A CRITICAL EVALUATION OF THE LEGAL FRAMEWORK OF OIL SPILLS AND COMPENSATION IN NIGERIA

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ABSTRACT
The larger available literature on crude oil spills in Nigeria are on the causes and effects however, very few studies have concentrated on the compensation framework. It is against this background that this article seeks to conduct a critical assessment of the legal framework for oil spill compensation in Nigeria. Doctrinal research method was adopted and data analysis was qualitatively based. The article among others found that municipal legislations regulating oil and gas industry in Nigeria are in piecemeal and the victims of oil spills are often not adequately protected. We suggest amongst others that the municipal legal framework regulating the oil and gas industry in Nigeria should be strengthened and repositioned in line with International Best Practices so as to properly address the issues relating to oil spillages and compensation of its victims.

Keywords: Oil Spills, Compensation, Biodiversity, Laws, Nigeria.

Introduction
Generally, oil exploration in Nigeria is inevitably associated with the devastating effects of oil spillage, air pollution and land degradation among others which causes adverse environmental challenges that negatively affect host communities by way of contamination of potable water, loss of farmlands and streams, fire hazards, illegal bunkering, pollution, health hazards, as well as other biological, ecological and industrial effects. The fulcrum of this work is among others, aimed at addressing the following issues or questions:

a. Is there any comprehensive legislation to protect the environment from oil spill incidence in Nigeria? and
b. Is there any Legal framework in place to ensure, or makes adequate/fair provision for compensation of victims of oil spillage in Nigeria?

Accordingly, there are municipal legal regimes regulating incidence of oil spillage and compensation of its victims but unfortunately, it is noticed that the Laws providing for compensation in cases of oil spillage are in piecemeal as there is no comprehensive legislation to regulate the conduct of operators in the oil and gas industry much more compensations of oil spill

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victim in Nigeria. Hence, there is the need and indeed one of urgency, to revisit and overhaul the legal regimes regulating compensation practice in cases of oil spillage in Nigeria with the aim of appraising same.

Similarly, even where there exists some piecemeal legislation as contended earlier, it appears that on the general context, the said existing pieces of legislation are not clearer in terms of its protection of the environment from spillage and in the area of compensation of victims of oil spillage in particular. However, it cannot only be said that the existing legal regime/framework is not clear but rather it is contradictory in some vital areas.

Furthermore, there are quite a number of statutes which undoubtedly, overtly or covertly provides for compensation in matters pertaining to land or landed property acquisition but unfortunately, only the Oil Pipelines Act and two other municipal legislation or regulations contain provisions that directly address matters pertaining to compensation emanating from oil spillage in Nigeria. Other Nigerian statutes such as the Land Use Act 1978, Minerals Act 1946, Petroleum Act 1969, Mining Act 1990, Oil in the Navigable Waters Act 1968 and others are only superficially relevant to compensation for oil spillage, as they deal primarily with land acquisition in Nigeria rather than injurious affection emanating from oil spillage. On the other hand, it also appears that there are several laws in place governing the upstream, midstream and the downstream sub-sectors of the oil industry in Nigeria and these laws are segmented, with none, comprehensive in terms of covering the problems associated with Nigeria Oil and Gas Industry. Although each of the Legislation is designed to cure some designated mischief, but it can, however, be said that all the legislation share one feature in common and this feature is that they all vests the ownership of petroleum, in its natural states in strata and other mineral resources on the Federal Government of Nigeria.

However, the statutory provisions which vests control of petroleum/mineral resources on the Federal Government on behalf of the Nigeria citizens do not impede the right to compensation arising from petroleum operation activities. This proposition was canvassed and upheld in the case of *Elf Nigeria Limited v. Opre Silto and ors* where it was unequivocally held that no law in Nigeria impedes the right to compensation arising from petroleum activities. Agreeably, no law prohibits payments of compensation in cases of oil spillage in Nigeria but the major question

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8. According to NOSDRA Act 2011, s.1, the Upstream Subsector consists of a crude oil, condensates and gas exploration and production activities including crude oil terminal. The Midstream Subsector consists of crude oil pipeline transportation, storage, refining and petrochemicals production, liquefied natural gas and gas conversion including all processing facilities. Downstream subsectors entails final consumers involving (marketing operation, jetties, above storage tanks, retail outlets, product pipelines and underground tanks operations).

seeking for an answer is; how accessible is the right to be compensated in the event of oil spillage in Nigeria? In response to the question above, Deinduomo accordingly postulated as follows:

Over the years it has been observed that, due to the many grey areas in the statutes governing compensation in oil and gas operations, oil multinational giants dodge the payment of compensation totally or for a good time or get off lightly. Sometimes they continue operations undisturbed whilst the case suffers undue delay (which is almost endemic in the Nigeria Judicial System) and they ultimately dodge the payment of compensation by winning the case on technical grounds or because of the inferiority of victims’ Lawyer or the inability of the victim to reach the standard of proof required to succeed.

With the above proposition in mind, it is pertinent to embark on an empirical and analytical assessment of the various heads of compensation in the main statutes relating to compensation of victims of oil spillage or compensation of those who suffer damage due to the negative effects of oil spillage in Nigeria. Apparently, the assessment can better be archived by careful examination of some of the major municipal Legislation relating to environmental protection and compensation of victims of Oil Spillages in Nigeria.

**Appraisal of Municipal Legal Regime in Nigeria**

Under this heading, attention is shifted to the appraisal of the municipal legal regime regulating compensation in cases of oil spillage as well as those enacted to protect the environment from cases of oil spillage and its unprecedented environmental damage. Among others, the Nigerian Legislation worthy of appraisal herein are;

- (a) Petroleum Act
- (b) Oil Pipeline Act
- (c) Minerals and Mining Act
- (d) Harmful Waste (Special Criminal Provision) Act
- (e) Oil in Navigable Water Act
- (f) National Oil Spill Detection and Response Agency Act
- (g) Niger Delta Development Commission (NDDC) Act
- (h) National Emergency Management (NEMA) Act
- (i) Criminal Code/Penal Code

**Petroleum Act.**

This is the principal Act regulating the operation of the petroleum industry in Nigeria and its sub-sectors. The Act also empowers the Nigerian Minister for Petroleum Resources to make regulations for the prevention of pollution of water causes and the atmosphere. This Act is not just concerned with the operation of the petroleum industry but majorly concerns itself with the regulation of petroleum and its products.

Accordingly, ‘Petroleum’ under the Act means Minerals (any related Hydrocarbon) or Natural Gas as it exists in its natural state *in strata* and does not include coal or bituminous shells or other stratified deposits from which oil can be extracted by destructive distillations. Also, Natural State in strata of Hydro Carbon refers to when the hydro carbon has not been penetrated,

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12 Often, scientific evidence is required to establish the Claimant’s claim in cases of oil spillage and because of the high cost of obtaining the required expert evidence, most of the victims, due to financial incapacity to call evidence of their case, bugs it at the instance of the sophisticated legal team of the multinational oil company.
13 In the course of appraisal of the Municipal legal regime, Regulations made pursuant to any of the legislation listed above shall be considered immediately after the legislation.
15 Petroleum Act 1969, s. 9(1).
16 Petroleum Act 1969, s. 5.
extracted, drilled or mined out from its natural formation beneath the soil. The Nigerian Petroleum Act further defined the term ‘Petroleum Products’ to among others include: Motor Spirit, Gas Oil, Diesel Oil, Automotive Gas Oil, Kerosene, Liquefied Petroleum Gases and any Lubrication Oil or Grease or Lubrications.\(^\text{17}\)

