**IMPACTS OF OIL POLLUTION AND COMPENSATION FOR OIL SPILLAGE IN NIGERIA**

Introduction

An oil spill caused by human interference happens when liquid petroleum is released into the environment by vehicle, vessel or pipeline. It happens on a large scale and is mostly seen in water bodies. It happens due to human negligence and is a major form of pollution. The sources of the spill are many. For instance, crude oil can be released by tankers on land or by vandals or saboteurs. In water bodies, the spill can occur due to drilling rigs, offshore oil platforms and well. Oil spills and their effects can also be experienced with refined petroleum or even waste oil from large scale industries. What is common in all of them is that the damage caused by them is permanent and takes a long time to clean up.

**Impacts of Oil Pollution/Spillage in Nigeria**

The shiny substance that is seen sometimes on top layer of large bodies of water such as rivers is nothing but oil, which makes it difficult for plants and sea animals to survive. As such, the cleaning up of oil spill is no easy task as various factors need to be considered before carrying out cleaning operations. Such factors include the amount of oil spilled, temperature of water, type of beaches and many more. The United States Fish and Wildlife Service classify oil spills into five categories, namely: very light oil, light oil, medium oil, heavy oil and very heavy oil. Of particular importance to this module are the light oil and very heavy oil which is common in Nigeria. Light oil such as crude oil in its raw form can be cleaned effectively. (What circumstances make cleaning up of oil spill difficult?). However, they do not evaporate quickly and are capable of devastating entire marine communities and areas between high and low waters. On the other hand, very heavy oils have the capacity to hover and diffuse into water and they affect living organisms on the ocean floor. Though they are not as toxic as the lighter oils, they are difficult to find and clean up, can prove fatal for plant, animal and human life. The impacts of oil pollution include; habitat degradation, pollution from gas flaring and these are cumulative and have acted synergistically with other environmental stresses to impair ecosystems and severely compromise human livelihoods and health. Oil spill penetrates into the plumage and fur of birds, breaks down the insulating capabilities of feather which makes them heavier, disallow them to fly and kill them via poisoning or hypothermia. Even though the public attention towards oil spills has grown in the last three decades, they have been happening for over a century. Since the coming of the industrial revolution, such accidents have been happening. However, the large-scale problems that follow oil spills, pipe lines vandalism and sabotage and their effects are more obvious to us today. MNOCs in Nigeria appear to deliberately understate incidents of oil pollution perhaps to escape public outcry and official reprimand. As such, the causes of oil spill in Nigeria are varied and include corrosion of pipes and tanks, pipeline and tanker accidents, sabotage and inadequate or nonfunctional production equipment.

Effects of Oil Spills/Pipeline Vandalism

There are four main types of effects of oil spill or pipeline vandalization in Nigeria:

1. Environmental Effect: First of these is the environmental effect. The animal life that lives in the water or near the shore are the ones most affected by the spill. In most cases, the oil simply chokes the animals to death. Others that live face a number of other problems. The oil works its way into the fur and plumage of the animals. As a result, both birds and mammals find it harder to float in the water or regulate their body temperatures. Many baby animals and birds starve to death, since their parents cannot detect their natural body scent. Birds that preen themselves to get rid of the oil accidentally swallow the oil and die due to the toxic effects. In many cases, the animals become blind due to repeated exposure to the oil. Dolphins, sea otters, fish, countless species of birds and many oceanic mammals face these consequences. Countering these effects and cleaning the oil can take anywhere between a few weeks to many years, depending on the damage caused.
2. ii. Effect on the Economy: The second major effect of the oil spill is seen on the economy. When precious crude oil or refined petroleum is lost, it affects the amount of petroleum and gas available for use. This means more barrels have to be imported from other countries. Then comes the process of cleaning the oil spill, which requires a lot of financing. Although the company responsible for the oil spills and their effects has to clean it up, a lot of government help will be required. The workers that are brought on board to clean up the spill face tremendous health problems later in life as well. Their medical treatment has to be paid for and becomes the responsibility of the government. Putting all the methods of recovery into place and monitoring them takes away resources from other more important work and hits the economy in subtle but powerful ways. For instance, the BP oil spill that flowed for three months at the Mexican Gulf. The spill was stopped after it had released about 4.9 million barrels of crude oil. An estimated 53,000 barrels per day escaped from the well just before it was capped.
3. iii. Effect on Tourism Industry: The local tourism industry suffers a huge setback as most of the tourists stay away from such places. Dead birds, sticky oil and huge tar balls become common sight. Due to this, various activities such as sailing, swimming, rafting, fishing, parachute gliding cannot be performed. Industries that rely on sea water to carry on their day-to-day activities halt their operations till it gets cleaned. One of the biggest oil spills seen in history happened during Gulf war when approximate of 240 to 336 million gallons of crude oil flowed into the Persian Gulf. It was considered one of the worst disasters, beating the Ixtoc 1 Oil spill in Mexico. Recent major oil spill happened when oil rigs, Deepwater Horizon sank in the Gulf of Mexico. The spill released somewhere between 172 to 180 million gallons of crude oil into the environment. In the year 2010 alone, six oil spills were seen in the USA. Oil spills have happened in Canada, Nigeria, France, United Kingdom and China. While the long-term issue caused by oil pollution and their effects is yet to be fully observed, the daily problems are clear. However, most corporations still do not have a solid plan in place for when this emergency may strike.
4. iv. Effect on human life and activities: The effect of oil pollution on humans cannot be overemphasized as this can be clearly seen from the state of environmental degradation of the Niger Delta region of Nigeria. As the spilled oil flow into their rivers, they lack adequate and clean water for consumption. The professional fishermen have all lost their jobs. Recently, it was proven that people from that region were prone to lungs cancer as a result of the contaminated water and sea food they consume. And they are also prone to diseases associated with lack of protein because sea food being a major source of protein in Nigeria has been destroyed.

