

## **INCORPORATING THE LONG TERM IMPACT OF OIL SPILLS INTO COMPENSATION VALUATION IN NIGERIA**

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### **ABSTRACT**

In Nigeria, Compensation valuation as a result of oil spill is undertaken based on the provision of the enabling laws and other relevant status. There are several augments as regards the factors to be considered when valuing for compensation payable as a result of oil spill. This study aimed at ascertaining the benefits of incorporating long term impact of oil spills into oil spill compensation valuation. Compensation provision of the various laws were reviewed and found to only provide assessment and payment of compensation on land, buildings, crops and economic trees, no provisions was made for the long-term impact of the spill. Consequently, both primary and secondary data were collected through questionnaires and interviews. The analysis identified the benefits as; Increase in compensation payable, improvement on already existing claims factors, increase in pipeline maintenance and surveillance and reduction in oil spill incidences. Recommendations were made and if adhered to, there is the tendency that the present inadequate compensation crisis among polluters and victims which have caused serious and lengthy litigation in the court will be reduced to the barest minimum. The researcher made the following recommendations having identified the importance of the long-term impact of oil spill in compensation determination, it is recommended that the long-term impact (value) of oil spill be incorporated into compensation valuation and the regulations governing compensation practices in Nigeria be reviewed, so as to incorporate long term impact of oil spill as an important factor in compensation determination.

### **INTRODUCTION**

Compensation Valuation is a statutory valuation exercise in which basis for assessment is determined by statutory process through various laws. Oil spill compensation valuation is therefore a statutory valuation exercise founded on the provision of section 44(2) of the 1999 Nigeria Constitution, Oil Pipeline Act (Cap 07, (LFN 2004), Petroleum Act Cap P10, LFN 2004, Nigerian Mineral and Mining Act 2007, and the

Land Use Act (CapL5, LFN 2004). The 1999 Nigerian Constitution Section 44(2) Provides compensation to victims whose buildings, economic trees and crops are damage by any authority or person licensed to enter, survey, or dig any land or to lay, install or erect poles, cables, wires,. pipes or their conductor or structures on any land in order to provide or maintain the supply or distribution of energy, fuel, sewage, telecommunication services or other public facilities or utilities. The oil pipeline Act (Cap 07, LFN 2004) provides compensation in sections 6(3), 11(5a) and 20(2). In section 6(3) compensation is provided for victims whose land, building, crops and profitable trees are damaged by holders of a permit-to-survey. In section 11(5a) compensation is provided for victims whose land or interest is injuriously affected by the exercise of the license granted. Finally compensation is provided in section 20(2) under the following Head-of-claims.

- i. Damage done to any building, crops, profitable trees
- ii. Disturbance caused by the holder
- iii. Damage suffered as a result of breakage of or leakage from pipeline or installation
- iv. Loss of land value
- v. Injurious affection

Similarly, the Petroleum Act (Cap P10, LFN 2014) provides compensation for any victims that suffers any loss or damage in course of the operation of the Act, though, the Act do not specify the Head-of-claims, the basis and the method of valuation but its compensation is prescribed under the land use Act.

The Nigerian Mineral and Mining Act, 2007 provides compensation in respect of any loss or damage that may have been suffered in consequences of the operation of the provisions of the Act. The Act does not provide any specific information on what the Head-of-Claims should be. The Act recommend that the amount of compensation payable should be as prescribed under the land use Act. Finally the land use Act (Cap 15, LFN 2004) provides compensation in section 29. This section provides compensation to holder/occupier of the right of occupancy revoked for overriding public interest. The compensation shall be under the following Head-of claims;

- i. Land: Compensation payable shall equal the rent, if any, paid by the occupant in the year the right were revoked.

- ii. Building, Installation and Improvement thereon: Compensation payable shall be the amount of the replacement cost, less any depreciation together with interest at bank rate for delayed compensation payment.
- iii. Crops: Compensation payable shall be the amount equal to the value of the crops on land and must be prescribed and determined by an appropriate officer.

In view of the above laws however, Oluduro (2012) asserts that the laws only prescribe the process for determining damage due to oil spill but fails to make a comprehensive provision for compensation in respect of oil spill in the petroleum industry. The author refers to the above laws wherein compensation is provided for only building, crops, and profitable trees. The Act does not take cognizance of the long term impact be it socio-cultural, economical and environmental impact of the spill.