The major objectives and intent of Petroleum Act among others include; to make Provisions for the exploration of Petroleum from the territorial waters and continental shelf of Nigeria and to vest ownership of same including all the on-shore and off-shore derivable revenue from Petroleum resources in the Federal Government of Nigeria.\(^\text{18}\) Accordingly, the major strength of the Act according to Nigerian Extractive Industries Transparency Initiative (NEITI) is that ‘the Act provides for Regulations to be made for safe working of petroleum operations, preventing of pollution of water causes and the conservation of petroleum resources among others...’\(^\text{19}\)

As the principal legislation regulating the petroleum industry, exploration of Petroleum, and its products, the major provision on liability imposed on the holders of an Oil Exploration and Prospecting Licenses or Oil Mining Lease is provided under paragraph 36 of the First Schedule to the Petroleum Act (FSPA) which provides 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 subjected to under the provision of this Act be liable to pay for an 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 land.\(^\text{20}\)

From the above, it is noticeable that paragraph 36 of FSPA provides for payment of fair and adequate compensation, for disturbances or damage suffered by owners or occupiers of land for which an oil exploration license, oil prospecting license or oil mining lease have been given to a holder.\(^\text{21}\) The Petroleum Act is grossly defective with respect to compensation in cases of oil spillage as no express provision of same was made in the Act save that the combined effects of S. 2(3) of the Petroleum Act, paragraphs 35(a), and 36 of FSPA implies that the draft man’s intention was to cater for compensation upon revocation or compulsory acquisition of land for purposes of oil exploration, prospecting and mining.\(^\text{22}\) However, it is pertinent to acknowledge that Nigerian Courts have broadened the scope of paragraph 36 FSPA in order to cover certain degree of damage which may be occasioned after an acquisition of land for oil exploration purposes. This landmark extension of the bank of paragraph 36 FSPA saw the limelight in the case of \textit{SPDC Nig Ltd v. F.B. Farah}\(^\text{23}\) where the court rightly held that a litigant can sue in an action for environmental degradation arising from the activities of petroleum drilling companies. It was the holding of the court in this case while interpreting paragraph 36 FSPA and content-analyzing same, that the basic issues for consideration were the determination of what constitutes disturbance, fair and adequate compensation, reinstatement, injurious affections, general inconveniences, evaluation of damage and its method. The holding of the court in Farah’s case supra is in consonance with the decision of

\(^{17}\) Petroleum Act 1969, s. 15.
\(^{19}\) Nigerians Extractive Industries Transparency Initiative (NEITI), ‘Existing Laws and Policies in the Nigerian Extractive industries’ (2010) 1. Available at www.nigerdeltabudget.org/law%2520 Accessed on the 7/6/2013 at 12:00pm. See also, the Long Title of the Petroleum Act.
\(^{20}\) Petroleum Act s. 2(3) and FSPA Para 35(a).
\(^{22}\) \textit{Ibid}.
the Supreme Court in the case of *A.G. Mid-Western States v. Chief Sam Warri Esse*\(^\text{24}\) where it was held that disturbance of any kind caused as a result of oil exploration activities warrants compensation. Although, this case (Sam Warri Esse’s case) was adjudicated in connection with damage caused to economic trees, crops and other valuables in the course of exploration of petroleum, it however, implies that Nigerian Courts can award damages with respect to cases of oil spillage even though paragraph 36 FSPA does not expressly provide to that effect. It is so because, an injury suffered as a result of oil spillage qualifies as an injury caused as a result of oil exploration and by the authority of Chief Sam Warri Esse’s case, the victims of oil spillage are entitled to compensation.

In contradistinction to the ineffective provision of the Petroleum Act in the area of compensation arising from oil spillage, it seems that its Regulation, that is, Petroleum (Drilling and Production) Regulations of 1969\(^\text{25}\) provides for reasonable, realizable and laudable provisions aimed at preventing pollution and other environmental hazards.\(^\text{26}\) Accordingly, the Petroleum (Drilling and Production) Regulations which provides for the prevention of pollution of waterways and the atmosphere among others was made pursuant to S.9 (1) of the Petroleum Act which is the principal statute governing petroleum operations in Nigeria. The circumstance under which the regulation was made was succinctly summarized by Ikoni\(^\text{27}\) viz:

This Act for the prevention of Pollution grants to the Minister in charge of Petroleum, the power to make regulation for the prevention of pollution of water causes and the atmosphere. The regulation made pursuant to the power granted by virtue of S.9 (1) of the Act to the Minister in charge of petroleum, concerns majorly with environmental protection in the petroleum operation.

Flowing from the strength of the said S. 9(1) of the Petroleum Act, the Nigerian Minister of Petroleum Resources commendably made the Petroleum (Drilling and Production) Regulation 1969. In order to vividly emphasise the point sought to be made, the relevant provisions of the Petroleum (Drilling and Production) Regulations addressing issues of environmental protection from oil pollution are worthy to be considered and accordingly, content analyzed with the view of showing its efficiency or otherwise in the payment of compensation in cases of oil spillage and protection of the environment from oil pollution. Regulation 13 of the Petroleum (Drilling and Production) Regulation provides to the effect that no petroleum shall be discharged or allowed to escape into the water or the port. Similarly, Regulation 25 of the same regulations provides viz:

The licensee or lessee shall adopt all practicable precautions including the provisions of up-to-date equipment approved by the director of petroleum resources, to prevent the pollution of inland waters, rivers, watercourse, the territorial waters of Nigeria or the high seas by oil, mud or other fluate or substance which might contaminate the water, banks or those line or which might cause harm or destruction to freshwater or marine life and where any such pollution occurs or has occurred, shall take prompt step to control and if possible, end it.

Accordingly, Regulation 25 as reproduced above is protective of the environment rather than concerned about the compensation of victims of oil spillage, though the Regulation is wide

\(^{24}\) (1977) 4 SC 71 at 89 - 90

\(^{25}\) Reference to the Petroleum (Drilling and Production) Regulation of 1969 also refers to its respective amendments in 1973, 1979, 1995 and 1996 respectively.


enough to cover any form of environmental protection and it is both active and pro-active in nature. According to Oche, the obligation imposed to licensees and lessees under Regulation 25 above is classified into two (2) namely: primary and secondary obligations which he aptly summarized thus:

...primarily, regulation 25 obligates the licensee or lessee to adopt all practicable precautions to prevent the pollution of the environment. One of the precautions it enjoins is the provision of up-to-date equipment... on the secondary level, the same regulation requires the licensee or lessee that where he/it is unable to prevent the pollution and it comes to occur, it is incumbent on him/it to take prompt steps to control and if possible, end it.28

From the foregoing, holders of oil prospecting or exploration license and mining lease technically referred to as concessionaires are duty bound to strictly adhere to Regulation 25 of the Petroleum Regulations.29 Similarly, prevention and prompt control of pollution are the principal objectives perceived from the above legislative drive. It is also of interest to associate the jurisprudential intendment of Regulation 25 to two (2) emerging principles of International Environmental Law which are:

a) The polluter pays principles, and
b) The precautionary principles.

It is indeed indubitable to say that the Petroleum Act of Nigeria through its Regulations made pursuant to s.9 (1) of the Act ensures adequate provision for prevention of environmental pollution which includes oil spillage and its control in the event of occurrence but the Petroleum Act in itself is grossly defective in terms of making sufficient provision for compensation in cases of oil spillage in Nigeria. Although optimism is heightened on the hope that the proposed Petroleum Industry Bill (PIB) of Nigeria now pending in Nigerian National Assembly when metamorphosed into an Act of Parliament shall be better off, as the rights, yearnings, aspirations and sufferings of the host communities and other stakeholders in the oil industry among others necessitated the PIB which contains provisions worthy to tackle incidents of oil spillage and pollution generally. In that regard, it is worthy to appraise the PIB in prospect.


