



Adequate Compensation as a Tool for Conflict Resolution in Oil-Polluted Wetlands of Niger Delta Region of Nigeria

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Abstract: Nigeria as a nation is battling with conflicts in virtually all geopolitical zones of the country. A major conflicting region is Niger Delta, where oil and gas resource of the nation domicile and this has become a major threat to the national development as well as the economic base of the nation. The conflict in Niger Delta has many dimensions to it and has given birth to unrepentant militant whose aim is to truncate the nation if their demands were not met. Although attempts have been made by the government at various levels as well as the multinational oil companies to address the problems emanating from the negative effect of oil and gas exploration, production and transportation in the region, the desired peace is yet to be fully realized. As part of the solution to the conflict in Niger Delta, this paper argued that adequate compensation to oil pollution victim is a right step in right direction. However, to arrive at such compensation value, there is need to review the legal framework, composition of heads of claim, as well as the procedural guide to the conduct of compensation valuation among the Nigerian Estate Surveyors and Valuers.

Keywords: Compensation; Conflict Resolution; Estate Surveyors; Niger Delta; Oil Spill

Introduction

Nigeria as a nation has suffered a great deal of conflicts virtually in all her geopolitical divisions. While some of the conflicting issues are as old as the nation, the recent struggles include the menace of Boko Haram which has

assumed an international terrorism status; and conflict over oil resource control in Niger Delta region of the nation. Some of the pioneers and leaders of these struggles have vowed never to allow the nation experience peace until they realize their goals. Although some

of the conflicts have been condemned by many and their demands described as frivolous, others especially those relating to oil resource control and environmental pollution in Niger Delta cannot not be disregarded. The situation in Niger Delta has been described as pathetic and unfortunate; the crisis in the Niger Delta has economic undertone at the onset but has now become a hydra-headed monster, threatening both the political and economic security of the nation; degenerating to source of friction between and among communities and nationalities in the oil bearing region (Saliu, Luqman, & Abdullahi, 2007). The conventional methods of dealing with conflicts have failed to broker peace but instead have heightened tension and insecurity in the region (Okoh, 2007)

Since the discovery of oil in Oloibiri in 1956, the Niger Delta has been exposed to varying degree of oil spillage arising from exploration, exploitation, transportation, loading and off-loading of crude oil and its product. Amnesty International (2013) described the region as one of the most oil-polluted places on the planet and reported the inconsistencies in the records given on oil spills in this region. Thousands of barrels of oil has spilt in Niger Delta since oil discovery and this has meted untold hardship on the residents of oil producing communities culminating into loss of means of livelihood and sustainability (Kadafa, 2012; Abii & Nwosu, 2009)]. Oluduro (2012) asserts that “the people of the Niger Delta region have continued to pay the price of development of the nation with their lives, health, cultures, environment and other means of livelihood”. The

impoverishment of Niger Delta land has led to internally displacement of many residents from their native land (Teminiski, 2011; Opukri & Ibaba, 2008).

For losses suffered from oil spill by its victims, the standard practice is to award compensation that will launch them back to the position they were before the mishap. Osimiri (2011) observed that inadequate or meager compensation for oil spill damage is a major cause of conflict in the oil producing communities and some of the fallout of this is destruction of oil and gas installations, income loss, loss of man hours, loss of peaceful coexistence, and abduction of expatriates and indigenous oil workers. From the foregoing therefore, this paper seeks to identify various issues responsible for inadequacies in compensation for oil spill damage in Niger Delta region with a view to recommend measures geared towards improving the present situation and forestall avoidable crisis

The Niger Delta Wetland and Oil Production

The Niger Delta region traverses the South-South, South-Western and South-Eastern geopolitical zones comprising nine states - Akwa Ibom, Bayelsa, Delta, Edo, Cross River, Imo, Rivers, and Ondo states of Nigeria. The region occupies a surface area of 112,000 square kilometers, a home to about 3000 communities with a total population of over 31 million people (Greyl, Ojo, Williams, Certoma, Greco, Ogbara, & Ohwojeheri 2013). The ethnic groups in the region include the Urhobo, Ijaw, Isoko, Itsekiri, Efik, Etche, Ibibio, Ikwerre, Ogoni, Andoni, Kwale-Igbo and Edo. The Niger Delta region is