The long-term values of non-use goods are not been considered or captured in its provision, rather only the value of use goods are incorporated. Egbenta, (2010) in affirmation of the above, asserts that the aftermath of not providing for the value of the non-use goods in compensation valuation is the beginning of the crisis of inadequate compensation value among victims of oil spill and polluters. Objectively, the purpose of compensation is to restore an injured party to the previous position before the damage, Babawale, (2013). The principle governing compensation also affirms that compensation must be fair, adequate and equitable. However, for a compensation to be fair, adequate and equitable, the total economic value (TEY) concept must be incorporated as been advocated by Otegbulu, (2005, 2009). This concept recognizes the direct and indirect use, non-use, option, bequest and existence values as component of total economic value (TEV) of land resources. But, Akujuru and Yalaju, (2015) agued that incorporating total economic value (TEV) as a basis for compensation determination is impossible in Nigeria due to the existing legal framework for compensation practice in Nigeria. Oil spill has been a major source of the degradation of the environment. Obot, Artonia Braid, Dore, Wicks and Steinor, (2006) affirming the above documented that a total of 220 hectares of wetland has been damaged by oil spill in Bayelsa state, 105 hectares in Delta state and 202 hectares in Rivers State. The consequences of the above according to Aghalino, (2000) is environmental pollution which affects the ecosystem. Chinda, (2002) further asset that oil spill has degraded most agricultural land in Rivers State and have turned production area into wasteland with

increasing infertility. The long impact of oil spill has resulted in undermining claimants sources of livelihood. It has been reported that impact of oil spill be it long or short had caused delayed germination of plants, stunted growth in trees and fruits which have affected claimant income, and in some cases had rendered affected land unsuitable or unuseable for years or decades. Further investigation reveals that it causes contamination of ground/surface water in term of portability for human consumption, values of land and properties are been reduced, , communities are been displaced due to presence of fowl odour as a result of oil spill, and all of these impact has not been factored in the determination of compensation payable. Long term impact are rarely considered in compensation exercise rather claimants or victims are paid for the number of crops and fruits that are damage and not the long term impact of such spill has on the damaged environment. This has been prominent case of compensation determination. Therefore, the need to examine the benefits of incorporating long term impact of oil spill into oil spill compensation valuation is the subject this study is attempting to address.

### **PROBLEM STATEMENT AND OBJECTIVE**

The non incorporation of long term impact of oil spill into oil spill compensation valuation exercise has become a major problem in the determination of compensation payable in Nigeria as a result of oil spill. Therefore the objective of this paper is to ascertain the benefits of incorporating long term impact of oil spill into oil spill compensation valuation and the need to incorporate long term impact of oil spill in compensation valuation exercise. The study attempts to answer the following research question

What are the benefits of incorporating long term impact of oil spill into oil spill compensation valuation

### **LITERATURE REVIEW**

An oil spill is an environmental problem that occurs as a result of the release of liquid petroleum into the environment. This release according to Joy (2013) could be internationally or accidentally from human activities. The author further asserts that oil spill occurs mainly at the production, storage and transportation site. However, Nwilo and Badejo (2001) described oil spill into four main types, the minor, medium, major and finally disaster. According to the author, the categories are based on the discharge quantity of oil in land, coastal or offshore waters.

Incidence of oil spill in Nigeria since the discovery and exploration of crude has raised a lot of concern over the sustainability of the environment, coastal and human life. Report on the incidence of oil spill differs according to daily independence, Lagos (2010). The Department Of Petroleum Resources DPR (2004) reported that an estimated 1.89million barrels of Petroleum were spilled into the Niger Delta between 1978-2001 out of the total of 2.4 million barrel spilled in 41,835 oil spill incidence. Under the same year, UNDP(2011) also reported that there have been a total of 6817 oil spill incidences which account for a loss of 3 million barrels of oil of which more than 70% were not recovered. The report has it that 69% of these spill occur offshore, a quarter in swamp and 6% on land. However, the World Bank argues that the true quantity of petroleum spilled into the environment could be as ten times the official claimed amount because the amount so far documented does not take into account of “Minor Spills” according to daily independence, Lagos (2010).

Blow-out from flow stations, equipment failure, corrosion of pipeline, sabotage, illegal refining, marine transportation accident, maintenance error has been identified as the common cause of oil spill. Imosemi and Abagwe (2013). Mobile producing Nigeria (1998) also attributes breaking of pipeline or damage to or leakage from oil pipeline, oil tank overflow, rapture or failure or loading or under-bus hose as an immediate causes of oil spill. In affirmation of the above, Ogbogbo (2004) further add that transportation of crude through pipelines and tankers from one place to another is also one major causes of oil spill Baird, (2010) admit that half (50%) of all the oil spillage occurs due to pipeline and tanker accident, 28% to sabotage, 21% to oil productions with 1% accounted for inadequate or non-functional product equipment.