The Petroleum Industry Bill (PIB) was initiated in 2012 by the 7th Senate of the Nigerian National Assembly and its legislative process continued in the 8th Senate in which case some parts of the Bill is still pending. The essence of the PIB is to provide for the establishment of a legal, fiscal and regulatory framework for the petroleum industry in Nigeria and other related matters.30

The Petroleum Industry Bill (PIB) has four (4) limbs mainly encompassing/dealing with issues concerning the physical arrangements (taxes and royalties) of the petroleum industry, host communities rights, governance of petroleum industry etc. Due to the deadlock encountered by the 7th Senate in trying to pursue the PIB in its entirety, the PIB was bifurcated into four (4) bills with the Petroleum Industry Governance Bill (PIGB) as one of such following which the Petroleum Industry Governance Bill was successfully passed in May, 2018 and now awaiting presidential assent.

In essence, the major objectives of the PIGB is to promote transparency and accountability, establish framework for creation of petroleum viable entities and to create the governing

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28 Petroleum (Drilling and Production) Regulations, 1969, Regulations 36 paragraph A, D & E, 39, 40, 66,(1), (2), 67, 69, and 104, are also apposite on this point.

29 The concessionaires or Holders of Oil Exploration License, Oil Prospecting License, or Mining Lease Pursuant to s. 2 of the Petroleum Act, and those guaranteed under the Deep Off-Shore Inland Basin Production Sharing Contract Act are under obligation to avoid Environmental Pollution and Degradation.

institutions of the petroleum industry with clear and separate goals as well as to foster a conducive business environment for the petroleum industry operations.\textsuperscript{31}

Nonetheless, from the objectives of the PIGB, it appears that the PIGB which is a facet of the PIB is primarily concerned with establishing a well-regulated and coordinated institutional framework for the governance of the petroleum industry in Nigeria which encompasses the core objectives of the PIGB. Hence, it is not surprising to see in the PIGB that seven (7) statutory institutions comprising the Office of the Minister, the Ministry of Petroleum Incorporated, the Nigerian Petroleum Regulatory Commission, the Nigerian Petroleum Company, Petroleum Equalisation Fund and Nigerian Petroleum Liability Management Company were all sought to be established under the PIGB with each having clear, distinct, specialised and coordinated roles assigned to it. Upon the establishment of these institutions, Nigerian National Petroleum Corporation (NNPC), Department of Petroleum Resources (DPR) and Petroleum Product Pricing Regulatory Agency (PPPRA) which hitherto are among the regulatory agencies in the petroleum industry stand to be scrapped. In this regard, it can be seen and also be said that the PIGB is mainly concerned with the governance and regulation of the petroleum industry in Nigeria and as such the other facets of the PIB particularly the aspect dealing with community rights and compensation also need to be urgently resuscitated and speedily fast-tracked like the PIGB.

Back to the PIB, its principal objectives among others includes to create a conducive business environment for petroleum operations, enhance exploration and exploitation of petroleum resources in Nigeria for the benefit of Nigeria people, optimize domestic gas supplies particularly for power generation and industrial development, establish a progressive fiscal framework that encourages further investment in the petroleum industry while optimising revenues accruing to the Government, establish commercially oriented and profit driven oil and gas entities, deregulation and liberalisation of the downstream sector, create effective regulatory agencies, promote transparency and openness in the administration of the petroleum resources of Nigeria, protect health, safety and the environment in the course of petroleum operations, promote the development of Nigerian content in the petroleum industry and attain such other objectives to promote a viable and sustainable petroleum industry in Nigeria.\textsuperscript{32} Hence the basic objectives of the PIB are to unbundle the NNPC and make the petroleum industry lucrative, effective and maximize revenue accruable to the Government from the oil industry.\textsuperscript{33}

In essence, the PIB if scrutinized, harmonized and holistically passed into law, it will provide a panacea for victims of oil spillage as a careful perusal of the Bill shows that, the PIB expressly provides for compensation of victims of oil spillage. It accordingly, provides thus:

The holder of a petroleum exploration license, petroleum prospecting licensee or petroleum mining lease shall, in addition to any liability for compensation to which the holder may be subject under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of the surface of the land or any other right to any person who owns or is in lawful occupation of the licensed or leased land, in accordance with written guidelines issued by the Agency; the rates of compensation contained in the guidelines referred to,… shall be arrived at through a consultative process and the Agency shall update the guidelines issued annually to reflect rates of inflation and any other relevant factors.\textsuperscript{34}

\textsuperscript{31} Petroleum Industry Governance Bill 2017, s. 1 (a)-(d).
\textsuperscript{32} PIB 2012, s. 1 (a) – (k).
\textsuperscript{33} Ibid.
\textsuperscript{34} PIB 2012, s. 296.
Though the PIB is appraised in prospect, it is worthy to say that if the PIB is scrutinized, streamlined and passed in its entirety, the problems and plights of victims of oil spillage as regards whether they are expressly entitled to be compensated under a known principal Nigerian legislation may be a thing of the past as the PIB did not only make provision for compensation of oil spill victim but also made stipulations as to the principle of assessment and guidelines in ascertaining what is due and payable to a particular victim of oil spillage.35

**Oil Pipelines Act**36

Oil pipeline Act regulates the grant of permits to survey, Authority or License to construct and maintain pipelines in Nigeria.37 For the purpose of this work, one may quest to know the precise meaning of pipeline. By the authority of Mobil Production Nig Ltd. V. Ayeni,38 the court described pipeline as follows:

A pipeline is a long pipe used ordinarily to transport petroleum products or gas from the point of mining to a storage tank. It does not float... it is either laid underground or on the floor of the sea. It does not form the part of the storage facility but it is rather independent of the storage facility... Oil pipeline is also used for transportation of hydrocarbons, from one oil terminal to another platform.

According to NEITI,39 the primary intent and objective of the Oil Pipeline Act are to provide for licenses to be granted for the establishment and maintenance of pipelines incidental and supplementary to oil fields and oil mining and purposes ancillary to such pipelines.40 The Oil Pipelines Act provides for lucid legislation on compensation as it affects the Nigerian Petroleum Industry but mainly with respect to the construction of pipelines after granting of licenses to the desired and qualified operators. In essence, s. 6(3) of the Oil Pipelines Act provides thus:

The holder of a permit to survey, acting under the authority of s. 5 of this Act shall take all reasonable steps to avoid unnecessary damage to any land entered upon and any building, crops or profitable trees thereon, and shall make compensation to the owners or occupiers for any damage done under such authority and not made good.

Holders of Permit to Survey/Licensees under the Oil Pipeline Act are under obligation to take reasonable steps not to cause unnecessary damage to any land entered and features therein and also under obligation to pay compensation to owners or occupiers of land in the event where damage occurs. The effect of the breach of any provision of the Oil Pipeline Act or obligation imposed on the licensees or holders of Permit to Survey under the Act is among others revocation of the permit or license granted to the holder.41

Haven content-analyzed s.6(3) of the Oil Pipeline Act, it is however submitted that the section is concerned with damage caused in the process of construction or changing of oil and gas pipeline and not damage caused by oil spillage. Hence, it does not provide remedies for oil spillage caused by corrosion of pipelines. Furthermore, s.11 of Oil Pipeline Act is also another section of the Act dealing with compensation but unfortunately, it

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37 Oil Pipeline Act, ss. 3, 4 and 7 authorized the Minister to grant permits, to survey or license to qualified applicants willing to carry out or operate pipelines in Nigeria.
38 LPELR – CA/L/255/05; also reported in (2008) 1 NWLR (pt.1067)185.
40 See the Long Title to the Oil Pipeline Act.
41 Oil Pipeline Act s. 27.
covers only compensation for compulsory acquisition of land and damage caused in the course of
pipeline construction. In details, s.11(1), (3) and (4) of the Pipeline Act authorizes the holder of
Oil pipeline license ‘…to enter upon, take possession of or use the stripe of land specified in the
license, thereon, thereover, thereunder to construct, maintain and operate an oil pipeline and
ancillary installations’. The provision of s.11(1) (3) and (4) of the Oil Pipeline Act amounts to the
compulsory acquisition of land and in such a situation, owners and occupiers of such land are
without more ordinarily entitled to compensation. In view of the foregoing, the provisions of s.11
(5) of the Oil Pipeline Act which ordinarily is to be construed with s.20(2) of the same Act, did not
only provide for damages but stipulated the nature of and circumstances under which damages can
be paid under s.11 of the Oil Pipeline Act. For proper adumbration and appraisal, s.11 (5) (a) (b)
and (c) provides as follows: The holder of a license shall pay compensation:

a) To any person whose land or interest in land, (whether or not it is land in respect
of which the license has been granted) is injuriously affected by the exercise of
the rights conferred by the license for any such injurious affection not otherwise
made good;

b) To any person suffering damage by reason of any neglect on the part of the
holder or his agent, servant or workman to protect, maintain or repair any work
structure or thing executed under the license, for any such, not otherwise made
good; and

c) To any person suffering damage (other than on account of the malicious act of a
third person) as a consequence of any breaking of or leakage from the pipeline or
an ancillary installation for any such damage not otherwise made good.