Oil pollution and spillage in Nigeria is an issue that spans over two centuries as these issues of spillage have occurred as far back as the 1960s and 70s. Nevertheless, the subsequent unit examines legal approach to oil pollution management in Nigeria and concerted efforts by government to protect the environment.

**Compensation for Oil Pollution in Nigeria**

Introduction

The downside of petroleum development has left profound adverse effect on the global environment whilst countries around the world promote economic growth, at the same time, most of them have committed themselves to reduce environmental impacts and to reverse global environmental deterioration. Generally speaking, in the face of conflicting economic and environmental goals, it is often hard to reconcile new developments with environmental protection and nature conservation. In order to encourage sustainability of development projects and to maintain current levels of natural capital, among other things, it is necessary to innovatively use planning and decision-making tools. In this context, environmental assessment (EA) has emerged as an important support tool. Whilst it is an instrument that ultimately seeks to avoid environmental impacts and to enhance positive effects, in practice its main role has often been to reduce and mitigate, and at times to compensate for negative environmental impacts. This chapter therefore looks at the mitigation and compensation elements of EA.

Compensation for Oil Pollution in Nigeria

Compensation can be distinguished from ‘mitigation’ in the sense that it involves undertaking measures to replace lost or adversely impacted environmental values that should have similar functions equaling existing environmental values. Environmental compensation can be defined as the provision of positive environmental measures to correct, balance or otherwise atone for the loss of environmental resources. (What is the difference between compensation and mitigation with regard to oil pollution?). Compensation may be viewed in terms of the creation of new values, which are equal to the lost values if the lost values are irreplaceable. Compensation concerns the creation of values which are as similar as possible. In the USA, for the purposes of the Clean Water Act, under which wetland permits are issued, mitigation is defined as: ‘sequentially avoiding and minimizing impacts and compensating for remaining unavoidable impacts.’ This sequential approach is also favoured by Canada.

Compensation may take either the form of a restoration project implemented by the Responsible Party (RP), a cash settlement to be used by Trustees for project implementation, or a combination of both. The objective of both restoration projects and cash settlements is to restore or rehabilitate the injured natural resources, or, if that is not possible, to replace or acquire the equivalent of those natural resources and services which were lost or impaired.

Compensation in environmental assessment normally aims at biological functions and other aspects, such as landscapes and non-biotic factors are not covered. In case no adequate functional compensation can be found, most systems that have compensation rules in place allow for monetary compensation. An element that is recognized as a form of compensation is enhancement which distinguishes those compensation measures that result in greater or better environmental values than those replaced.

Under international law, there are different compensation schemes for the damage caused by oil pollution from oil tankers, most notably the Civil Liability Convention (CLC) and the Fund Convention. The extent to which oiled wildlife response can be compensated for, is assessed on a case-by-case basis and the CLC and Fund Conventions provide the necessary guidance to make this assessment. The capture, cleaning and rehabilitation of wildlife and also wildlife impact assessment are activities that can be compensated for.

