through the GGESS. But above all, he canvassed that the re-establishment of law and order remained the

150. See Hector Igbikiowubo and Victore Ahiuma-Young, *FG, Oil Workers Parley Over Pull-out from Niger Delta*, Vanguard, Thursday, February 1, 2007 p 9.

151. Comrade Peter Akpatason, *Energy Briefs*, Vanguard, Tuesday January 9, 2007 p 23.

basis on which other strategies can be effectively pursued and achieved and thus, the joint Task Force was to be revitalized for more efficiency and effectiveness¹⁵².

At an earlier stakeholder meeting with NUPENG and PENGASSAN, government had reiterated its decision not to employ the military option in the volatile region where hostage taking and vandalization of the pipelines had become the norm claiming that it was not borne out of cowardice but because of its regard for the sanctity of human lives. According to **President Obasanjo**, artisans, opportunists and people not in government had continued to fan the fire in the region to their advantage but criminality will not be tolerated. For the President, 'hostage taking is no longer a means of addressing grievances, it is criminal act. It is not an act of agitation. It is not as a result of marginalization or lack of opportunity to express opinion. It is simply an act of criminality that should be treated as such'. An assistant to the President, **Oluremi Oyo**, further advanced the position of government. 'if government was not rolling out the tanks, it was because of its belief in the possibility that the people can still come to the table' noting that the fact that the carrot and stick mechanism was being adopted showed the level of responsibility that the government had brought to bear on the matters to ensure that lives were not lost, especially, those that were in so far away land-the hostages¹⁵³.

However, soon after the CNN broadcast footage of what it said were 24 Filipino Sailor hostages, hijacked on a general cargo ship belonging to Bacoliner at Okerenkoko at the Chanomi Creeks in Warri South-West Local Government Area, Delta State, the Philippines began to seek information on a Filipina kidnapped in Port-Harcourt by gunmen who switched off her telephone and abducted her to an unknown destination. The Philippines Embassy was working closely with Nigerian authorities to try and try and free her. Ed Malaya, Spokesman of the Department of Foreign Affairs claimed that Philippines government had not had direct contact with the 24 Sailors but added that Nigerian authorities had had and were dealing with the situation¹⁵⁴. In seizing the cargo ship with 24 sailors, MEND did not only claim responsibility (contrary to

the claims of the Information Minister, Frank Nweke) and demanded the release of the former Governor and Dokubo, but

152. See the Guardian, Thursday August 2, 2007 p 1.

153. See Ben Agande, We're not Cowards for not confronting Militants, Vanguard Friday, February 9, 2007 p 9. See also, Ben Agande, We Can Hit Back, Obansajo Warns N-Delta Militants, Vanguard, Friday January 19, 2007 p 7

154. See Philippines Seeks Information on Nigeria Kidnap Victims, Vanguard Friday February 9, 2007 p 17

contended that it was disenchanted with the fraudulent diversion of the 13% derivation funds by the governments of Rivers and Bayelsa States and wanted the 2 governments to account for the money they collected on behalf of their people. The militant group further demanded from Shell, the payment of 1.5 billion dollars to Ijaw aborigines of Bayelsa State claiming that since a court ordered the payment of the money, the company had been foot-dragging. In alternative to the fulfillment of the tasks, it threatened to blow up the Chevron Oil Tank Farm in Escravos, Delta State¹⁵⁵.

3.11.26. International Response to Pseudo-alternative Remedies

Sometimes, the situation was complicated in terms of the response of the foreign government, the government of Nigeria and the oil company in industrial and international relations. For instance, four oil workers – Robert Dieghi, Frances Arena, Cosma Russo (Italians) and Imad Saliba (Lebanese) – kidnapped in December 7, 2006 from an Agip Oil facility at Brass in Bayelsa State and held in unlawful custody for a full month felt disappointed by the Italian government which did nothing to get them released. Frances Arena particularly carpeted the Nigerian Agip Oil Company which left them to rot in the jungle. He claimed that the Italian government and Agip had put themselves in the hands of the government of Nigeria which would never be able to yield to the demands of the militants and kidnapers. In Rome however, the Italian Foreign Ministry had insisted in a statement that it was ‘not overlooking any lead or any element that can lead to the freedom of the men as soon as possible’ as the Nigerian authorities were ‘playing the basic roles’¹⁵⁶.

More active indication of the involvement of foreign government even agitated the militants more. For instance, MEND had threatened more attacks on the background of a report that the Chinese Ministry of Commerce had indicated that Beijing had launched an emergency mechanism to rescue five Chinese telecommunications workers seized by militants in Emuoha, Rivers State along with equipment valued thousands of US dollars. The Chinese Ministry of Commerce urged the Trade Department of the Chinese Embassy in Nigeria to

make all efforts to rescue the workers and ensure their safety. Chinese President, **HuJintoo** and Premier **WenJiabao** ordered the Foreign Ministry, Chinese embassy and Consulate and a Chinese Rescue Group to do everything possible to rescue the kidnapped telecommunication workers while liaising with Nigeria government, authorities and police to achieve results¹⁵⁷.

155. See the Vanguard, Sunday January 21, 2007 p 5.

156. See Kidnapped Oil Workers Decry Employer, Government Abandonment, Vanguard Wednesday, February 7, 2007 p 7.

157. See MEND Threatens More Attacks, Vanguard, Monday January 8, 2007 p 1 and 15

However, foreign missions operating in Nigeria has requested to be given a greater role in the security of nationals working in the oil industries. This was not an issue envisaged in the international industrial relations arena that was playing out in the Niger Delta and Nigeria as a whole. As at 2007, Vanguard investigations had revealed that not less than 15 foreign missions offered mandatory security advice about the situation in the Delta to nationals that come to work in Nigeria. The Embassies which had created a Niger Delta Security Desk under the purview of the Office of the Defence Attached, had also notified the Nigerian authorities of this developing initiative with a request that security official be allowed active oversight in the assessment and exposure to security risks in the Delta by their nationals to minimize such risks. They however, explained that it did not in any way implied that they were to do the job of the Nigerian Security Apparatus but they were only concerned about how best to protect their nationals from the risk of working in a region that was gradually spinning out of control. Shortly before the formation, Korean and Chinese nationals had been taken hostage but set free after protracted negotiations that involved the Nigerian Embassies of the affected nationals¹⁵⁸.