The Oil Pipelines Act provides that where injury is occasioned and the amount of
compensation is not agreed between the victims and the holders of license, the amount shall be
fixed by a court in accordance with the provision of the Oil Pipeline Act under Part IV of the Act
which is primarily concerned with the court having jurisdiction to entertain issues of compensation,
basis of assessment of compensation and modus operandi of compensation where the local
community are interested.

Furthermore, s.20 (2) of the Act provides for the various heads of compensation which
includes: compensation in respect of buildings, crops or trees, disturbances, injurious affection, loss
of value of land or interest in land. However, it is rather sad that flowing from the appraisal of the
relevant provisions stipulated or embedded in the Oil Pipeline Act above, like its Petroleum Act
counterpart, nothing under the sections expressly stated/provided that oil spillage caused by
corrosion of pipelines was contemplated by the draftsmen of the Act. Also, no section expressly
provides for compensation for victims of oil spillage via corrosion of pipelines. However, it is, in
essence, suggested that scholars are in agreement with the jurisprudential intendants of s.11 (5)
(a), (b), (c) and s.20 (2) of the Oil Pipeline Act to the effect that s.11 (5) (a) covers damage arising
from the acquisition of land or interest in land for the laying of the oil pipelines and ancillary

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42 The Land Use Act s. 28(1) empowers the Governor to revoke Right of Occupancy for overriding public
interest. Under s. 28(2) (c) of the same Act, the requirement of land for mining purposes or oil pipeline
or for any purpose connected to it, satisfies overriding interests.
43 See CFRN 1999 (as amended) s.44 and Etikerentse, Nigerian Petroleum Law (London Macmillan 1985)
90-93.
installations. The sections also encapsulate damage to third parties property rights outside the area covered by the license, it equally provides for injurious affections which are akin to nuisance.

Secondly, s.11 (5) (b) of the Act provides for Negligence. According to Deinduomo, the requirements of Negligence entail rigorous proof which is needless in a claim for compensation. In the same vein, it is equally posited that s.11 (5) (c) provides for strict liability akin to the Rule in Ryland v. Fletcher with only two (2) defences of ‘Default of the Plaintiff’ and ‘Malicious Act of Third Party’ available for defendants who is usually the holder of oil pipeline license. To this extent, it is rather regrettable that no express provision in the Oil Pipeline Act of Nigeria provides for compensation in cases of oil spillage caused by pipeline vandalism, sabotage or corrosion in which case, innocent owners and occupiers of land are often than none victims of such barbaric acts and rather than providing for the compensation of victims, the acts provides for statutory exceptions hinging on the fault of the plaintiff and malicious act of the third party.

Also, Worthy of mention in the appraisal of Oil Pipeline Act is s.33 of the Act which provides lee-way for the formulation of Regulations. Pursuant to the said S.33 of the Oil Pipeline Act, Oil and Gas Pipeline Regulations of 1995 (simply referred to as OGPR 1995) was made. Regrettably, it is equally unfortunate that OGPR ignored totally the issues of compensation of victims in cases of oil spillage. However, Regulation 8 of OGPR only provided for environmental protection guidelines to be observed while constructing pipelines and the said Regulation 8 is primarily aimed at ensuring safety and nothing more.

Finally, on this point, it is justified in the circumstance that Oil Pipeline Act, calls for an urgent amendment. This is because it is lacking in many material respects especially as it affects or relates to the compensation of oil spill victims on the one hand and environmental protection on the other hand.

**The Harmful Waste (Special Criminal Provision) Act**

Harmful Waste (Special Criminal Provision) Act is another Act worthy of appraisal whenever an issue of oil spillage is in focus. The Act is one regulating indiscriminate, unauthorized and illegal dumping of waste in Nigeria. Accordingly, any solid, semi-solid or liquid toxic or noxious substances injurious or poisonous to health and capable of causing environmental hazards, qualifies as harmful waste. From the perspective of the Act, a waste is said to be harmful and hazardous to health and environment if the waste is of such quantity, whether with or without other consignments of its kind or different substances, capable of subjecting any person to the risk of death, fatal injury or incurable impairment of physical and mental health. In essence, the Act is objectively designed to address issues of indiscriminate dumping or discharge of harmful waste on the environment. while it can be said that the Act is well positioned in the area of environmental protection from harmful waste, it also appears that indiscriminate dumping of oil substances is a cause of minor oil spillage, hence, the question is: did the Act made provision for compensation of victims of spill caused by indiscriminate dumping or channeling of oily waste into the environment? The answer is in the affirmative as meticulous reading and appraisal of s. 12 of the Act provides that damage caused by dumping of harmful waster into the environment warrants liability at the instance of the person responsible for the dumping of the said harmful waste. Accordingly, the said s.12 of the Harmful waste (special criminal provision) Act stipulates thus:

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47 Ibid.
Where any damage has been caused by harmful waste which has been deposited or dumped on any land or territorial waters or contiguous zone or exclusive economic zone in Nigeria or its inland waterways, any persons who deposited, dumped or imported the harmful waste or caused the harmful waste to be deposited, dumped or imported shall be liable for the damage except where:

a) It was due, wholly to the default of the person who voluntarily suffered it; or
b) It was suffered by a person who voluntarily accepted the risk thereof.

In this respect, s. 12 of the Harmful Waste (Special Criminal Provision) Act is germane and quite relevant in the sense that, should any harmful waste or harmful oily waste be generated in the process of offshore petroleum operations and should any damage result therefrom, the doers are liable to compensate the victims. In reality, oil pollutants, because of their hazardous, harmful and toxic capabilities may be said to come under the definition of ‘harmful wastes’. It would, however, be acceptable that this Act is both conscious of environmental protection and compensation of victims of harmful oily waste, but does not generally cover compensation of oil spill victims in Nigeria save as it relates to harmful waste.

Oil in Navigable Waters Act 1968

This is an Act of the National Assembly enacted to implement the terms of International Convention for the Prevention of Pollution of the Sea by Oil and to make provisions for such prevention in the navigable waters of Nigeria. For the purpose of this research work, a body of water such as River, canal or lake is said to be navigable if it is deep, wide, and slow enough for a vessel to pass through it. Navigable water also connotes water that provides a channel for commerce and transportation of people and goods. In essence, the Act was practically enacted to circumvent marine pollution hazards in the navigable waters. Without hesitation and much ado, the Act did not make any provision for compensation rather it employs only penal techniques against deviants of its provisions. In summary, the act created numerous anti-pollution offences which among others include:

a) Discharge of oil into prohibited sea areas: s.1(1) of the Act makes it an offence for any Nigerian ship to discharge oil into prohibited sea areas created under the International Convention for the Prevention of Pollution of the Sea by Oil as amended in 1962.

b) Discharge of oil into Nigerian waters: The Act under s.3 made it an offence for any vessel to discharge oil into Nigeria waters including Navigable waters.

c) Failure to install oil pollution prevention equipment in/on ships: s.5 of the Act provides that where a Nigerian or foreign-owned ship fails to install equipment considered suitable for the prevention or reduction of oil discharges an offence is said to have been committed under the section.

d) Failure to Keep Record of Oil Matters: There are three (3) distinct offences under this column which are:

52 1952-1962
53 See the Long Title to the Oil in the Navigable Water Act.
1. By virtue of s.5 (5), masters of Nigerian ships over eighty (80) tons should keep a log of their oil discharges, spills, and ballasting activities, failure to do so is an offence under the Act.