Legal Framework on Compensation in Nigeria

Although Nigeria has a number of statutes that provide for compensation in matters relating to land or landed property acquisition, only the Oil Pipelines Act Cap 07, LFN 2004 contains provisions that are directly related to compensation arising from oil spillage. Other statutes such as the Land Use Act Cap L5, LFN 2004 and Petroleum Act Cap P10, LFN 2004, Mining and Mining Act 20 of 2007, Oil in Navigational Waters Act Cap 06, LFN 2004. These statutes make only tangential reference to compensation for oil spillage as they deal primarily with acquisition rather than injurious affection. The latter does not transfer interest in land in any way.

The Oil Pipelines Act (Cap 145 LFN 1990)

Section 11(5); of the Oil Pipeline Act provides that the holder of a 1icence shall pay compensation to any person whose land or interest in land is injuriously affected by the exercise of the right conferred by the license, for any such injurious affection not otherwise made good: and any person suffering damage as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, for such damage not otherwise made good. Damages arising from sabotage and malicious acts of third parties are exempted.

Section 11 of the Act further provides that where the amount of such compensation cannot be agreed between any such person and the licensee, it shall be fixed by a court in accordance with the relevant section of the Act. According to Section 20 of the Act, the court may award such 1. What is your observation about the legal framework on compensation in Nigeria? 2. Name at least three factors affecting compensation for oil spillage victims in Nigeria compensation as it considers just, having regards to: a. any damage done to any buildings, crops, or profitable trees by the holder of the license; b. any disturbance caused by the holder the exercise of such right; c. any damage suffered by any person as a consequence of any breakage of or leakage from the pipeline or an ancillary installation and the loss (if any) in value of the land or interests in land by reason of the exercise as aforesaid. (Highlight the relevant laws on compensation in Nigeria)

Furthermore, Section 20 (3) provides that in determining the loss in value of land and or interest in land of a claimant, the court shall assess the value of the land or the interest injuriously affected at the site immediately before the grant of the license and shall access the residual value of the claimant of the same land of interest consequent upon and at the date of the grant of the license and shall determine the loss suffered by the claimant as the difference between the values so found, if such residual value is a lesser sum. Compensation shall not be awarded for unoccupied land as defined in the Land Use Act, except to the extent and in the circumstances specified in the (Act Section 20(4)). Section 20(5) stipulates that in determining compensation in accordance with the provisions of this section, the court shall apply the provisions of the Land Use Act as far as they are applicable and not in conflict with anything in the Act as if the land or interests concerned were land or interests acquired by the President for a public purpose. Section (29) of the Land Use Act provides for calculation of compensation according to rent, building, installation or other improvement thereon

**Factors Affecting Compensation for Victims of Oil Spillage in Nigeria**

Some factors limiting the compensatory rights of victims of oil pollution are set out below:

a). The issue of pipeline vandalization by saboteurs, vandals and oil thieves

Section 15 (c) of the Oil Pipelines Act states that any person who suffers damage as a result of his own fault or the act of the third party, is not liable to compensation. It is recommended here that a compensation fund be set up by the federal government to ensure award of compensation to victims of oil spill resulting from sabotage. However, the question that rises is: how can a group of people deliberately sabotage oil pipelines and expect the victims which may be other community members to be compensated. The community needs to be reoriented on the disadvantages of this unpatriotic act of sabotage.

b). The lack of legal cost: The lack of funds by victims of oil spill to seek compensation from court is a major factor.

c). Complex and protracted class action litigation in Nigeria and limitation of time:

The *Ejamah-Abube Community V Royal Dutch/Shell* case was in court for over 33 years due to all these procedural hitches. Also, under the Limitation Law of Lagos State 1994, an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued. In deciding whether or not a statute of limitation applies to an action, two factors are considered by the court: is there a cause of action and when did the cause of action arise? Once the cause of action accrues, time continues to run. However, time shall not continue to run when parties to a dispute engage in negotiation for the purpose of settling a dispute. See *Eboige v NNPC* (1994) 5 NWLR (Pt 347) 660, per Adio JSC. In *Gulf Oil (Nig.) Ltd v Oluba* (2002) NWLR (Pt 780) 92, the respondents/plaintiffs brought an action against the appellant/defendant in 1986 to recover damages for pollution of their lands, fishing ponds, swamps, channels and lakes as a result of seismic and other oil exploratory activities within their community in 1973. The Court of Appeal held that the cause of action was statute-barred.