Nigeria's largest wetland with a landmass of 70,000 square kilometres. It is the largest wetland in Africa and among the three largest in the world. It hosts huge deposits of oil and gas in Nigeria and exploitation of these resources provides over ninety five percent of the foreign exchange earnings of the country (Oviasuyi & Uwadiae, 2010)

The Niger Delta's environment comprises four ecological zones, that is, coastal barrier islands; freshwater swamps; mangrove swamp forests and lowland rainforest (Kamalu & Nwokocha, 2011). Many people in the region depend on services provided by the ecosystem for their survival. The

occupational structures of the people are mainly farming, fishing, traditional mangrove exploitation, raffia/oil palm etc. The introduction of oil exploration in this fragile ecosystem dated back to 1938, when Shell D'Archy was granted an exploration license to explore the region for possible crude oil extraction. Oil was first discovered at Oloibiri (presently in Bayelsa State) in 1956 and commercial production began in 1958. With this success Nigeria witnessed the influx of many foreign oil producing companies operating both onshore and off shore Niger Delta; thus, Nigeria joined the Organisation of Petroleum Exporting Countries (OPEC) in 1971. (See figure 1).

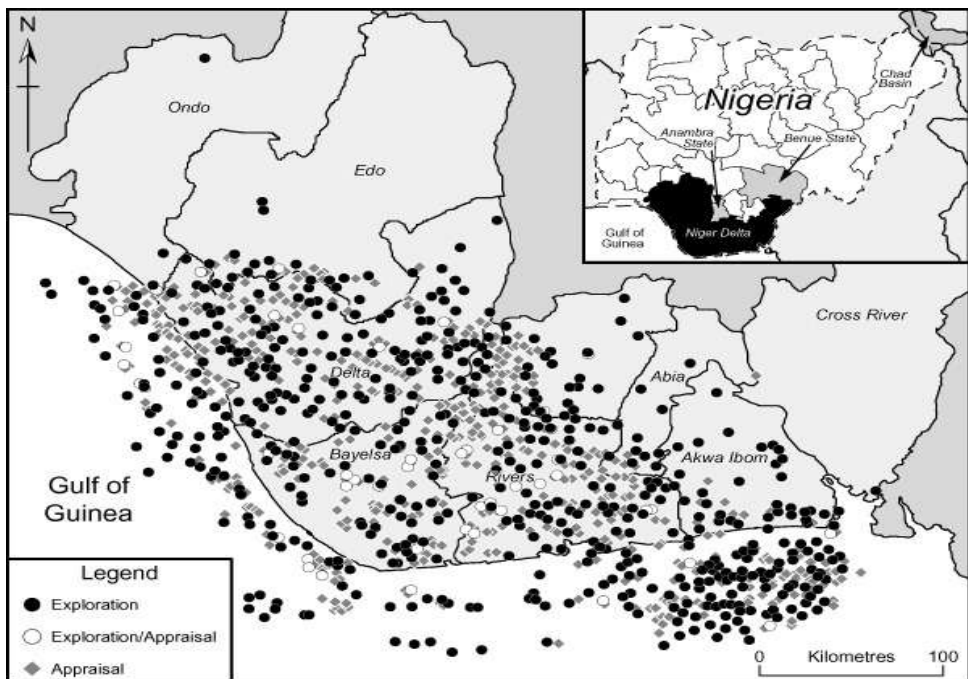


Figure 1: Map of the Niger Delta region of Nigeria showing the nine States and categories of oil well.

There are about 606 oilfields (355 onshore and 251 offshore) in the region

Source: Adapted from Anifowose, Lawler, Horst, and Chapman (2014).

Jike (2010) highlighted the effect of oil exploration and production on both natural and built environment, public health, employment in the peasant economy, and socio-economic impact on individual and Institution (See figure

2). Not less than 90% of oil spill in Niger Delta is yet to be cleaned up (Okeowo, 2014), therefore resulting to cumulative environmental problems with grave consequences on the residents particularly.