At the sub-regional level, Nigeria and seven other West African countries: Cameroon, Equatorial Guinea, Sao Tome and Principe, Gabon, Angola, Democratic Republic of Congo and one other country: had raised an eight-member guard force to monitor the common maritime interest in the Gulf of Guinea. According to Aguiyi-Ironsi, Defence Minister, the increasing relevance of the Gulf of Guinea in international politics of oil was a source of threat as unending crises in the Middle East and the Persian Gulf had shifted the focus of the international community to the Gulf of Guinea which has an estimated 30 billion barrels of crude oil reserves which is the largest single bloc of crude oil deposit in Sub-Saharan Africa and it was fast becoming an important and strategic area in the emerging global oil politics¹⁵⁹.

3.11.27. The Remedy of Monetary Compensation

A remedy is a legal redress or a means of recovering a right or of obtaining a redress for a wrong. It is a means of counter acting or removing an outward evil of any kind. Sometimes, it is argued that remedies refer only to positive legal steps which may be taken to assert and enforce a claim and does not include a mere defense to a claim. In other words, a remedy is in the nature of a spear which can be used to attack and is not in the nature of a

158. See Victor Ojeme, Foreign Missions Set Up Desks on the Niger Delta, Vanguard, Friday January 19, 2007 p 9.

159. See Collins Olayinka, Nigeria, Others Raise special Force to Guard Gulf of Guinea, the Guardian, Friday May 18, 2007 p 64

shield which can be used to repel an attack¹⁶⁰. But as held by Pearson, J in **Goulandris Bros Ltd v. Goldman B & Sons Ltd**¹⁶¹ remedies should be construed widely enough to cover defenses as well as cross claims, shield as well as spears, pleas as well as counts. And as held by Sugerman, J in **Batson v. De Carvalho**¹⁶² to remedy a breach is not to perform the impossible task of wiping it out of producing the same condition of affairs as if the breach had never occurred. It is to set things right for the future and that may be done even though they have for some period not been right.

Compensation is that which is given or received as an equivalent for services rendered or debt owed or loss incurred or suffered. It is to pay; to recompense, and to give equal value for what has been damaged or loss¹⁶³. Compensation is a broad legal term that denotes the balancing of one thing against another. It implies making whole or giving an equivalent or substitute of equal value. It is the remuneration required by court order to be paid by one person to another who has sustained loss or injury through the act or omission of the first person. The areas in which compensation becomes payable continue to be broadened by statute and judge made law or judicial precedence¹⁶⁴. Thus, the seizure of property through the condemnation process to make room for a pipeline, a flow station or indeed any oil installations, facilities or operations must be accompanied by compensation paid by the seizing authority equivalent in value to the appropriated property¹⁶⁵.

Compensation, therefore, is essentially damages because damages in tort are compensatory in nature and are designed to put the claimant in the position in which he would have been but for the tort committed. An injured claimant will receive a sum deemed to be sufficient to compensate him for the type of injury he has suffered in terms of loss of quality of life, pain and suffering. He will also receive a sum for financial loss flowing from the injury¹⁶⁶.

The whole region of inquiry into damages is one of extreme difficulty and there cannot be laid down any fixed principles for a court as to the amount of

compensation which it ought to award in a given situation¹⁶⁷. However, the assessment and award of damages is the primary function of the court¹⁶⁸. The test by which the amount of damages is ascertained is called

160. C. C. Banwell, Words and Phrases Legally defined, Vol. 4, O-R, (London: Butterworths, 1960) p 294-295

161. (1957) 3 All ER 100

162. (1948) 47 NSWSR 417 p 487.

163. Webster Dictionary of the 21st Century, p 370

164. *Id.*

165. The Encyclopedia Americana, International Edition, Vol. 7, (Danbury: Crolie, 2000) p 457

166. *Id.*, @ 458

167. Craig Osborne, Civil Litigation, London: Blackstone Press Ltd, 1993 p 3.

168. *Badmus V Abegunde* (1999) 71 LRCN 2912 p 2930

The measure of damages and damages from the same cause must be recovered once and for all¹⁶⁹. In assessing what is fair and reasonable in the award of damages, it is appropriate to bear in mind previous awards made by the courts in comparable cases in the same or neighbouring jurisdiction where similar social, economic and industrial conditions exist; and also the economic strength or weakness of the national currency¹⁷⁰.

3.11.28. Assessment of Compensation under the Minerals and Mining Act

Under section 96, the amount of the compensation payable is determined by the Minister after consultation with the appropriate authority or officials. The person liable to pay the compensation shall pay within 14 days from the date on which notice of the amount of the compensation is given otherwise the Minister may suspend the prospecting right or license of the holder until the amount awarded is paid together with such other sums as may be adjudged and demanded by the Minister as security for any future payment. But in further default, the Minister may revoke the license¹⁷¹.

Under Section 62 of the Minerals and Mining Act where, by reason of the grant or existence of a mining lease, the State revokes a right of occupancy over land, the subject matter of a certificate of occupancy, or resumes possession, the mining lessee shall pay to the state, the amount of compensation paid by the state to the holder of the certificate of occupancy by reason of the revocation or repossession. Where, after the grant of a mining lease to a lessee or certificate of occupancy is granted in respect of any land within the area of the mining lease, which was unoccupied prior to the grant of the mining lease, the state lessee or holder of the certificate of occupancy shall not be entitled to compensation under Section 95 of the Act.