**The need for a new Oil Spill compensation regime in Nigeria**

A detailed analysis of the major global legislation on compensation from oil pollution from the International Convention on Civil Liability for Oil Pollution Damage via the US Oil Pollution Act, to the latest EC Directive on the subject, concludes that there is no standardised compensation rate internationally. (State the important steps to having strong compensation regime in Nigeria). It does however show that the major compensation schemes do have a number of principles in common.

1. Damage to property tends to be calculated by reference to the actual cost of repairing or replacing the property, or the difference between the value before and after the spill;

2. Compensation for damage to natural resources (where this is provided for) tends to be calculated by reference to the cost of remediating or replacing the lost or damaged natural resources. The compensation schemes do not generally provide for additional, independent compensation for damage to natural resources;

3. Damages for loss of subsistence use of natural resources can be included;

4. Compensation for consequential losses and pure economic losses (such as loss of income) are generally provided;

5. It can include the cost of bringing a claim, including the use of advisers where appropriate;

6. The heads of loss identified in the compensation schemes are generally not exhaustive or exclusive: for example, the French court awarded damages for non-pecuniary losses in addition to those provided for by the International Convention on Civil Liability for Oil Pollution Damage 1992; similarly, the American OPA does not contain damages for personal injury but these can be claimed under state or admiralty law;

7. Non-pecuniary losses (save to the extent that these might be recoverable as damage to natural resources of loss of subsistence use) and punitive damages are generally not expressly recoverable under the compensation schemes.

**The Role of the National Oil Spill Detection and Response Agency (Establishment) (NOSDRA) Act 2006**

The most significant and forefront agency regarding oil spillages within the Nigerian context is the National Oil Spill Detection and Response Agency. The agency is mandated with the statutory responsibility for preparedness, detection, response and investigation to all oil spillages in Nigeria under section 1(1) [20]. However, Olawale observes that most oil spill investigations are headed by oil multinationals instead of NOSDRA and or combinations of both organisations, and thereby hinders the supply of accurate technical data from spill site. This further contributes to inaccuracy of information regarding the extent of damage and number of incidences reported. For example, the National Oil Spill Detection and Response Agency certified 327 oil impacted sites in 2006, while in 2007, 253 oil spill incidents were reported, 588 incidents reported and 419 oil spills reported in the first two quarters of 2008. Between 2012 and 2015, Nigerian experienced 1,527 incidents recorded, with numerous unrecorded incidents. While in the same vein, the oil multinationals reported 400 incidences with preventive measures to stop investigation from the responsible agencies, making the joint investigation process reliant on the oil multinational corporations.

According to NOSDRA “the progressing trend of the sad incidents of oil spill is indicative of a grave danger ahead as a nation, in terms of polluted environment and its poor health index as well as colossal loss of revenue which is aptly required for economic and physical development”. (Briefly examine the responsibility of the National Oil Spill Detection and Response Agency (Establishment) (NOSDRA) Act 2006). The incidents pose challenges to the agency in terms of clean-up, remediation and rehabilitation due to the frequencies. Hence, the agency has commenced action on the development of a National Oil Spill Compensation Rate (NOSCR) which will serve as guide for oil industry arriving at acceptable and appropriate compensation to host and transit oil communities. There remains little or no physical/practical evidences and intermediary measures in relation to oil spill impacts and environmental devastation reductions and or compensations for the affected. It is necessary to emphasise that, among the numerous legislations provided for the environment and the oil and gas sector, section 102,103 of the PI Act, the Oil Pipeline Act, Cap 145, LFN 1990 is the only Act that contains provision directly related to compensation occurring from oil spillage. Compensation for oil spill damages should be an integral part of a coherent and rational environment policy.

**Summary**

The Nigerian regime on compensation for oil spills and oil pollution is set out clearly under the Oil Pipelines Act and the NOSDRA Act. As such, you should be able to effectively advise a future client on the steps to take if he/she intends to institute a class action suit on behalf of his community. It is also important to read up on more cases pertaining to oil pollution and compensation in Nigeria