2. Under s.7 (5) and (6) of the Act, ships and vessels are required to keep detailed records of oil transfers to and from the vessels. Failure to keep the said record is an offence under the Act.

3. Fraudulent entries in respect of (a) and (b) above. This is relevant to the extent that it amounts to cover-up information covering oil pollution.

Furthermore, there are other offences created under the Act but the ones pointed out above are apposite to demonstrate that the Act did not make any provision for compensation rather it only criminalized unacceptable acts of ship owners and operators. However, the Act is very good and proactive if properly enforced. It is a welcome development to acknowledge the comprehensiveness of the Act with respect to prevention of water or sea pollution. On the other hand, it is also unacceptable that the Act did not make any provision for compensation of victims in the event where actual damage is occasioned as a result of a discharge of oil into the Navigable waters of Nigeria.

**National Oil Spill Detection and Response Agency Act 2006**

National Oil Spill Detection and Response Agency (NOSDRA) Act is another legislation which regulates issues of oil spillage, its management, responses, remediation, and clean-up operations in Nigeria. The Act provides for the establishment of the National Oil Spill Detection and Response Agency (NOSDRA) and other related matters. Accordingly, s.1 (1) of the Act which is the establishment section provides thus:

There is established an agency to be known as the National Oil Spill Detection and Response Agency (in this Act referred to and to as ‘the agency’) with responsibility for preparedness, detection and response to all oil spillages in Nigeria as set out in section 5 of this Act.

From the above provision of section 1(1) of the Act, it is clearer that the fulcrum of the Act is to establish an agency and position it in such a way that the agency will be prepared to detect and respond to all oil spillages in Nigeria. Accordingly, the Agency created by virtue of s. 1(1) of the Act is in adherence to the implementation of the stipulations of the 1990 Convention on Oil Pollution Preparedness, Response and Co-operation. Therefore, it appears that the Act is solely concerned with the detection, remediation, clean-up and management of all incidents of oil spillages in Nigeria. Among others, NOSDRA is statutorily charged with the following core duties:

a) To be responsible for surveillance and ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector.

b) Receive reports of oil spillage and coordinate oil spill response activities throughout Nigeria etc.

In accordance with the provisions of the Act, oil spillers are duty bound to report any incident of oil spillage to the Agency in writing not later than 24 hours after its occurrence and failure to report same attracts penalty of Five Hundred Thousand Naira ($500,000.00) only for each day the incident of the spillage is not reported reckoning from the day of its occurrence.

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55 NOSDRA Act 2006.
56 See the Long Title of the NOSDRA Act.
57 See NOSDRA Act s.5 which provide for the objectives of the Agency.
58 That is National Oil Spill Detection and Response Agency (NOSDRA).
59 See generally NOSDRA Act ss. 6(1), (c), (d), (e), (2), (3), (4) and 7 which provides for the functions of NOSDRA.
60 NOSDRA Act s. 6(2).
Similarly, failure of an oil spiller to clean-up the impacted site to all practical extent including remediation attracts a further fine of One Million Naira (₦1,000,000.00).\(^{61}\)

From the above, it appears that with respect to the protection of the environment from oil spillage and pollution, the agency is statutorily positioned to punish spillers, protect the environment and also to collaborate with other sister institutions in the event of disastrous spills.\(^{62}\) Unfortunately, the various sections of the Act appraised/analyzed did not make provisions or stipulations for the payment of compensation to victims of oil spillage but rather concerned itself with the punishment of spillers and generation of revenue for Federal Government by way of imposition of fines on oil spillers.

It is pertinent to acknowledge that, in the exercise of the powers conferred on the Agency by virtue of s. 26 of the NOSDRA Act and all other powers enabling it in that behalf, the Agency, accordingly made two (2) Regulations which simultaneously came into effect on the 26\(^{st}\) day of May 2011. While the Act only imposed fine against defaulters (spillers) by way of penalties, the Regulations made provisions for penalties as well as payment of compensation to victims of oil spillage in certain instances. These regulations are:

a) Oil Spill and Oily Waste Management Regulations (OSOWMR)\(^{63}\)

b) Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations (OSRCRDAR)\(^{64}\)

**Oil Spill And Oily Waste Management Regulations (OSOWMR)**

The OSOWMR provides regulations which apply to on-shore and off-shore petroleum facilities in Nigeria. It is primarily aimed at regulating the oil facilities which due to their locations can reasonably be expected to discharge oil or oily waste in harmful quantities into or upon the land or navigable waterways. Facilities regulated by OSOWMR include facilities used for seismic survey, drilling, production, gathering, storage, processing, refining, distribution, and consuming activities.\(^{65}\)

Accordingly, r.16 of OSOWMR provides that owners or operators of facilities from which oil or oily waste are discharged into or upon land or navigable waters of Nigeria are liable for specific damages resulting from the discharged oil and the removal costs incurred in a manner consistent with the National Oil contingency plan.\(^{66}\) From the foregoing, oil facilities owners upon default are liable to pay specific damages resulting from the discharge of oil or oily waste. In the same vein, they are also liable to pay the removal costs incurred in the course of clean-up activities of the said oil spill or discharge of oily waste, undertake remediation activities and also ensure environmental restoration. Although, both the damages and removal cost imposed by the regulations and payable by the defaulters goes to the Agency (NOSDRA) and not the victims of oil spillage. It seems that the Regulation under consideration excludes payment of compensation or damages to individuals as damages and cost imposed by the regulation only appear to address the specific damages and not general damages. In any event, specific damages entail phenomenon

\(^{61}\) NOSDRA Act s. 6(3).

\(^{62}\) See NOSDRA Act s. 19. The said S.19 provides that the Agency/NOSDRA shall in the event of major or disastrous oil spill, in collaboration with other co-opted Agencies, undertake and supervise all those provisions as set out in the 2\(^{nd}\) schedule to the NOSDRA Act. Also, Government of the Federation through the Federal Ministry of Environment can intervene in situations of catastrophic spill. Further, Sister Institutions as used here include Niger Delta Development Commission,(NDDC) National Emergency Management Agency (NEMA), Department of Petroleum Resources (DPR) and even the respective States Ministries of Environment depending on where the spill occurred.

\(^{63}\) 2011.

\(^{64}\) 2011.

\(^{65}\) See OSOWMR 2011 Regulations 2(1) & (2). The Regulation is contained in part II – IX and covers the up-stream, mid-stream and down-stream subsectors of the petroleum sector.

\(^{66}\) See OSOWMR Rs.36, 71, 82, 128 and 147 which all make different provisions relating to damages and regulation of oil and oily spill and waste management.
including a monetary loss that is quantifiable by way of calculation. This view was expounded authoritatively in the case of *Utc Nig Ltd v. Philip*\(^{67}\) where it was unequivocally held as follows:

General damages are such that the law will presume to be the direct, natural and probable results of the acts complained of which need not be strictly provided; unlike special damages that needs to be quantified... all that the court needs to do is to exercise its discretion judicially and judiciously since there is no parameter or yardstick for the court to use in the award of general damages except what the reasonable man would expect. General damages are claims made at large and the quantum needs to be pleaded or proved. It does not depend upon any calculation made and a figure arrived at from any specific terms, rather, it is considered by what the reasonable man would see as adequate loss or inconvenience flowing naturally from the act of the defendant.