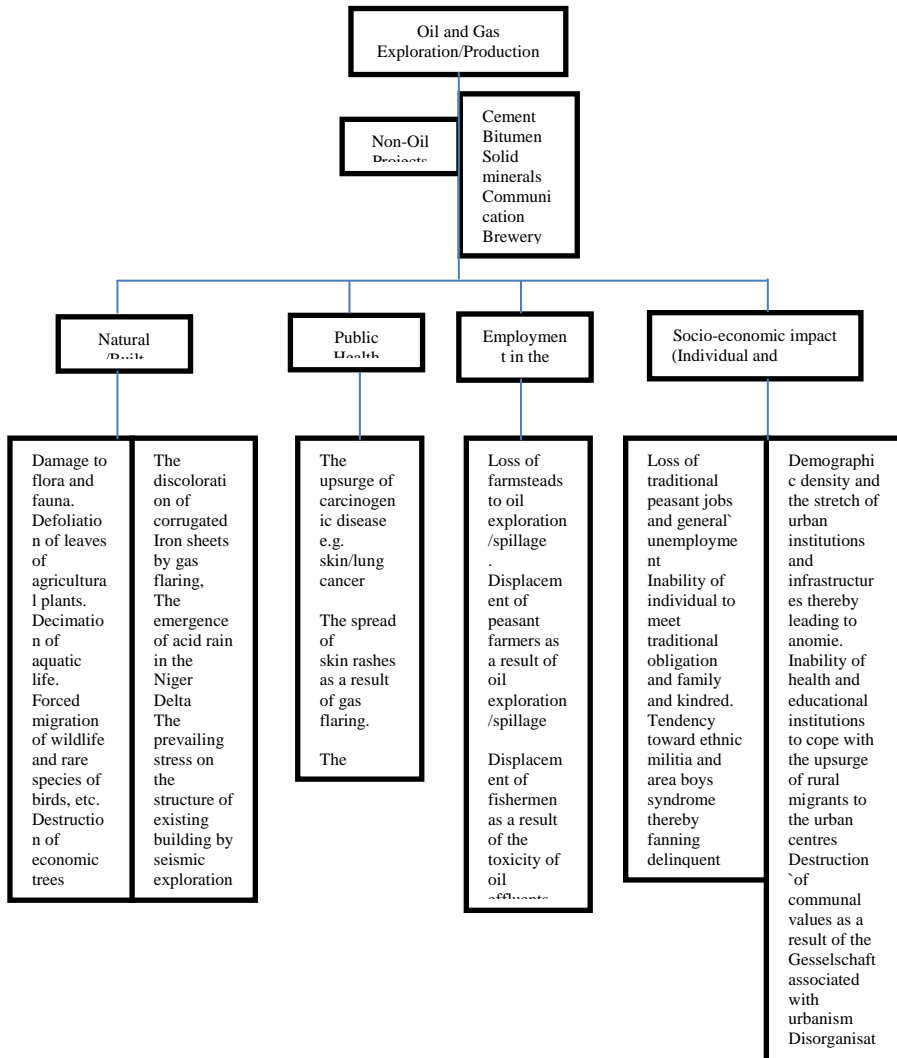


Figure. 2. How oil exploration and production have adversely affected every facet of life of the Niger Delta people (Source: Jike, 2010).

Nature of Conflict in Niger Delta

As a mainstay of Nigerian economy, crude oil commonly referred to as black gold to Nigeria is a blessing whereas the communities where this resource is extracted perceive the black gold as a curse (Omotola & Patrick, 2010). Omeje (2005) gave three dimensional perspectives of contending issues underpinning oil conflict in Nigeria's Niger Delta as connection between institutional, ecological and social factors. The most important of the institutional perspective of the conflict is the arrogation and monopolizing access to the oil-bearing land by the state via the instrumentality of Land Use Act 1978, and denial of courts' jurisdiction over any matter relating to compensation on land. Under Nigerian law, local communities have no legal rights to oil and gas reserves in their territory. In term of ecological and social perspectives, Omeje (2005) argued based on the residents' view, that oil conflict in Niger Delta is attributable to incessant oil spill in the environment by multinational oil companies and the believe that there is an alliance between government and oil companies to the detriment of the people who bears the brunt of environmental damage.