Section 95 provides that a holder of a mining title shall, on the direction of the Minister, in addition to any other amounts payable under the provisions of the Act, pay to the owner or the occupier of land held under a state lease or the

subject of a right of occupancy, reasonable compensation for any disturbance of the surface rights of the owner or occupier and for any damage done to the surface of the land which the prospecting or mining is being or has been carried on; and in addition, pay to the owner of any crop,

169. Ogu V Ihejirika (1991) 4 NWLR (Pt 185) 388 p 393

170. See P.G. Osborne, A Concise Law Dictionary, (London: Sweet and Maxwell, 1954) p 107. See generally, Aneke, J. G. O. Law for Everyman (Vol. 11), Onitsha: Africana-Fep. Pub. Ltd, 1993) @ 28-23. See also Allied Bank of Nigeria V Akubeze (1997) 51 LRCN 1648 and Nka V Onwu (1996) 40/41 LRCN 1303

171. See Section 97 of the Minerals and Mining Act

economic tree, buildings for work damaged, removed or destroyed by the holder of the mining title or by any of its agents or servants compensations for the damage, removal or destruction of the crop, economic tree, building of work.

However, the holder of a mining title who is paying surface in respect of any land within the area of the mining title shall not pay compensation in respect of the building erected, economic tree or crops planted or work constructed on the land after the date on which the holder began to pay surface rent.

**CHAPTER FOUR:
REVIEW OF COMPENSATION IN OIL POLLUTION IN NIGERIA**

4.1. LIMITS OF THE LAW IN OIL SPILL COMPENSATION. ALTERNATIVES TO LITIGATION AND THE COMMON LAW.

The shortcomings of the common law through litigation, in effectively redressing oil spill hazards, as discussed in the last chapter, provide a basis to explore alternative mechanisms. This chapter seeks to make recommendation aimed at reforming the status quo. The discussion of the proceeding chapter has shown that Nigeria needs a comprehensive regime which must effectively and positively respond to the adoption of a (preventive) precautionary approach to environmental problems caused by the oil industry. It must also provide for:

- i. The establishment of a pollution compensation fund to settles claims arising from oil spills;
- ii. Practical guidelines for the management of the pollution fund;
- iii. The creation of strict liability for oil operations as ultra-hazardous activities;
- iv. Increased participation by non-government organizations in environmental protection;
- v. The application of relevant international conventions;
- vi. Multi-stakeholder participation in environmental policy making; and
- vii. An active judiciary through continuous judicial education, training and enlightenment, thesis does not pretend to discuss all these recommendations exhaustively, while a detailed discussion of a proposal to establish a pollution compensation fund is to be found in this chapter, other recommendations will be discuss either summarily or superficially.

Any discussion of possible alternatives to litigation or the new regime, envisaged by this thesis, for the Nigeria oil industry, should start with a preventive approach to environmental management by oil operators. In the event that pollution occurs, despite the preventives approach², the victim of such pollution can then rely on the compensation framework to be suggested and discussed later in this chapter.

1. This thesis recommended establishment of a compensation fund for oil spill victims

2. Adeniyi argues that oil operations are very risky only rigorous precautions together with careful geological surveys can eliminate or reduce that risk..

4.2. The Oil Operator and (Preventive) Precautionary Approach

In contemporary national and international law, environmentalists are shifting emphasis from the traditional protection to a preventive approach. This is an attempt to prevent environmental damage from occurring. The precautionary approach is now clearly established as a principle of environmental law³. The principle states that, environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation⁴. Although the legal implications of this principle are not entirely free from doubt, its continued entrenchment in international declarations is a clear indication of willingness to be bound by it⁵. Notwithstanding the negligible traces of doubt. Handi argues that there is no denying that international environmental law already addresses some of the concerns epitomized in the principle of precautionary action such as the call for restraint on state autonomy in creating significant risks of transboundary environmental harm, or for the conserving biological diversity of the planet by the same token, a limited number of general maxims of environmental action, such as adoption of “best available pollution control, controlling pollution at the source”, the setting or the setting of reasonable margins of safety in environmental policy making, which are basic ingredients of precautionary environmental action, appear to be well on their way to becoming or have indeed become part of the customary international law of the environment⁶ what needs to be done urgently is to inculcate the (preventive) precautionary approach into the oil operators activities in Nigeria. An undertaking to abide by the precautionary principle should be integrate part of the exploration,

prospecting and mining licenses and leases. A good starting point should be the development of an effective regime on safety and prevention of hazards in oil operations. In most jurisdiction, an effective safety regimes has proved to be a stepping stone to a precautionary

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3. In recent times, voluntary compliance programs have developed in North America as a preventive approach which seeks to install a regime of industry self-regulation. Scholars are sharply divided on the exact meaning of voluntary compliance and its effectiveness. Generally, skeptics argue that there is no reason to trust corporations to voluntarily regulate themselves. Regulation is in place because of the failure of industry to regulate itself, and most regulatory reforms were motivated by industrial accidents or disasters. See Smiths and Tombs.
 4. See The Bergen Ministerial Declaration on sustainable Development in the ECE Region of May 16 1990, 1 Pear book of International Environmental Law p. 429 for a discussion of various dimensions
 5. Principle 15 of the 1992 Rio Declaration on Environment and Development states that “in order to protect the environment the precautionary approach shall be widely applied by the states recording to their capabilities. Where there are threats of serious or irreversible damages, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measure to prevent environmental degradation”.
 6. “Environmental security and Global change: the challenge of international law” in lang et al/cd Environmental protection and international law (1991) p. 79.

approach. This is the position in most oil production provinces and states in Canada and United States. In Alberta for instance, a license of an oil well has an obligation to install and maintain at all times blowout prevention equipment that is:

- a. Adequate to shut off any flow at the well head whether or not any type of tool or equipment is being used in the hole, and
- b. In accordance with the well classification approved by the Energy Resources Conservation Board⁷