It is pertinent to note that payment of specific damages under OSOWMR is not intended to compensate the victim rather to compensate the Agency for the cost it incurred following the spiller’s non-compliance to their obligations. Again, the damages payable by the spiller goes into the Agency’s fund and not paid to the victims of oil spillage. Hence, if one is to rely on the authority of *CBN. v. Beckiti Construction Ltd*\(^{68}\) where the Nigerian Court of Appeal held *inter alia* that damages are fundamentally meant to compensate victims or sufferers of damage caused by 3rd parties, it can be asserted that the provision of r.16 of OSOWMR is not meant to compensate the victims of Oil spillage but rather meant to compensate the Agency for the cost incurred in carrying out the obligation of the spiller.

In addition to payment of special damages and removal costs incurred by the Agency in the course of carrying out the task, duty and obligation imposed on it by OSOWMR, r.39 also impose monitory fines on the defaulters of the Regulations. The said r.39 provides that the owners and operators of oil production facilities who fail to comply with the regulations contained in OSOWMR, shall in addition to specific obligation imposed on them, including the obligation to carry out necessary clean-up operations and to furnish report to the agency; ‘be liable for payment of an amount of not less than, Five Hundred Thousand Naira (₦500,000.00) to the Agency into the account of the Government of the Federation for each day the violation continues’. Similar provisions are also provided under Regulations 56, 74, 93, 113, 132, and 151 of OSOWMR respectively. It appears that OSOWMR is more punitive than compensatory in nature and it is also very sensitive as well as proactive with respect to environmental protection than compensation of victims of oil spillage.

**Oil Spill Recovery, Clean-Up, Remediation and Damage Assessment Regulation (OSRCRDAR)**

OSRCRDAR regulates the procedures, methods and other requirements for detection, response, clean-up and remediation of oil spills from on-shore and off-shore petroleum activities into or upon the land and navigable waters of Nigeria or adjoining shore-lines. The scope of OSRCRDAR covers all on-shore and off-shore activities engaged in the exploration, production, storing, refining, and distribution of oil products that have the potential to spill into or upon navigable waters of Nigeria or adjoining shore-lines.\(^{69}\)

It is worthy to state that of all the municipal Acts, Laws and Regulations appraised in this work, OSRCRDAR is the only one which precisely, unequivocally and unambiguously provides

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\(^{68}\) (2011) 5 NWLR (pt. 1240) 203 at 239.

\(^{69}\) OSRCRDAR R.1.
for payment of compensation to victims of oil spillage. Accordingly, r.26 (1) of OSRCRDAR provides that 'an owner or operator of oil spill facility shall pay compensation to an oil spill victim for damage caused to the victim’s person, business or property'. Similarly, r.26 (3) of OSRCRDAR also provides that: ‘An owner or operator shall internalize the cost of compensation as part of polluter-pay-principle’. Hence, comparative and content analysis of r.26 (1) and (3) of OSRCRDAR made it abundantly clear that spillers are duty bound to compensate the victims of oil spillage with respect to damage occasioned to the said victim’s person, business or property and the compensation is payable in form of polluter-pay-principle. Also, it can be distilled from the above, that damage caused to a communal source of water, agricultural crops, degradation of farmland, health hazards and monetary loss as a result of incidents of oil spillage can rest assured be compensated under r.26(1) and (3) of OSRCRDAR.

In complementing the provisions of r.26(1) and (3) of OSRCRDAR, r.27 of OSRCRDAR further provides that: Compensation shall be paid for damage to buildings, economic trees or crops by any person who surveys, digs, lays pipes or such other activity for the supply of energy and distribution of energy and fuel. Indeed it is laudable that OSRCRDAR expressly enshrined or provides for compensatory rights of victims of oil spillage and also imposed fine on any person who violates the provisions of the Regulation. Accordingly, operators who violate the duties imposed on them by the regulations shall be liable to pay Five Hundred Thousand Naira (₦500,000.00) daily penalty as fine.

NOSDRA Act and its Two (2) Regulations, that is, OSOWMR and OSRCRDAR made pursuant to s.26 of the NOSDRA Act, seems to be the most comprehensive legislation regulating oil spill incidents in Nigeria. The most acceptable features of the legislations is the express provision of r.26 of OSRCRDAR to the effect that victims of oil spillage are entitled to compensation even though it is regrettable that the said r.26 further provided for an exception wherein oil industry operators are exempted from compensating victims of oil spillage in situations or circumstances where the spill is caused by 3rd party interference or sabotage.

Niger Delta Development Commission Act 1999

This act was basically enacted to enhance rapid socio-economic and infrastructural development in the Niger Delta region of Nigeria. In order to achieve its aims, s. 1 (1) of the Act established a commission known as and called Niger Delta Development Commission (NDDC). Accordingly, s.7 (1) (h) and (i) of the Act, provides for the functions of NDDC to among others include tackling of ecological and environmental problems arising from the exploration of minerals in the Niger Delta, advise Federal and State Government on the prevention and control of oil spillage, gas flaring and other environmental pollutions. Similarly, the NDDC is also empowered to liaise with oil companies in tackling issues of environmental pollutions, its control, and management.

From the foregoing, it is incontrovertible that the NDDC is not empowered to pay any form of compensation to victims of oil spillage save that out of its magnanimity, it provides relief materials in certain extreme disastrous cases of oil spill. Also, the power conferred on the NDDC is that of proffering of advice to the Federal and State government as well as management and control of oil spill where the need so arises and the need is said to have arisen in situations where the modus operandi of NDDC qualifies it to act or liaise with NOSDRA as a sister Organisation/Agency in certain instances of oil spillage in the Niger Delta.

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70 See OSRCRDAR R.25 which laid down the method of assessment of damage for purpose of compensation.
71 See NOSDRA Act 2006, s.6(2) & (3) which imposed Five Hundred Thousand Naira (₦500,000.00) daily penalty on defaulters of the Act and same is accordingly incorporated by OSRCRDAR.
72 OSRCRDAR 2011, R.26 (2).
73 1999 Cap N84 LFN 2004. It is abbreviated as NDDC Act.
74 See NOSDRA Act, S. 6 & 7 which empowers NOSDRA to act or liaise with other sister agencies in carrying out its duties where the need arises.
**National Emergency Management Agency Act**\(^\text{75}\)

This Act was enacted in 1999 by the Nigerian National Assembly to address issues of national emergencies and an agency known as National Emergency Management Agency (NEMA) was established to implement the provisions of the NEMA Act. Accordingly, s. 6 of the Act encapsulated the functions of NEMA which among others, charged NEMA with the responsibility of disaster management and also entrusted it with the duties to monitor the state of preparedness of all Agencies, bodies or commissions which may contribute to disaster management in Nigeria.

NEMA Act is only connected to this work to the extent to which its functions involves management of oil spill disasters. This is because, the Act defined disasters to include anything arising from crisis, epidemic, drought, flood, earthquake, storm, rain, roads, aircraft, oil spillage and other of such things which causes disaster to people and environment. Therefore, NEMA only provides preliminary reliefs for people living in oil spewed environment and nothing more. This is because the NEMA Act did not provide for any form of penalty against polluters or spillers of the environment much more compensation for victims of oil spillage.