Oviasuyi and Uwadiae (2010) identified sources of conflict in compensation

payment in Rivers State, Nigeria. These include unwillingness on the part of the oil prospecting companies to pay adequate compensation, carefree attitude of the oil and gas prospecting firm, protracted litigation, selfishness of some community representatives, and lack of basic infrastructures in oil producing communities. Saliu *et al* (2007) argued that conflicts in the Niger Delta resulted from abject poverty and environmental degradation to which the region has been subjected over the years. One way by which oil companies have sought solution to incessant faceoff with their host communities in Niger Delta is instituting or intensifying corporate social responsibility (CSR); however this has failed to lessen incidence of violent conflict (Idemudia & Ite, 2006)

Idemudia and Ite (2007) conceptualized the conflict in Niger Delta as multifaceted, the root cause of which is political and economic factors. These two causes gave rise to proximate causes which are expressed in both marginalization and poverty, and environmental factors. The results of these are frustration and feeling of powerlessness, increased grievance due to loss of livelihood and widespread sense of relative deprivation (see figure 3).

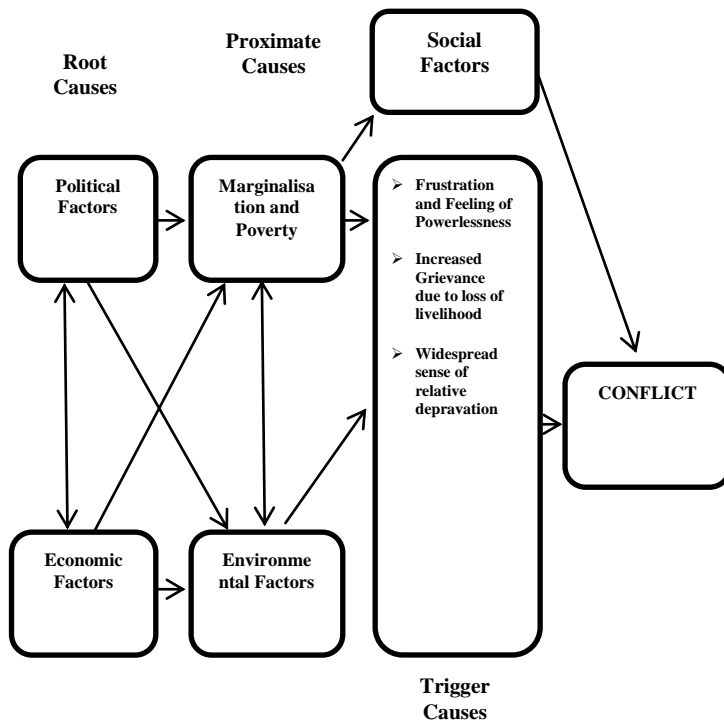


Figure 3. Causes of Conflict in the Niger Delta
(Source: Idemudia & Ite, 2006)

Aghalino (2005) traced intractable problem over compensation for oil spill damage in Nigeria to colonial origin of the oil industry and skewed template of laws which disregard the interest of victims of the negative externalities from the oil industry; the compensation paid by oil industry does not reflect market price and fall short of international standard. The nature of impaired interest in Niger Delta extend beyond goods that are traded in open market, hence Akujuru (2005) claimed that apart from use-goods, oil spill in Niger Delta also affect non-use goods.

In order to effectively manage conflict in Niger Delta, Okoh (2007) proposed

collaborative problem solving method. By this approach, participants, especially the voiceless are given equal chance to express their grievances, views, and have input to the final decision. This improves the understanding of policy makers of the issue at stake and boosts the community trust in government and its intentions. Although this approach is not new, the policy makers have only been playing lip services to issues over the years, the reason why the desired peace seem unattainable.

Sources Of Inadequacies in Compensation for Oil Spill Damage Assessment

Although many researchers have advocated for Total Economic Value (TEV) as the correct basis for compensation valuation in Nigeria (Akujuru, 2005; Otegbulu, 2009; Udo & Egbenta, 2011), the current valuation method and existing legal framework underlining the practice are incongruent to the motion. From literature, many factors have been identified as sources to inadequacies in compensation valuation. Babawale (2013) scrutinized the process as well as the method employed by valuers in compensation valuation for oil spills damage in Niger Delta and classified potential inadequacies into type 1, 2, and 3 errors. He argued under type 1 error that most of value estimates submitted for compensation claims were speculative and superfluous because of lack of input from professionals such as micro biologists, soil scientists, marine biologists, health, and safety experts etc who could have given scientific evidence to back up the claims. Although he did not state categorically whether the practice had led to under or over valuation, he opined that the figures were not reliable to be regarded as adequate for the intent of equitable compensation since most of the assertions in the valuation reports are not within the primary purview of a valuer. Famuyiwa and Omirin (2011) had earlier submitted that the use of environmental experts' input in valuation is the best ways to estimate the impact of contamination to avoid inaccurate estimation of values. Also this input will assist in precise