Commenting on blow outprevention plans for oil operations in **Alberta, HudeeandPaulus** assert that the oil and gas regulations regulate blowout prevention procedures by prescribing the equipment that must be installed by the well license, specifications for the equipment used, the arrangement of various system including the kill system and the bleeding-off system and prescribe blow-out prevention steps taken during operations. The Regulations also impose strict requirements for crew training and qualification including the performance of regular blow-out prevention drills. If the license fails to comply with this obligation, the energy resources conservation board or a person authorized by the board, under section 92 of the oil and gas conservation Act, may enter the well site and do whatever the board considers necessary. Costs of the work are determined by the board and the provincial treasurer is authorized to use all or part of the licensed deposit to reimburse the board. Costs remaining unpaid after the use of the licensee’s deposit constitute a debt to the board by the license⁸. The importance of an effective safety regime in Nigeria’s oil operations as a

starting point for the attainment of a precautionary regime has been the subject of scholarly commentaries. **Dr. Adeniji** argues that prevention is the desideratum rather than the reparation of damages or application of sections. This implies full consideration of environmental factors and more rigorous specifications for cementing setting, casing and testing of blow out prevention equipment prior to leasing⁹ if an operator is mandated to carry out his operation utilizing environmentally sound preventive mechanisms, he will be obliged to carry out detailed geological and scientific study prior to commencing any of his operations which might threaten environmental quality. The operator should then refrain

7. See Regulation 8.130 (1) of the Alberta oil and gas regulation (consolidated up to (1996) made pursuant to oil and gas conservation Act of Alberta.

8. Albert J. Hudee & Joni R. Paulus "Current Environmental Regulation of the Alberta oil and gas industry and emerging issue" Alberta L. Rev. (1980) Vol 28 No. 1 p. 171

9.

from any operation which threatens the environment, human life or property even if the certainty of these threats cannot be determined by a geological and scientific study. This is the hall mark of the precautionary principle.

4.3. A WAY FORWARD: PROPOSAL FOR AN OIL POLLUTION COMPENSATION FOUND

In some jurisdictions, the challenge of redressing environmental pollution has made the establishment of various kinds of compensation funds or bonds a necessity. These funds or bonds are designated to respond to a plethora of issues which are either not adequately covered by the law or where the law has persistently been used as an engine of injustice. The United States superfund is one good example. A trust fund known as "Oil Spill Liability Trust Fund", has been established in the treasury of the United States, consisting of amounts credited to the trust fund from: taxes received in the treasury as environmental taxes on petroleum, amounts from the deep-water port liability fund, amount from offshore oil pollution compensation fund etc¹⁰. The superfund is used for varied purposes. Payment of governmental response cost for removal of spills, claims for injury, destruction or loss of natural resources resulting from the release of hazardous substances etc. Despite being a developed country, management of the superfund in US has been very complex¹¹. This complexity makes the

superfund regime unsuitable for Nigeria. This thesis shall recommend a simpler framework that will suit Nigeria as a developing country.

Nigeria needs an oil pollution fund because of the inherent risk and likelihood of spills further, compensation for pollution hazards should be prompt and chargeable to this polluter. Thus operators should provide funds to, an autonomous agency for costs incurred in the containment, clean up, elimination of residue and compensation to injured persons in the event of an oil discharge, spillage, well blowout, and pipeline leakages etc¹² for these purposes. The establishment of oil pollution trust fund in the Central Bank of Nigeria is proposed. The Central Bank would hold the fund in trust for potential victims of oil spillage, damages to natural resources, personal property and to defray costs of removal of pollutants by relevant

10. Section 9509, chapter 98 USCA title 26.

11. For an intelligent discussion of fund regime for oil spills and compensation, including the gaps and loopholes in the US regime, see Michelle Straube, "is full compensation possible for the damages resulting from the Exxon Valdez oil spill" *Environmental law reporter* (August 1989) p. 10338.

12. K. Adeniji "the legislative and administrative regulation of oil and gas industry in relation to the legal problems of the Nigeria Petroleum Industry" (Unpublished 1976 Doctor Juris Dissertation faculty of law University of Toronto).

government agencies. The amount payable to the fund by each of the oil companies for any specified period would be determined by the Central Bank of Nigeria based on the recommendation of the Department of Petroleum Resources (DPR). As all the oil companies in Nigeria do not have equal number of oil wells and the risk factors are different, the DPR's recommendations should estimate the likelihood and severity of potential oil, spills with respect to operations by particular operators¹³.

4.4. STRUCTURE OF THE PROPOSED POLLUTION FUND¹⁴

Before suggesting possible ways to manage the pollution fund, this sub-chapter shall briefly discuss the basis for proposing a pollution fund and the likelihood of its success in Nigeria. At present none of the oil producing (developing) countries in Africa and Asia has effectively evolved, alternative mechanisms to compensate victims of oil hazards. They still rely heavily on the common law and the provisions of ineffective statutes. Nigeria already has an analogous mechanism for similar problems arising from aspects of maritime or admiralty claims. This mechanism has been successful. In addition, the recent Niger Delta Environmental Survey (NDES) initiated by shell Petroleum and joined by her multinational oil operators is an indication that oil companies will contribute to the pollution fund if mandated to do so.

Similarly, the fact that, in the past three decades, leading Nigerian environmentalists, have consistently suggested a fund regime is a manifestation of their conviction that it will be an effective alternative to common law remedies. If the proposed fund succeeds in redressing damage from environmental hazards in Nigeria, it is expected to open new vistas for the attainment of environmental justice in other oil producing jurisdictions in the developing world, especially in Africa.

4.5. OVERVIEW OF THE ANALOGOUS ADMIRALTY CLAIMS IN NIGERIA

Admiralty regime in Nigeria which in some ways has similarities to the proposed fund regime the discussion is expected to reinforce the confidence held by this writer that the proposed fund regime has a strong potential of success in Nigeria. The success of the admiralty claims mechanism should be extended to claims by victims of oil spill hazards.

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13. The recent Niger Delta Environmental survey is an indication that oil companies can contribute to the fund. After the hanging of eight environmental right activist by the Nigeria Military Government in 1995
 14. Virtually all the leading Nigeria Scholars have called for the establishment of a trust fund to redress pollution injury arising from oil spills. However, virtually all of them were equally silent on how the thesis shall go further than preceding seminar works in this filed by suggesting practical ways to manage the fund.