**Criminal Code Act**\(^\text{76}\)

The Criminal Code is another municipal legislation which contains in it certain provision for the protection of the environment. It provides for certain offences against users of the environment even though it did not make any specific reference to spillage. Under s. 234 of the Criminal Code, there exists an offence known as ‘Common Nuisance’. The offence of ‘common nuisance’ is said to be committed where a person does anything which obstructs or causes inconvenience or damage to the public. In practice, however, this offence correlates with the Common Law offence of public nuisance which may be invoked to punish unlawful discharge of oil pollutants on the environment, public land or waterways because of the inconveniences and damage it causes to the public in their enjoyment of the rights likely to be breached. To this extent, it can be said that the Criminal Code protects the environment and the public from pollution caused by oil spillage even though it only imposed penalties on polluters and ignores compensation of oil spill victims. Also, s. 245 of the Criminal Code creates some offences against public health. These offences touch on criminal liability for pollution such as ‘Fouling of Water’ among others. Accordingly, ‘Fouling of Water’ is an example of an offence that punishes any person who corrupts or fouls any water, body spring, streams, well, tank, reservoir or place so as to make it less fit for the purposes for which it is ordinarily used.\(^\text{77}\)

The Criminal Code is very protective of the environment and the public to the extent it provides that any person who does anything to vitiate the atmosphere in any place so as to make it noxious to the health of persons in general dwelling house or in a place of carrying on business in the neighborhood or in such other place passing along the public way or where such act is done, and there is reason to believe that it is likely to spread the infection of any disease dangerous to life whether human or animal life, the doer of such an act, is guilty of misdemeanor and liable to imprisonment for six(6) months.\(^\text{78}\)

The Criminal Code like host of other Legislation appraised above obviously protects the environment and the public from oily related pollution but made no provision for the compensations of victims of oil spillage in Nigeria as it is purely punitive in nature.

**International Conventions**

Generally, ‘Conventions’ are ‘agreements or compact especially one among nations’.\(^\text{79}\) In essence, international conventions are agreements creating binding obligations between subjects of

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\(^{75}\) 1999 Cap N34 LFN 2004.

\(^{76}\) Cap C38 LFN 2004.

\(^{77}\) The punishment for such offence is 6 months imprisonment.

\(^{78}\) s. 247 of the Criminal Code Cap C 38 LFN 2004.

international law. In practice, Conventions provides the international framework for certain global phenomenon with oil spillage inclusive. In this regard, there are numerous Conventions addressing issues connected with oil spillage but some of the most connected and relevant Conventions to cases of oil spillage and compensation of victims of victims of oil spillage are as follows:

(a) International Convention for the Prevention of Pollution of the Sea by Oil (ICPPSO) 1954.
(d) Convention on Oil Pollution Preparedness, Response and Co-operation (COPPRC) 1990.

International Convention For The Prevention of Pollution of The Sea by Oil (ICPPSO) 1954

This Convention or Conference on pollution of the sea by oil was held in London from 26th April 1954 – 12th May 1954. Its primary aim was the desire to take action by primary agreement on how to prevent the pollution of the sea by oil discharge from ships. It was the views of the participants of the Conference that the best way to circumvent the pollution of the sea by ship is through an all-inclusive convention and that gave birth to ICPPSO.

The convention applies to sea-going ships registered in any of the territories of the contracting government, and contracting government in this regard means the member states which are signatories to the ICPPSO. The convention prohibits any form of oily discharge on the sea by tankers and ships and in doing that, penalties are imposed on contracting government and the defaulters of the provisions of the convention. The penalties imposed by the convention can be implemented under the law of any of the territories of the contracting government. Hence, Nigeria as a contracting government or signatory to the convention can enforce unlawful discharge of oil or oily mixture from any ship within her territorial waters/sea.

Like many other contracting governments or States, in adherence to the fulcrum of ICPPSO, Nigeria as a contracting state enacted Oil in the Navigable Water Act (ONWA) which is primarily meant to implement the aims and objectives of the ICPPSO. In this regard, it is posited that ICPPSO has been ratified in Nigeria to the extent to which Oil in the Navigable Water Act (ONWA) provides for the implementation of its content.

With particular emphasis as to whether ICPPSO guarantees payment of compensation for victims of oil spillage in the contracting states, the answer is in the negative. It is in the negative because the convention ab initio was primarily aimed at preventing sea pollution and contamination of territorial waters of contracting government by ships and tankers conveying oil and not to compensate victims who might have suffered some forms of damage via the contaminated territorial waters by ships and tankers conveying oil. Similarly, it can also be said that the shortcoming of ICPPSO for not factoring in payment of compensation to victims of oil spillage is evident of the reason why ONWA which is a national legislation, enacted to implement the aims and objectives of ICPPSO was deficient in the area of compensation of victims of oil spillage in Nigeria.

International Convention on Oil Pollution Civil Damage (ICOPCD) 1969

This Convention is one of the International Conventions also targeted at addressing the devastating issue of pollution at the global level. The convention was informed by the disastrous

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81 See ICPPSO Article II.
82 See ICPPSO Article VI.
83 Ibid.
84 See generally, ICPPSO 1954
impact of the ‘Torrey Canyon’ Oil Spill Incident of 1967.\textsuperscript{85} The incident as at then highlighted vividly the need for a new international regime in civil liability for oil pollution damage which in 1969 precipitated the International Maritime Organisation to sponsor an International Legal Conference on Maritime Pollution Damage for the purpose of adopting the convention of liability for compensation and pollution.\textsuperscript{86}

It is interesting to postulate that the principal aim of the convention was to ensure that adequate compensation will be made available to persons who suffer damage caused by oil pollution as a result of oil discharge or escape from ships and the convention was also aimed at standardizing the international rules and procedures on oil pollution liability and compensation. Like any other international conventions, ICOPCD is guided by its Articles which accordingly stipulate the basis, modus operandi, framework, and methodology adopted by member states for purposes of achieving its aims and objectives. It is pertinent to X-Ray some specific provisions of the Convention which has direct bearing to the subject matter of this work, that is, protection of the environment from oil spillage and payment of compensation to victims of oil spillage.

First and foremost, the convention defined the meaning of ‘Pollution Damage’ and represented same to mean loss or damage caused outside the ship carrying oil by contamination resulting from escape or discharge of oil from the ship.\textsuperscript{87} Pollution damage from the viewpoint of the convention does not only mean escape or discharge of oil from the ship but also includes the cost of preventive measures and further loss or damage caused by preventive measures.\textsuperscript{88} ‘Preventive Measures’ as used in the Convention, connotes any reasonable measure taken by any person after an incident has occurred to prevent and minimize pollution damage caused by escape or discharge of oil from the ship.\textsuperscript{89}

With respect to liability and compensation of victims of oil spillage, the convention provides to the effect that when oil has escaped or has been discharged from two or more ships and pollution damage results, owners of all the ships concerned except in certain instances, shall be jointly and severally liable for all such damage which is not reasonably separable in the same manners for which it is caused.\textsuperscript{90} However, the convention states that owners of ships shall be entitled to limit their liabilities under the convention in respect of any incident to an aggregate amount of Twenty One Thousand Francs for each ton of the ship tonnage but the aggregate amount shall not, in any event, exceed Two Hundred and Ten Million Francs.\textsuperscript{91}

\textit{International Convention On The Establishment Of An International Fund For Compensation Of Oil Pollution Damage (ICEIFCOPD) 1971}

This is another Convention dealing with compensation for oil pollution damage. The convention is a follow-up of the 1969 Civil Liability Convention\textsuperscript{92} which provided a useful mechanism for ensuring the payment of compensation for oil pollution damage but did not satisfactorily deal with the legal, financial and other questions raised during the Conference in

\textsuperscript{85} Torrey Canyon Oil Spill is one of the world most devastating and disastrous oil spill. It happened in South West Coast of the UK in the spring of 1967. The Spill left a negative environmental legacy which lasted for decades. In this incident, a cargo of full crude oil owing to some navigational error struck Poland’s rock of seven stores which led to the discharge of estimated 32 million gallons of crude oil. The British government (headed by her Prime Minister Herold Wilson) in a mitigation effort involved bombing raids by Aircraft from the Royal Air Force. About 50 miles (80km) of French and 120 miles (190km) of Cornish Coast were contaminated with the death of over 15,000 sea birds and other Marine organisms. The British and French government claimed against the ship owners in addition to other consequential claims.