estimation of remediation costs and determination of remediation period. The type-2 category of inadequacy approach is in the estimation of compensation value based on equivalent reinstatement cost method for intangibles goods such as fishing right, use of "one best judgment" by some valuers - which is unconventional, untested, unknown and lack acceptability and, reliance on OPTS (Oil Producers Trade Section of the Lagos Chamber of Commerce and Industry - a private sector group which represents the interests of oil and gas producing companies in Nigeria) rate which lack legal footings for valuation of crops/economic trees contribute to unjust compensation. The last category (type 3 error) is the use of improvised or arbitrary data in estimating compensation value.

Famuyiwa and Omirin (2011) identified inadequacies in policies and regulation entrenched in Land Use Act, 1978 as contributing factor to inadequate compensation valuation in Nigeria. The Act is silent on the issues bothering on injurious affection and disturbance which may accompany compulsory acquisition or any other form of pollution damage. The current legislations guiding compensation practice in Nigeria would always result to inadequate compensation (Ajoku, 2000). In the same vein, Nuhu (2009) observed non-inclusion of bare land among head of claims, exclusion of certain classes of crops and trees, and adoption of depreciated cost method against investment method for economic tree among others, leads to undervaluation of claimants' interests. Although the OPTS rate for

compensation is considered better in scope and amount than the rate an “appropriate officer” under Land Use Act prescribes, Otegbulu (2009) opined that apart from the fact that the rates are not updated regularly, their application in valuation for compensation exercise is inconsistent with correct valuation practice of income yielding properties and thereby leads to unreliable value opinion. He proposed the use investment method of valuation in place of this rate. Akujuru (2015) opined that lawfulness of the OPTS rates being adopted by the oil companies is doubtful; hence its enforcement is sometimes questionable and meet with fierce resistance.

Non-inclusion of non-use goods in the calculation of the amount due to claimant was identified by Udo and Egbenta (2011) as another source of inadequacies in compensation valuation. The sampled populations from oil producing communities in Niger Delta were asked to express their level of satisfactions over 64 satisfaction questions via contingent valuation method. The results shows that the value of none-use goods which the existing legal framework does not recognize was estimated to be N5,696,708,185.00, whereas the opinion of experts expressed on use-goods was N156,600,000.00. This indicates that the value of non-use goods far exceed the use-value. They concluded that the agitation for adequate compensation among the oil producing communities stem from non-payment of compensation on their non-use goods. Their study identified dissatisfactions among claimants over the compensation paid for oil spills in the region. Imoseni and Abagwu (2013) analysed the

content of Land Use Act, 1978 in respect of its provision for compensation heads of claim. He argued that the Act leaves open a number of claims of the victims for valuers and courts to decide. The undefined claims bring about undervaluation of the victims’ interests. Nuhu, (2009) also identified that the provisions of Land Use Act which did not include bare land in head of claims, exclusion of certain classes of crops and trees, adoption of depreciated cost method against investment method among others leads to undervaluation of claimants’ interests.

Legal framework for compensation can be described as adequate only if it achieves the fundamental principle of placing the injured in the earlier situation prior the mishap. There had been many criticism of the current legal framework guiding compensation valuation in Nigeria. Abii and Nwosu (2009) observed that due to many grey areas in various statutes governing compensation in oil and gas operation in Nigeria, oil multinational giants have found grounds to either avoid fair compensation to the pollution victims or deliberately cause undue delay through faulty Nigeria judicial system. Eventually, the victims most time loose the case on technical grounds and sometimes find payment for legal charges difficult. Crag, Croft and Samiama (2013) observed that the existing legal system on compensation for damage seems to push oil victims towards seeking redress in the courts because of the inadequacies inherent in the alternatives. Otegbulu (2009) had contended that policy and legal framework to assess full economic value

arising from damage to natural resources to individual species based on economic functions in Nigeria is lacking.