Nigeria is one of the leading maritime countries in West Africa its access to the sea and heavy reliance on imported commercial goods from Europe, Asia and the Americans, combine to boost its volume of maritime trade. In past decade, there was an upsurge in maritime claims arising from damage or short landing of cargo consigned by Nigeria consignees to various foreign ships for delivery at Nigeria seaports for years, these claims remained largely unsettled because of the technical difficulties in arresting these foreign ships to provide security for the consignee's claims.

In most cases, the particular ship sets sail before the damage or short landing of consigned goods was discovered, such Nigeria consignees whose goods were damaged or lost by ships registered in foreign countries, remained without effective remedies if they could not arrest the ship that caused the damage. Worse still, claims brought against the Nigeria agents of such foreign ships were dismissed on the basis that at common law, an agent for a disclosed principle was not liable for the wrongs of his principal. Following the promulgation of the new admiralty proceedings decree in 1991, a regime was involved to respond to such admiralty claims. At present ship owners are required to enter a caveat against arrest of their ships in Nigeria. Where a claim for damage to cargo is brought against such ship, the caveat or posts on acceptable bond in the registry of the Federal High Court. Before a bond is

adjudged acceptable it must have sufficient funds to cover the amount claimed by a cargo owner as damages. The Registrar of the federal high court keeps the register caveats entered by ship owners. Further, the bonds and the amount therein are kept by the registrar in trust for the cargo owner. Where the cargo owner succeeds in his claim, the amount in the bond is used by the court to settle the claim. Since 1991, the posting of bonds in the registry of the federal high court in Nigeria, for the settlement of admiralty claims against ships and ship owners has been a successful practice¹⁵.

4.6. Management of the Proposed Pollution compensation Fund¹⁶

In suggesting possible ways to the manage the proposed oil pollution compensation fund, great care should be taken not to compound existing problems, suggestions capable of creating another level of bureaucracy must be avoided, what is needed is a frame work that will fill the gaps in the existing regime. Since the Department of Petroleum Resources is the

15. For a detailed commentary on admiralty claims, caveats and bonds see Nnamdi Mbanefo, Admiralty practice and procedure (London)1995, Agbakoba, Onyejose & Aginam, "Arrest of Ships", A call for uniform practice "in maritime Newsletter (Lagos Nigeria) Vol. NV April-July 1996.

Chief enforcer of environmental discipline and standards in the oil industry, this thesis suggests the establishment of an Oil Pollution Compensation Commission (OPCC) to be chaired by the Director of Petroleum Resources to manage the pollution fund.

Other members of the commission should be drawn from the oil producing communities, the Federal Environmental Agency (FEPA), the Oil Companies, the Federal Ministry of Justice, Environmental and Human Right Groups, the Ministry of Petroleum Resources, the Central Bank of Nigeria and the Nigeria Institute of Estate Valuers and Surveyors. On a cursory glance, it would seem that the commission's membership is too wide and likely to be bogged by bureaucracy and disagreements. However, the influence of wealthy oil companies and wide spread corruption in Nigeria are a compelling motivation for the suggested wide membership. This will reduce the overriding influence of these multinationals on the commission there by ensuring that all claims are objectively and meticulously considered.

4.7. Compensation Claims by Oil Spill Victims

The Commission should be free to formulate its rules and operating guidelines. Claims for any pollution injury should be based on valuations prepared by experts who would be on retainer with the commission¹⁷. Ideally, they should be qualified estate valuers and environmental scientists¹⁸. Their professional services and the cost of scientific test should be paid from the fund. The Texaco (Nigeria) valuation Report on disturbance and injurious affection, prepared by professional valuers and used by Texaco (Nigeria) to settle pollution claims arising from the Funiwa oil blowout of January 17, 1990 should serve as a guide.

The commission should considered claims expeditiously. A three month framework should be workable. This would give enough time to conduct relevant scientific tests, for instance soil test to determine the extent of environmental damage.

16. See Appendix A for a framework draft legislation which sets up the pollution fund and provides for its management by the commission. This writer suggests that the appended draft should be improved and incorporated as part of the new regime on oil spill compensation envisaged for Nigeria. The draft is intended to harmonized the ineffective compensation provisions of both the petroleum Act and the oil pipeline Act

17. In Ontario, the environmental Compensation Corporation established by the Ontario Environmental Protection Act has the power to appoint an inspector to make investigation in respect of spills of pollutions in other to assist the corporation in assessing applications for payment of compensation filed by victims of such spills.

18. Most of the spills in Nigeria affect agriculture lands more than other components of the environment. This makes the services of professional valuers very important. At the first annual conference of the Nigeria Institute of Estate Surveyors and Valuers in 1970, the institute condemned the use of laymen for assessment of compensation in cases of oil spills and made recommendation on the use of qualified valuers. See Umeh J.A. Compulsory Acquisition of land and compensation in Nigeria (1973) pp. 109-110

Remuneration of members of the commission could be paid from the fund. The issue of using lawyers to pursue pollution claims is controversial.

It is likely to be time wasting and expensive. It should be in the discretion of the commission to decide, through its rules of practice and procedure, whether the services of lawyers are needed to present claims on behalf of victims in a particular case.

4.8. The Pollution Commission and Victims' Common Law Rights

In most jurisdictions with a statutory compensation regime, it is not uncommon to see provisions which guarantee common law right as addition on remedies¹⁹. In **McCannv. Environmental Compensation Corporation**, the Ontario Court of Appeal unanimously held that the statutory right to claim compensation from the environmental compensation corporation under Section 91 of the Environmental Protection Act R.S.O 1980 does not restrict a person right to pursue any of the available common law remedies such as nuisance or trespass. The statutory right to compensation for loss or injury suffered because of an environmental spill is an additional remedy provided to spill victims²⁰. Unlike the US provision, the framework in Ontario for

claiming additional compensation under the common law is unqualified. It is a right which a spill victim has discretion to exercise even if his/her claim for compensation succeeds under the statute. The implication of the melon decision therefore is that the Ontario Environmental Protection Act provides for a two-pronged approach to ensure that adequate compensation is paid to persons injured by spills. Victims are allowed to proceed to court for an injury which is already compensated by the commission. The importance of additional common law remedies in cases of statutory compensation is that it allows for effective and fuller compensation. It is debatable whether a two-pronged compensation strategy like the Ontario framework amounts to double jeopardy for the polluter. One particular spill incident may lead to a plethora of damages: injury to person, damage to property or cost for the removal of pollutants: a claim made by a victim for damage to his land or property for instance should not bar a subsequent common law action. For personal injury, in court if the victim elects to exercise that right conversely a claim filed by a

19. Section 9612 (e) of the United States Comprehensive Environmental Response, Compensation and Liability Act 42 USCA chapter 103, provides: "Regardless of any State Statutory or common law to the contrary, no person who asserts a claim against the fund pursuant to this sub-chapter shall be deemed or held to have waived any other claim not covered or assertable against the fund."