\textsuperscript{87} ICOPCD, Article 1(6).

\textsuperscript{88} ICOPCD, Article 1(6)

\textsuperscript{89} ICOPCD, Article 1(7)

\textsuperscript{90} ICOPCD, Article 4.

\textsuperscript{91} ICOPCD, Article 5(1).

\textsuperscript{92} i.e ICOPCD 1969 appraised above.
Brussels which among others include proposal to establish an International Fund for the Compensation of Oil Pollution Damage.\(^93\) Therefore, in 1971, member states of the ICEIFCOPD convened in Brussels whereupon the Charter of the Convention was adopted and the said charter adopted was named ICEIFCOPD and accordingly taken to be a supplementary Charter to the 1969 Civil Liability Convention.\(^94\) Accordingly, the aims or purpose of the ICEIFCOPD include:

(a) To provide compensation for pollution damage to the extent that the protection afforded by the 1969 Civil Liability Convention is inadequate.

(b) To give relief to ship owners in respect of the additional financial burden imposed on them by the 1969 Civil Liability Convention, such relief being subject to conditions designed to ensure compliance with safety at sea and other conventions.

(c) To give effect to the related purposes set out in the convention.\(^95\)

While the ICEIFCOPD operates at the International Arena, in Nigeria, ICEIFCOPD was ratified and domesticated in 2006 by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage as Amended (Ratification and Enforcement) Act.\(^96\) The ICEIFCOPDRE Act which was enacted in 2006 fully ratified and domesticated the ICEIFCOPD of 1971 and it came into effect on the 22\(^{nd}\) day of December 2006.\(^97\)

Under the ICEIFCOPDRE Act 2006, Article 1 provides for the establishment of Compensation Fund (referred to as ‘The Fund’) for victims of oil pollution which oil spill is inclusive. Secondly, Article 2 of the same ICEIFCOPDRE is to the effect that ‘The Convention shall apply exclusively... to pollution damage... and to preventive measures, wherever taken, to prevent or minimize such damage.’ In essence, Articles 1 and 2 of ICEIFCOPDRE necessitates the establishment of Fund for compensation of victims of oil pollution which encompasses crude oil spills.

Importantly, Article 4 provides for the payment of compensation to victims of oil pollution. However, Article 4(3) provides that where pollution damage resulted wholly or partially by an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the Managers of the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person.

It is also worthy to state that the right to compensation under the ICEIFCOPDRE is enforceable within 3 years after which it becomes statute barred.\(^98\) Further, the fund through which victims of oil spillage or pollution damage are compensated, are acquired from contributions of contracting states that are signatories to the convention.\(^99\)

The ICEIFCOPDRE is a big success and relief to victims of pollution damage if properly implemented and enforced. It is worthy however to say that the first objective of the convention was achieved following the establishment of an International Fund for Payment of Compensation of Damage Caused by Oil Pollution.\(^100\) However, the problem seemingly associated with the provisions and jurisprudence of the Convention is the big issue of management and allocation of the “Fund” to victims of pollution that so deserves it and when addressed properly, the ICEIFCOPDRE may go a long way in ameliorating the plights of victims of oil spillage in Nigeria.

\textit{Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990.}

\(^{94}\) See http://www.imf.org Accessed 28/6/2013 at 11:00am.
\(^{95}\) See objectives of ICEIFCOPD 1971.
\(^{96}\) Simply referred to or abbreviated as ICEIFCOPDRE Act.
\(^{97}\) In compliance to CFRN 1999 (as amended) s.12, the convention via its Ratification and Enforcement Act now operates as a municipal law which for all intent and purposes, is now enforceable in Nigeria.
\(^{98}\) ICEIFCOPREA, Article 6.
\(^{99}\) ICEIFCOPREA, Articles 10 & 12.
This is an International Maritime Convention establishing measures for dealing with marine Oil pollution incidents nationally and in co-operation with member states vis-à-vis non-member states.\textsuperscript{101} The OPRC convention was actually drafted within the framework of the International Maritime Organization (IMO), adopted in 1990, came into force in 1995 and as at June 2013, there were 105 State parties to the OPRC Convention.\textsuperscript{102} Of utmost importance to this work is the fact that parties or signatories to OPRC Convention undertook individually or jointly to take appropriate measures towards preparing and responding to oil pollution incidents.\textsuperscript{103} It is in line with the undertaken entered by signatories to the OPRC convention that the Nigerian Parliament enacted into Law NOSDRA Act which represents the Nigerian National or Municipal Framework for the implementation of her obligations under the OPRC Convention/Charter.

It can be posited that OPRC unlike ICEIFCOPD did not fashion out an International Mechanism for compensation of oil spill victims but rather imposed obligations to all member states/signatories to domestically work out panacea for addressing incidents of oil spillage and payment of compensation to its affected victims. In the Nigerian case, Regulation 26 of OSRCRDR 2011 provides for compensation of victims of oil spillage and the OSRCRDR vis-à-vis NOSDRA Act which is its principal legislation was enacted in response to fulfilling Nigerian state obligations under the OPRC.\textsuperscript{104} Though, adherence to the provision of s.12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which requires that International Conventions or Treaties to be applied in Nigeria must be ratified and domesticated is central to the implementation of any convention, treaty or charge in Nigeria. In all, one may be rather positive that with the enactment of NOSDRA Act, OPRC had been ratified and domesticated or better still had been adhered to.

It is of essence to posit that in addition to the Nigerian municipal legislations appraised above and its international convention counterparts, victims of oil spillage can also seek for compensation through the auspices of some common law principles like Trespass, Nuisance, Negligence and Strict Liability which are always available for owners of Land, properties or persons who suffered from any form of damage or legal injury to rely upon and accordingly seek for redress in the Court of Law or any other recognized Tribunal as the case may be.

**Conclusion**

In conclusion, it is observed that the municipal legislation on oil and gas industry in Nigeria are in piecemeal. The Nigerian municipal legislation appraised in this article revealed that most of the legislation are protective of the environment while just few particularly ‘Oil Spill, Recovery, Clean-up, Remediation and Damage Regulations (OSRCRDAR) made pursuant to Section 6 of the NOSDRA Act 2006 and Article 4 of the International Convention on the Establishment of an international Fund for Compensation for Oil Pollution Damage as Amended (Ratification and Enforcement) Act 2006 expressly provides for compensation of victims of oil spillage in Nigeria. Also, some of the International Conventions partly or wholly concerned with issues of environmental protection and compensation of victims of oil spillage which Nigeria is signatory to are yet to be ratified and domesticated in line with the provision s. 12(1) of the Constitution of the Federal Republic of Nigeria (as amended) hence constitutionally unenforceable under the Nigerian Legal jurisprudence. Finally, there are in place some common law principles through which victims of oil spillage can seek legal redress in Nigeria.

**Recommendations**

In other to address the legal issues militating against compensation of victims of oil spillage in Nigeria, it is recommended in the interim that the existing Municipal Legislation and Regulations governing the oil and gas industry in Nigeria should be amended and repositioned to

\textsuperscript{101} Nigeria is a signatory to OPRC.


\textsuperscript{103} Ibid.

\textsuperscript{104} See generally NOSDRA Act 2006 and the two Regulations (OSWMR and OSRDAAR) made pursuant to it.
address the plight of victims of oil spillage. Secondly, it is also required that the Nigerian National Assembly enact a comprehensive legislation to govern the oil and gas industry in Nigeria or the Petroleum Industry Bill (PIB) which appears to be comprehensive should quickly be passed into law in its entirety.

Further, some of the International Conventions addressing issues of compensation of victims of oil spillage to which Nigeria is signatory to, should, as a matter of necessity be ratified and domesticated to enable victims of oil spillage resort to it for redress.