Schopp and Pendergrass (2013) claimed that the legal framework guiding valuation for compensation purpose of oil pollution damage in Nigerian does not specifically take into cognizance the natural resource damage. The injured only rely on common laws to make recovery for damage to their property because most of the existing statutes and regulations confer no right to private action. Because of the difficulties in measurement of lost to ecosystem goods and services, many government trustees prefer to quantify the damage through resource replacement cost. Boyd (2010) posited that this approach has nothing to do with the actual social wealth

damages that have already occurred on account of ecosystem resource loss or degradation. Even though, the replacement cost may be more than the avoided social cost however, most times the latter is vastly under represented.

From the foregoing discussion, sources of inadequacies in compensation for oil spill damage can be summarily categorized under four headings, namely, inadequate legal framework, incomprehensive heads of claim, inappropriate approach to valuation method, and lack/poor input to valuation assessment by other experts (see figure 4). The conflict generated by the inadequate compensation has reached a point whereby peace must be sought in earnest in order to curb the consequence already ravaging the region.

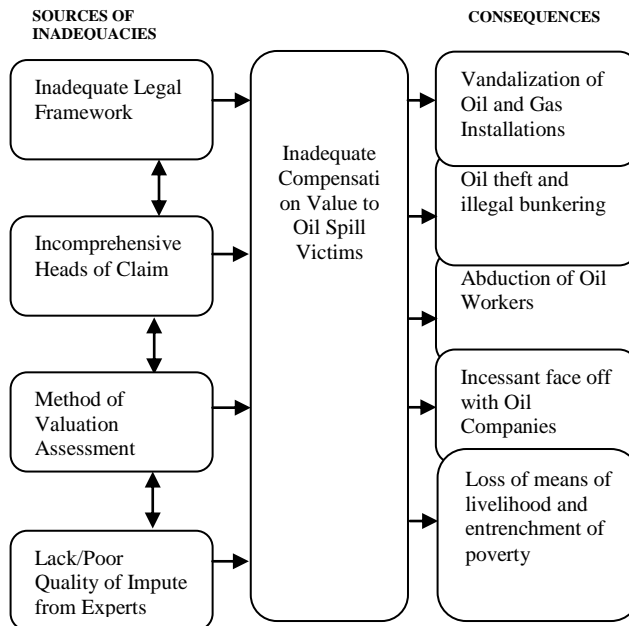


Figure 4: Sources of Inadequacies in compensation for oil spill damage and their consequences in Niger Delta Region

Attempts towards Resolving Conflict in Niger Delta

Attempts have been made by the Governments at Federal and States as well as multinational oil companies to respond to the conflict in NDR. The very first effort towards addressing the grievances of the ethnicity minority in the region was traced to 1957 when the Nigerian government set up Willink commission with the mandate to investigate the agitation of the people and measures to allay their fear (Okolo, 2014). Findings of the commission indicated that there were inequalities in the allocation of resources from oil and gas extracted from their communities, degradation of natural environment, air pollution, and gross feeling of neglect among the people. Willink report submitted in 1958 led to the establishment of the Niger Delta Development Board (NDDDB) in 1961. The mandate of this Board among others was to advise the federal and the regional government of the then Eastern and Western Nigeria on the developmental need and development of the Niger Delta. Not much success was recorded in all these moves.

Okolo (2014) described the establishment of NDDDB as misunderstanding of the right approach to solving NDR problem. There were inherent structural, administrative and funding challenges in the establishment of NDDDB and all these hindered it from achieving the desired results. For instance, nobody from the region was appointed to be among the Board members. Failure of NDDDB to contribute meaningfully to resolving crisis in NDR led to the establishment of Niger Delta Basin and Rural

Development Authority (NDBDA) in 1980 by Alhaji Shehu Shagari civilian regime. The focus of NDBDA was not limited to the Niger Delta, thus revenue from oil was not adequately released for its funding and this further aggrieved the people of NDR with feeling of frustration and neglect.

Oil Mineral Producing Areas Development Commission (OMPADEC) was established by Decree 23 of 1992 as a notable response to the crisis in Niger Delta by Military President Ibrahim Babangida. Through OMPADEC, the government geared up the financial allocation to oil producing state from 1.5 to 3 percent. Although OMPADEC was perceived as the best approach to solving the environmental degradation caused by the activities of the oil companies, the latter event turned out in the contrary as the commission became a platform to perpetrate corruption (Amusan, 2009). Activities such as award of contracts to the traditional rulers, retired military officers, non-execution of awarded contracts, marred the success of the Commission.