20. (1991) S. C. E. L. R. (N.S) 247 @ page 249.

government agency against a polluter, for recovery of cost incurred in removing a spill should not bar an action for damages by a victim. A victim of multiple damages from spill should have discretion to make a distinct claim under the oil pollution trust fund. He/she may also decide to litigate other damages in order to guard against double compensation, any particular injury which is compensated for, should on the principle of res judicata, operate as a final determination of all rights and liabilities in respect of that particular pollution damages²¹.

Finally, it remains to be said that a victim of oil spill may decide to pursue the entire remedies solely at common law. This may arise in a variety of situations: he may not opt for the common law route from the onset immediately after the spill or subsequently if he/she is dissatisfied with the amount offered by the commission and rejects it. In the latter situation, it is suggested that the time spent before the commission in pursuing a claim should not count in the statutory period allowed by law to present such

common law claims in court. For purpose of limitations period time should begin to run against a spill victim on the day the amount offered by the commission as compensation is rejected. Where a victim of oil pollution decides to pursue the claims entirely at common law, it is suggested that Nigeria courts should follow the strict liability practice for ultra-hazardous activity. This has been the dominant practice in most oil producing jurisdiction in North America.

21. Nigeria case law leans in favour of allowing common law rights as additional remedies. In *William v. kamson* (1968) 1 ALL NLR 399, the Nigeria Supreme Court awarded compensation to the plaintiff for disturbance as an additional remedy outside the provisions of the Public Lands Acquisition Act. In *National Electric Power Authority v. Amusa* Supra, the supreme court held that the common law rights of a claimant to compensation cannot be taken away by a statute except where the statute manifests an intention to exclude them in "clear and unmistakable terms".

CHAPTER FIVE: CONCLUSION

5.1. BRIEF SUMMARY

Compensation can be broadly classified into two. It is either in cash or in kind, according to authors, compensation in kind usually involves projects such as building of classroom blocks or health care centre or market stalls in the affected communities. The realization that legal and institutional framework approach cannot peacefully manage oil pollution crisis in Nigeria has necessitated the shift to other approaches which focus on community development through execution of project and programmes that improve the qualities of life of the people. The writer of the dissertation supported the

above suggestion because monetary compensation in oil pollution has caused a lot of mayhem in our communities.

Development generally is the improvement in the quality of life or the standard of living of the people. It can be summed up by using such social indicators as literacy level, qualitative, health, good living and good housing. A typical community perceived development is the improvement of certain key issues like employment, health, housing and quality infrastructure. According to B.B. Conable¹ sound macro-economic policies and efficient infrastructure are essential to provide an enabling environment for the productive use of resources but they alone are not sufficient to transform the structure of African economics and, by extension, Nigeria. Major efforts are needed to build capacities to produce a better trained, more healthy population and a greatly strengthened institutional framework within which development can take place. This calls for a human-centered development strategy which involves investing in people, strengthening the enabling environment, capacity building, growth that is sustainable and equitable, agriculture, entrepreneurship development, sustainable funding for development, mobilization of domestic resources and communal integration in infrastructural development.

There is however, the need to move from words to deeds which does not diminish the importance of words. As it is put by **Grace Alele-Williams**², we need to follow the money to see what it is doing in the communities and in government.

1. Sub-Sahara Africa: from crisis to sustainable growth (Washington DC: World Bank, 1989) @ xii

2. Proceedings of the SPDC Integrated Environment and Community Development Stakeholders workshop (Effurun Warri: Shell Petroleum Development company) 2004 @ 5

Also according to **Akpezi Ogbuigwe**³ we need to take hold of our own destinies in our hands and change from what we can get to what we can contribute: therefore, the need and requirement for “new” laws in the area of non-monetary compensation to firm up the traditionally available legal regimes and remedies which do not seem to cover the filed in terms of the commitments, the risks, the human and non-human capital and material infrastructure involved in the long term goal of sustainable development of the oil bearing communities. The legislature should therefore rise to confront this situation and its loopholes. A “new” law entirely promised on the issue of monetary and non-monetary compensation in oil mineral pollution matters in Nigeria is long overdue, it may, perhaps, starve and redirect the energies of

that tiny but a significant cross section of the stake holders in the industry and community involved in sabotage, vandalization, hostage taking, and armed Struggle due to the absence of such an enabling law and legal environment. The judiciary is no less needed in the creation of this desired “new” law. It has already been noted that the areas in which compensation becomes payable has continued to be broadened by statute and judicial precedence. Frynas⁴ has succinctly highlighted this development with the decision in **SPDC v. Farah**⁵ for Niki tobi where the intention of the legislature is unclear, a judge cannot adjourn a situation before him for the legislature to make a law to place the situation on his hands, he could make the law, and as Elegido has rightly opined, while the legislature is unable to up-date the law quickly enough, judicial law making allows constant refinement of legal rules.

Thus, the prospects for an alternative remedy to monetary compensation in oil mineral pollution matters in Nigeria are bright and compelling but it does not completely oust the availability and applicability of monetary compensation in certain appropriate cases. It is therefore a more fundamental, underlying methodology applicable in circumstances where wider interests are involved in order to cover the field and address the broader issue of the quest for sustainable development in the oil bearing communities; it may, in appropriate cases. Therefore, admit monetary compensation in which case both becomes quite complementary than alternatives.