### **Effect of Oil Spill**

Oil spill has a major effect on the environment into which it is released. Baird 2010) asserts that people living in the affected area complain about health issues like skin lesions, breath problems etc. According to the author, many has lost basic human right such as clean water, access to food etc. similarly, Janice, (2002) asserts that the effect of oil spill on mangrove forest are known to be acidity to soil which can starve root of vital oxygen. However, Ogbogbo (2004) attributes massive land pollution, river and stream contamination in the Niger Delta as a consequences of oil spill which have resulted into land becoming unsuitable for agricultural

production, impairs water quality and creation of imbalances in the ecosystem. Ite, ibok, ite and peter(2013) further assert that whatever manner oil spillage is seen, it has resulted in disastrous effect on land and marine environment as well as a problem to human health and welfare.

### **Impact of Oil Spill**

The institute of Medicine (2010) documented that oil spill have both short and longterm physical and psychological effect on people. These includes, colossal loss of farm land, shrink in fisheries activities, pollution to sources of drinking waster, desecration of scared placed, health hazards, community displacement and untimely loss of lives etc. The above assertion was confirmed by Oluduro, (2012) who stated that the people of Niger Delta are continually paying the price of development of the nation with their lives, health, culture, environment and other means of livelihood. These impacts could be physical, economic, socio-cultural and environmental. Aghalno (2000) asserts that oil spill has a latent physical impact on the oil producing communities. Associated with the above is the removal of soil cover, land and attendant soil and coastal erosion. Aghalino (2000) further maintained that farmers and fisherman who are unable to adjust to the present circumstances will usually move to another urban city in search of livelihood.

The implication of this movement is the problem of unemployment. The environmental consequences of oil spill on the habitants are enormous. Chinda (2000) posited that oil spills have degraded most agricultural lands in the State and have turned such affected land into wasted land with increased infertility due to the destruction of oil microorganisms. Egbe and Thompson(2010), however documented that oil spill impact on crop production and other agricultural activities causes damage to the plant community due to high retention time of oil occasioned by limited flow.

### **CONCEPT OF COMPENSATION**

Compensation is one of the means employed to enforce or redress an injury. It is founded on the legal maximum “restitution in infregrum” which mean to restore an injured party to the position he/she was prior to the incident. Compensation can be paid in various forms as damages, reparations, restitution, rehabilitation or restoration provided it serves as an adequate recompense for the victims and the damaged area of the environment, Omotala (1990). The purpose of compensation is therefore to restore an injured party to the previous position he was before the act

that causes harm or damage, Babawale(2013); therefore asserts that the purpose is neither to make the affected richer nor poorer but to obtain a cash payment that will restore the victims to his original position.

Compensation valuation is usually a function of the provision of the Act, decree and other relevant statutory enactment guiding the process, Kakulu (2008a). These enactment spell out the basis and method of compensation assessment, as well as the procedures, head-of claims and roles of every respective stake holders or parties. However Oluduro (2012) argued that there is no complete legislation regulating oil spill compensation and liability in Nigeria.

But, Imosemi and Abagwu (2013) observed that apart from the oil pipeline Act(CapL7,LFN 2004) which have a direct provision for compensation due to oil spill every other laws such as Petroleum Act(CapP10,LFN2004) Nigerian Mineral & Mining Act 2007 and the Land Use Act (Cap L5,LFN2004) deals with only compensation due to compulsory acquisition rather than injurious affections, it is based on the foregoing that Otegbulu (2009) sees the Nigeria Legal Framework for compensation as not capturing the total economic value. Similarly, Kakulu, Byne and Viitenen, (2009) also argued that Nigeria constitution does not provide a fair play for non market goods determination.

## **PRINCIPLES OF COMPENSATION**

The major motive of compensation is to restore an injured party to its original position. Compensation principles seek to restore the person to a state where he is neither worse nor better at the end of the exercise, Olusegun (2013). The author further maintained that whatever method employed to determined the compensation payable must sustain the principle of equity, in which claimants is to be whole in terms of naira. However FAO(2008) also argued that financial compensation on the basis of equivalence of only the loss of land or damage crop does not achieve the motive of putting the claimants as they were before the damage as that alone cannot recompense the claimants. Similarly, Ambaye (2009) asserts that compensation requirement under the law is for the polluters to pay adequate compensation and to put the victims in a good financial position as if they interest or property had not been damaged.

## **REGULATION GOVERNING COMPENSATION IN NIGERIA**

The laws to be considered regards compensation practice in Nigeria are the 1999 Nigerian Constitution, Oil pipeline Act (CapL7, LFN 2004), Petroleum Act (Cap P10, LFN 2004), Mineral Act (Cap 226 of 1999) and the Land Use Act (Cap L5, LFN 2004).