At the return of the political power to the Obasanjo's government under democracy in 1999, one of the early bills sent to the National Assembly was the creation of Niger Delta Development Commission (NDDC) as a replacement for OMPADEC. The NDDC was inaugurated on December 21, 2000 with a mandate to "facilitate the rapid, even and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable, ecologically regenerative and politically peaceful". Mboho and

Inyang (2001) appraised the performance of NDDC in providing solution to the conflict in Niger Delta with particular focus on Ikot Abasi, Akwa Ibom State. The findings indicated that although development projects were carried out in the communities, 70% of the surveyed population opined that the strategies adopted by the government in tackling poverty in the region did not yield positive results due to non-availability of the fund to the rural poor, lack of community involvement in programmes design, handling and implementation.

A recent move to resolve conflict in the Niger Delta was the amnesty programme instituted by President Yar' Adua in 2009. The Niger Delta militants were given between 6th August to 4th October, 2009 (a 60-day window) to disarm and assent on the amnesty register. At the end of the amnesty period in October, a total of 2,760 arms of different classes and caliber, 3 155 magazines, 287 445 ammunitions, 763 explosives and sticks of dynamite, 1 090 dynamite caps, and 18 gun boats 20,192 were recovered from ex-militants and non-militants in Niger Delta by the Presidential Amnesty Committee (Oluwaniyi, 2011). The amnesty programme has three dimensions to it - disarmament, demobilization and reintegration (DDR) of the militants, a tool commonly used in conflict. The programme aims at giving more to the militants in Niger Delta following several national embarrassments and sharp decline in daily oil production which led to substantial loss of revenues to the nation. The initial five years of the programme lapsed in December

2015 but has been extended by another two years by the Buhari's government.

Nwankwo (2015), summarized the Nigerian government efforts in addressing the incessant oil-related conflicts in NDR as three-pronged strategy. These are the derivation principle, the establishment of developmental bodies and the militarisation approach. The derivation principle increased the oil revenue to the states in Niger Delta from 11/2 % to 3% and currently to 13%. The second strategy was the establishment of developmental commissions which brought about Niger Delta Development Board (NNDB) in 1960, the Oil Mineral Producing Areas Development Commission (OMPADEC) in 1992, the Petroleum (Special) Trust Fund (PTF) in 1995, the Niger Delta Development Commission (NDDC) in 2000, and the establishment of the Ministry of Niger Delta Affairs in 2008. Thirdly, the militarisation approach, witnessed the establishment of Joint Task Force. The force grossly violated human rights; this move remains a pointer to the fact that compensation for oil pollution-related conflict is yet to be resolved.

Considering the various moves towards resolving the environmental and developmental conflict in NDR, the situation is yet to attain the desired end. International Crisis Group (2015) observed that the bitter complaints about abject poverty and ruinous oil pollution, which aggravated the earlier rebellion in NDR, remain largely unaddressed as there is increased threat by the ex-militants to pick up their arms.

Recommendation

There is urgent need to promote peace in Nigeria and especially the Niger Delta which bear the oil resource on which the economy of the nation rests. This cannot be achieved when private interest and rights is violated especially due to oil pollution. Having highlighted

the various issues which made compensation for oil spill damage far from being adequate, it is pertinent to ameliorate the situation. Conceptually, figure 5 shows sources of compensation inadequacies diagrammatically and in line with this thought, the following recommendations are made

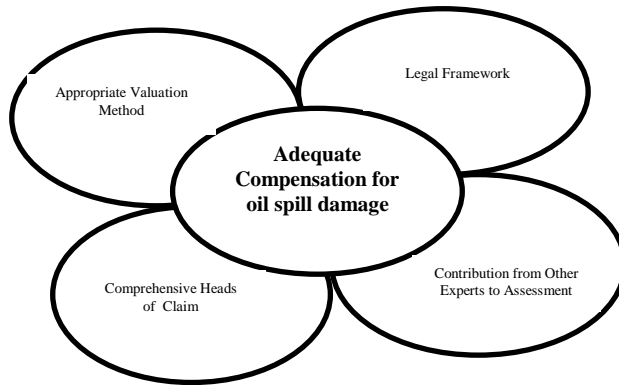


Figure 5: Approach to correcting inadequate compensation for oil spill in Niger Delta