3. Id, @

4. J.D. Frynas, Legal change in Africa: Evidence from oil-related litigation in Nigeria, Journal of Africa law vol 43 (1999) @ 121-150

5. SPDC v. Farah (1995) 3 NWLR (pt 328) 148.

This study buttresses the view that monetary compensation bodies with litigation alternative to compensation in pollution matters while the non-monetary compensation approach accords with the non-litigation alternative or the alternative dispute resolution strategy which has been found in this study to argue better for the sustainable development projects and programmes for the community usually outlined in a memorandum of understanding. In comparative terms, the litigation option appears to address given isolatable individual cases while the development option appears to address the impact of oil operations on the communities as a whole by the

integrating the stakeholders, harmonizing their goals and aspirations with a longer range of view to their mutual needs and prospects.

The point must be made here that agitation for resources control across the nine states of the Niger Delta region may be healthier if they would condole to sustainable development of the states. But this study has shown that government and corporate good will for sustainable development in the Niger Delta is presently suspect. The alternative remedy to monetary compensation does not consist of and is not conterminous with sabotage, vandalization, bunkering hostage taking and all other forms of self-help and third-party interventions, actions and activities that generally border on criminality and negative out-crops of the prevailing states of affairs in the Niger Delta. However, there is no doubt that these pseudo-alternatives to monetary compensation have greatly thrown up to the fore, the utter neglect of the region and have attracted both national and international attention to bear on the plight of the human and ecological communities of the Niger Delta making the appeal of the development to monetary project and programmes rather than compensation more imperative. The current compensation assessment and payment mechanism in the oil and gas industry in Nigeria is largely dominated by civil courts and compensation payments increasingly being obtained through litigation and negotiation in preference to valuation. Ideally, compensation can be obtained through a systematic professional and technical assessment of the immediate and long-term impacts of pollution on land, property and environmental resources. In terms of the quantum of compensation, there is often a wide disparity in value estimates which differ significantly from one plot to another in similar locations. This is a reflection of the apparent lack of

standardization in this process in Nigeria which is further complicated by interplay of different and often conflicting legislation on the subject of compensation embedded in different enabling laws. In her desire to contribute to the transformation process in the current inefficient and often counterproductive oil spill management and compensation system in Nigeria, the Stakeholder Democracy Network (SDN) with funding from the Dutch Ministry, facilitated a research on 'New compensation rates and processes in Nigeria. An expert term of researcher's and valuers undertook the study to identify a fair and comprehensive oil spill rates mechanism' that captures the

immediate and future loss of earnings due to oil spill which are presented in this dissertation.

5.2. Observations.

During the course of this dissertation I observe that there are various compensation techniques. Compensation by negotiation leaves a wide margin for subjectivity and corruption. It is not systematic and the disparity in values will tend to be much higher using this approach.

The writer also observe that an alternative remedy is that providing or necessitating a choice between two or loosely more than two things or one of numerous alternatives, its concerns that which may be chosen or omitted as one of two things so that if one is taken, the other must be left. Thus the researcher of this dissertation observe that such option should not be given in case of oil spill that leads to compensation. When two things are no longer offer it is no longer refers to as alternative but when one thing is only offered, it is said that there is no alternative.

The researcher also discovered that compensation is broadly classified into two, it is either in cash or in kind. Compensation in kind usually involves projects such as building of classroom blocks or health care centre or market stalls in, the affected communities. The realization that legal and institution framework approach cannot peacefully manage oil pollution crisis in Nigeria has necessitated the shift to other approaches which focus on community development through execution of projects and programmes that improves the qualities of life of the people which the researcher of this dissertation strongly agreed. The researcher of this dissertation vehemently oppose to the legal approach which can also be term the monetary compensation approach as the preventive alternative. Non legal or the extra legal approach which can be termed the community development approach or the alternative to monetary compensation approach as the curative approach to oil crisis management.

The researcher observed that development generally is the improvement in the quality of life or the standard of living of the people.

Recommendation

The imperative of the community development option is not necessarily the easiest alternative. It is strewn with political problems whose magnitudes are writ large and proportionate to situations in the past in which Truth Commissions have been called in post-apartheid South Africa and post military fascist Nigeria. To suggest that a Truth Commission be set up to look into the role multinational oil companies in Nigeria play together with the Nigerian state via-a-vis the after neglect of the oil bearing communities of the Niger Delta may be viewed as an invitation to regional and partial analyses and an exercise not particularly in consonance with or driven by avowed

nationalism but nothing could have been more revealing. Only recently in 2000, **Professor Darah**¹ in his article “**History and its Grave Digger**”, showed how Professor Clarke’s play, “All for Oil” explored how British imperial politics contrived the Nigeria Colonial State to disinherit the Niger Delta people whose palm oil brought the British to the West African coast and whose crude oil now sustains the Nigeria post-colonial state; yet, life for its indigenous people is more gruesome than it was many centuries ago.

Another damaging indictment which has been made by **Othe**² is to the effect that some oil companies in Nigeria carry out oil exploration without environmental impact assessments and that perhaps, the Delta region Nigeria is the only region in the entire world where the inhabitants are compelled to cope with a spill after a spill situation. Even attempts made to address spillages do not usually involve the local communities affected. **Othe** further concluded that a critical analysis only shows that the government which is to implement that the laws and punish polluter are in complicity with the oil companies submitting that there does not seem to be any open conflict or disagreement between the government and the oil industries but rather joint ventures and co-operations. Addressing the same issue, **Adeyanju**³ has submitted as lacking, the willingness of government to enforce the provisions of the law due to the fact that the economy depends largely on the investments of the oil companies. Government, more often than not, switches its protective powers for the polluters against the victims as in the 1995 Ogoni crisis.