The 1999 Constitution of Nigeria provides for compensation in section 44(2). The Section stipulated a prompt compensation paid to any victim whose building, economic trees and crops were damaged by any authority or person licensed to enter survey, or dig any land to lay, install or erect poles, cables, wires, pipe or their conductors or structure on any land in order to provide or maintain the supply or distribution of energy, fuel sewage, telecommunication services or other public facilities or utilities.

Compensation in the Oil Pipeline Act is found in section 6(3), 11(5a) and 20(2). In Section 6(3) compensation is provided for any victims whose land, building, crops and profitable trees were unnecessarily damage by holder of the permit to survey. Section 11(5a) also provide compensation to victim whose land or interest in land (be it the land the license is granted is injuriously affected by the exercise of the licensed granted, finally Section 20(2) also provide just compensation under the following Head-of Claims; any damage done to any building, crops, profitable trees, disturbances caused by the holder, damage suffered by any person as a result of breakage of or leakage from pipeline or installation; loss of land value; and finally injurious affection.

The Petroleum Act provides for compensation for any victims that suffers any loss or damage in course of the operation of the Act. However, the Act does not provides specific Head-of-Claims, the basis and the method of valuation but provides that compensation payable should be prescribed under the land use Act.

The Nigerian Mineral and Mining Act, 2007 provides compensation in respect of any loss or damage that may have been suffered in consequences of the operation of the provisions of the Act. The Act does not provide any specific information on what the Head-of-Claims should be. The Act recommend that the amount of compensation payable should be as prescribed under the land use Act. The Act further provides compensation to owners of corps, economic trees, building or work damaged, removed, destroyed by the holder of the mining title or by any of its agents or servants. The compensation payable shall be determined



by a mining cadastre officer in consultation with the state mineral resources and environmental management committee and a Government Licensed valuer.

The Land use Act Cap L5, LFN 2004) provides compensation at the instance of compulsory acquisition in section 29 of the Act. The Act prescribe no value for bare land, it however provides compensation for an amount equal to the rent, if any paid by the occupier during the year in which the right of occupancy was revoked. For building, installation and improvement thereon. The Act recommends an amount of replacement cost, less any depreciation with interest at bank rate for compensation payable, and for crops, the act recommend that compensation payable shall be the amount equal to the value of the crops being damaged.

## **METHODOLOGY**

The study was limited to ascertain the benefits of incorporating long-term impact of oil spill into oil spill compensation valuation in Nigeria. The study relied on secondary data which were sourced from textbooks, Journals, Articles etc, and primary data that was also sourced from the face-to-face interviews conducted and questionnaire administered to stakeholders earlier identified for the purpose of the study .Based on the foregoing 12 estate surveying and valuation firms operating in Rivers State that are involved in oil spill compensation valuation exercise were selected. Also selected for investigations are oil spill impacted communities and oil companies (Polluters). The data collected from these sources are analyzed using content analysis tools in line with the objective of the paper.

## DATA PRESENTATION

**Research Question:** what are the benefits of incorporating long term impact of oil spill into compensation valuation

Table 1: Improvement on already existing factor

NATURE OF RESPONSE	NO OF RESPOSNE	PERCENTAGE OF RESPONSE
Strongly Agree	9	75%
Agree	3	25%
Undecided	-	-
Disagree	-	-
Strongly Disagree	-	-
<b>TOTAL</b>	<b>12</b>	<b>100%</b>

Source: Field Survey, 2018

This question sought to find out, if incorporating longterm impact of oil spill will lead to improvement of already existing factor the results indicate that 9 respondents representing 75% strongly agree, while another 3 respondents representing 25% also agree. Conclusively, all the 12 respondents representing 100% of the sample agree that the will be an improvement of on the already existing factors.

Table 2: Increase Compensation Payable

NATURE OF RESPONSE	NO OF RESPOSNE	PERCENTAGE OF RESPONSE
Strongly Agree	10	83%
Agree	2	17%
Undecided	-	-
Disagree	-	-
Strongly Disagree	-	-
<b>TOTAL</b>	<b>12</b>	<b>100%</b>

Source: Field Survey, 2018

This question sought to find out, if respondents agree that by incorporating long term impact of oil spill into compensation valuation, compensation payable will increase? The result shows that 10 respondents representing 83% of the sample strongly agree, while another 2 respondents representing 17% also agree. In conclusion, all the 12 respondents representing 100% agree that it will actually lead to increase in compensation payable.