A. Appropriate Valuation Method

There is need to revisit the imposition or adoption of predetermined value of claimants’ interests by the use of OPTS rate of compensation and other similar rates compiled by the state or oil companies. Adequate compensation goes beyond arriving at figures. Spash et al (2005) had warned that once valuation becomes divorced from its theoretical roots, numbers can be produced which have little content or meaning, and are defensible only in terms of their political role rather than theoretical basis. The use of predetermined rate as a substitute to valuation assessment carried out by a qualified Estate Surveyor and Valuer should be discouraged as this will only fan the already heated atmosphere. Estate Surveyors and Valuers by their training are equipped with right

knowledge and skill to determine (using appropriate method of valuation) an equitable value for impaired interests of oil victims. It is also pertinent that the Nigerian Institution of Estate Surveyors and Valuers (NIESV) and Estate Surveyors and Valuers Registration Board of Nigeria (ESVARBON) should continue to educate their members via Continue Professional Development (CPD) and other education platforms on the valuation of wetlands and natural environment. This will update their knowledge and furnish them with developments in environmental valuation which many of these professionals are not well informed about.

B. Comprehensive Heads of Claim

Studies have shown that certain claimants’ interests are excluded from compensation assessment. This

sometimes is as a result of reliance on OPTS rate as the guiding document for valuation purpose. Non-inclusion the items considered valuable to the compensation claimants most often constitute conflict in the region. For example some trees which are categorised as non-economic tree may not always be so in all communities. Also the spiritual attachment to some sacred forest in Niger Delta required specific activities which only the natives or designated persons can be involved in especially when such forests are desecrated by oil spill. The work of Ibagere (2002) corroborates the importance of cultural heritage to compensation claimants. The study reported that compensation claims were presented in respect of desecration of Inyosa family Juju shrine, and Ikhimwin-no-zokpa shrine at the bank of Ikpoba River in Edo state. Thus there is need to conduct investigation of what constitute heads of claim in the Niger Delta region as a guide to conducting equitable compensation in the region. In conducting such investigation, bottom – top approach is advocated

C. Contribution from Other Experts to Assessment

Oil spill damage assessment sometimes requires scientific investigations which fall outside a valuers' professional competence; hence it is expected that other experts such as soil scientist, land-surveyor, environmental scientists, hydrologists, ecologists, fisheries scientists, chemists, marine scientists, micro biologists, medical and health experts etc. should have input in the assessment. Ibagere (2002) faulted many valuation reports submitted for compensation claims in NDR because

they lack input from such experts. Thus the claims could not be substantiated. Report submitted by the experts should be incorporated into the claims or attached as an addendum to the valuation report.

D. Legal Framework

There is need to revisit the legal framework guiding compensation practice in Nigeria. The existing legal framework is not clear and contradictory in some vital areas (Babawale, 2013). Although there are a number of statutes that provide for compensation in matters relating to land or landed property acquisition, only the Oil Pipelines Act, Cap145, LFN, 1990 contains provisions that directly address matters relating to compensation arising from oil spillage. Other statutes such as the Land Use Act (1978), Minerals Act Cap 121 of 1946, and Petroleum Act No. 51 of 1969 now Cap 350 LFN 1990, Mining Act No 24 of 1990, Oil in Navigational Water Act, Cap 337 LFN 1990 are only superficial relevant to compensation for oil spillage; they deal primarily with land acquisition rather than injurious affection (Imosemi & Abagwu, 2013). It is hereby recommended that laws regulating oil spill damage should be collapsed into a single document that will address all aspects of compensation for oil spill and other contamination damage. This compensation code should have sufficient input from all stakeholders especially the oil producing communities who are already having a feeling of marginalization in terms of oil resource management.

Conclusion

The study has highlighted conflicting issues in compensation for oil spill damage in Niger Delta and various

efforts geared towards resolving conflict therein. Four aspects of identified inadequacies in compensation valuation - inadequate legal framework, incomprehensive heads of claim, inappropriate approach to valuation

method, and lack/poor input to valuation assessment by other experts - must be holistically addressed in order to ameliorate conflicts relating to oil spill damage in Niger Delta.

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BELLO O. M. & OLUKOLAJO M. A.

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