The foregoing submissions show that much is left to be desired by the present state of affairs. In his book, **After Oil What Next?**, **Arthur Nwankwo**⁴ has raised the question as to what benefits have accrued to

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1. The Guardian, Wednesday august 16, 2000 @ 46
 2. Othe Ewoma Ogheneyome, A case study of the Nigeria Liquefied natural Gas Project and the Principle of Corporate Social Responsibility in Environmental Pollution, LL. B Degree Research Project, Faculty of Law, Delta State University, Oleh Campus, (2005) @ 62-63
 3. J. A. Adeyanju, Government and the Oil Pollution Crisis in Nigeria, International Journal of Environmental Issue, Vol 2 No. 1& 2 (2004) @ 224
 4. A. Nwankwo, After Oil, What Next?: Oil and Multinationals in Nigeria, (enugu: Fourth Dimension Publishers, 1982) @ 1

Nigeria from the uncontrolled exploitation of her petroleum resources and why she has failed to gain control of the sector than mortgaging her entire economy to the whims of a capricious, exploitative international order. In his prescription, **Arthur Nwankwo**⁵ submitted that the third world (Nigeria inclusive) must be prepared for interminable confrontations with the oil companies in the future and to do so effectively he contended that the oil-producing countries must supersede their feudal social-political structures by

adopting socialism which alone can control all the instruments of production and distribution and tame the enormous powers of the oligopolists⁶. How effective this prescription is in present realities is equally suspect. But there is no doubt that the present state of affairs has resulted in a general deterioration of political and social cohesion leading to civil unrest, hostage taking, kidnapping of workers, closure of platforms and rigs, reduced productivity, bunkering and more pollution and degradation.

However, given the legal and academic thrust of this dissertation, not actuated by obvious political inclinations the response of the stakeholders to the quest for sustainable development through alternative remedies to monetary compensation in oil matters is as multi-dimensional and complex as tackling the problem of pollution arising from oil mineral exploration in Nigeria itself.

The **InfrastructureSyndicate** of the **ProceedingoftheSPDCIntegrated Environment and Community Development Stakeholders Workshop**⁷ was apt in concluding that infrastructure is the key factor in Niger Delta Development. This prioritization came from the Dutch consultants to the defunct Niger Delta Development Board touching on canalization, road building, energy, health and education. These priorities have remained immutable but how should the state, the industry and the community responds?

On the part of the state, it has all been adhoc committees and commissions. One after the other. One, too many. According to **Bibobra Bello Orubebe**⁸, the state's reaction has usually been founded in the establishment of ill-funded and corruption entangled special development agencies like the NDDDB, OMPADEC, PTF, ETF and NDDC. For **Yinka Omorogbe**, adequate allocation of a greater percentage of the proceeds

5. Id., @ 10.

6. Id., @ 40

7. Held at The Petroleum Training Institute Effurun, Warri, on 24th -26th February, 2004 @ 37

8. B. B. Orubebe, Environmental Impact Assessment Law and Land Use: A Comparative analysis of Recent Trends in the Nigeria and USA Oil and Gas Industry, Delsu Law Review, Vol. 2 No. 2 (206) @ 378.

from oil o these commissions and the communities may ensure that the latter are not left out in the development scheme and process. There should therefore be a shift from the preventive legal approach to the community development curative approach to oil crisis management. The latter approach should further adopt a bottom-top participatory development process as against a top-bottom interactive approach. The focal point of the two

approaches should be the provision of the basic infrastructural facilities—schools, hospitals, roads, electricity, water—for the oil bearing communities.

It has been noted earlier, the technological aspects of the oil industry which require further research and the need for the state not only to be actively involved but to adopt and apply the results and findings of these researches in determining oil policies. While the industry may focus on the best practices in terms of safety and environmental friendliness, the state may focus on the evolution of a community development and governance model that should be responsible for monitoring the progress and compliance of the industry on the development programmes and projects agreed upon on the platform of a memorandum of understanding and on the basis of transparency, accountability, representative participation, equity and fair play.

On the part of the industry, well control through the use of blow out preventers is a major solution to accidental discharge of oil and gas to the environment as same is not only harmful but uneconomical. Apart from using the state-of -the-art equipment, it would be needful to develop and implement effluent limitation guidelines and stress the importance of instilling environmental consciousness on all operating personnel. They should comply with regulations and abide by legal regimes.

On the part of the communities, widespread awareness of the harmful consequences of oil pollution as in the first world is lacking and should be developed by government, the industry and the community in collaboration with non-governmental organizations. Furthermore, public enlightenment on the effect of truncating a well engineering process should be equally mounted to change the orientation of environmental agitators towards the adoption of dialogue and mutual compromise in seeking compensation, restitution and reparation.

For the host community therefore, openness, constructive engagement and greater access to the company or industry for ascertainment of extent of damages and clean ups without preconditions are imperative. Calls on the state to enact laws on and for compensation

payments are also necessary while the state accountable for statutory allocations and derivations funds.

The oil industry has been doing more harm than good to our environment, subtracting moiré than it has been adding to it. Yet, our destiny

is tied up with an adequate, prudent and effective use of our physical environment. The assault on the environment cannot be completely and effectively controlled but it must be prevented. Preventing pollution is better than curing its evil effects. Taping environmentally friendly energy sources is imperative. An integrated pollution control approach should be highlighted for no one part of the environment is separate from the other. The approach should minimize and render harmless, releases of prescribed substances through the best technically practicable option with a view of developing a radical change in our culture and attitude to the environment. Waste minimization, reduction, reuse and recovery are better approaches to sustainable development strategies that can balance the contending tendencies of commerce and environmental protection.

Pollution is an inherent part of the economic operations of the oil industry but its magnitude can be minimized through good industrial management. Efforts should therefore be made to balance production needs with environmental quality in the quest for national development. Greater government and industry cooperation in detection, prevention and control of environmental pollution can minimize its levels now and in the future. Thus, the real issue is to find a well-balanced environmental programme that benefits the industry, the nation and the special needs of the oil bearing communities⁹.

Contribution to Knowledge

This dissertation has raised the issue that monetary compensation in oil pollution matters has proved inadequate and that there is no law regulating comprehensively the payment of compensation. The alternative remedy of developing projects has been advanced. This dissertation calls for the enactment of a law in these areas.

9. A. D. Lkpah, cited, A. A. Ikein, Impact of Oil on a Developing Country: The case of Nigeria, (Ibadan: Evans Brothers Limited, 1991) @ 131

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