Table 3: Increase And Affective Oil Pipeline Maintenance /Facility Surveillance

NATURE OF RESPONSE	NO OF RESPOSNE	PERCENTAGE OF RESPONSE
Strongly Agree	4	33%
Agree	5	42%
Undecided	-	-
Disagree	2	17%
Strongly Disagree	1	8%
<b>TOTAL</b>	<b>12</b>	<b>100%</b>

Source: Field Survey, 2018

This question seek to find out from respondent, if incorporating of long term impact of oil spill will lead to increase and affective oil pipeline maintenance and facility surveillance by polluters? The result shows that 5 respondents representing 42% agree, another 4 respondent representing 33% of the sample strongly agree while 2 respondents representing 17% disagree and 1 respondent representing 8% strongly disagree. Conclusively, 9 respondents are presenting 75% of the sample agree that its incorporation will lead to an increase and affective oil pipeline maintenance and facility surveillance.

Table 4: Fair, Adequate and More Acceptable Compensation Value?

NATURE OF RESPONSE	NO OF RESPOSNE	PERCENTAGE OF RESPONSE
Strongly Agree	7	58%
Agree	5	42%
Undecided	-	-
Disagree	-	-
Strongly Disagree	-	-
<b>TOTAL</b>	<b>12</b>	<b>100%</b>

Source: Field Survey, 2018

This question seek to find out, if incorporating of longterm impact of oil into compensation. Valuation will lead to fair, adequate and more acceptable compensation value. Result shows that 7 respondent representing 58% of the sample strongly agree, and another 5 respondent representing 42% also agree. Conclusively, all the 12

respondent representing 100% of the sample agree that its incorporation will lead to fair, adequate and more acceptable compensation value.

## **DATA ANALYSIS AND INTERPRETATION**

**The research Objective; To Ascertain the benefits of incorporating long term impact of oil spill into oil spill compensation valuation?**

In attempting to answer this question, reference would be made to the interviewee response and returned questionnaires from Table 1-4.

Stakeholders interviewed identified the following benefits in incorporating long term impact of oil spill into compensation valuation.

1. Improvement on already existing factors
2. Increase compensation payable
3. Increase oil pipeline maintenance/surveillance
4. Fair, adequate and more acceptable compensation value
5. Reduction of Oil Spill Incidences

To confirm the interviewee response, the researcher further sought to find out from respondents if incorporating long-term impact of oil spill will cause improvement on the already existing factors. The result in table 1 shows that all the 100% (12) respondents are of the view that it will cause improvement on the already existing factors. The implication will be an equitable and more acceptable compensation value. The result in table 2 also indicate that it will effect compensation by it's incorporation. The implication is that, there will be increment in compensation payable. Table 3 also indicates that incorporating long-term impact of oil spill will encourage oil companies (polluters) to be more effective in their daily pipeline maintenance/surveillance to avoid oil spill incidence. Haven attributed lack of maintenance of pipeline and surveillance to oil spill incidence in the reviewed literature, also have known the multiplier effect of incorporating long-term impact of oil spill into compensation valuation, polluters will rather be encourage to increase maintenance and surveillance culture to avoid payment of huge amount for compensation. The result in table 4 also confirms that by incorporating long term impact of oil spill compensation payable will be fair, adequate and more acceptable and finally, result from the field of study also confirms that its incorporating will reduce oil spill incidences.

## **SUMMARY OF FINDINGS, CONCLUDING AND RECOMMENDATION**

The study was aimed at finding out the benefits of incorporating long term impact of oil spill into oil spill compensation valuation.

Inadequate compensation had since been the major Crisis between polluters and victims. This is due to the non-incorporation of the long term impact of oil spill into compensation valuation to determine the compensation payable. The long term impact had not been taking into consideration when computing for compensation payable. The end result of the above is inadequate compensation value which negates the main motive surrounding compensation. But as being revealed in the field of study, incorporating long term impact of oil spill into any given oil spill compensation valuation exercise, compensation payable will be increase, it will also cause improvement on the already existing factors which will bring about adequate and acceptable compensation value.

## **CONCLUSION**

After much research work, and findings, it's my conclusion that long term impact of oil spill is an important factor in compensation determination which cannot be disregarded. Finding had reveals that its incorporation will cause improvement on the already existing factors, which will cause increment in compensation payable. It is therefore the researcher conclusion that, it should be incorporated in order to bring adequate and acceptable compensation value.

## **RECOMMENDATION**

From the above findings and conclusion, I am recommending that long term impact of oil spill be incorporated into oil spill compensation valuation exercise for an improvement on already existing factors, increase compensation payable, increase and effective oil pipeline maintenance and facility surveillance, fair, adequate and more acceptable compensation values and finally, reduction of oil spill incidences.

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