International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 28-11-2021, Accepted: 13-12-2021, Published: 29-12-2021
Volume 7, Issue 6, 2021, Page No. 150-157

Alternative remedy to monetary compensation: Any prospects in Nigerian oil litigation

C O Okwelum
Delta State University of Science and Technology, Ozoro, Nigeria

Abstract
It appears that the remedy of monetary compensation in oil litigation is not suitable and sustainable in many situations victims of the activities of oil companies find themselves in the Niger Delta: particularly the Communities. Rather than engender cohesion, cash payment has become a secondary source of majority of the crisis being experienced in the Communities. This is because no statutory procedure has been generally developed and applicable in the courts of law before which these disputes are ventilated leaving much to the idiosyncrasy of the Judge. Because there are no clear-cut guidelines to follow, alternative remedies to monetary compensation have emerged sometimes leaving the oil companies to go scot-free with the socio-ecological atrocities they commit on the environment. This paper which adopts the doctrinal method looks into the concept of alternative remedies to monetary compensation and how suitable they are to the benefit of the industry and the host community. It finds that in certain cases and situations in which it is difficult to pay cash, development projects are better used to compensate the Communities.

Keywords: communities, multi-national oil companies, compensation, alternative dispute resolution, non-litigation procedure

Introduction

An alternative remedy is that providing or necessitating a choice between two or, loosely, more than two things or one of numerous alternatives. It concerns that which may be chosen or omitted as one of two things so that if one is taken, the other must be left. Thus, when two things offer a choice of one only, the two things are called alternatives but when one thing only is offered, it is said that there is no alternative.

Compensation can be broadly classified into two. It is either in cash or in kind. According to Awhefeada, compensation in kind usually involves projects such as building of classroom blocks or health care centre or market stalls in the affected communities. To Adeyanju, the realization that legal and institutional framework approach cannot peacefully manage oil pollution crisis in Nigeria has necessitated the shift to other approaches which focus on community development through execution of projects and programmes that improve the qualities of life of the people. Drawing authoritatively from Ikporupo, Adeyanju has described the legal approach which can also be termed the monetary compensation approach as the preventive alternative, while the non-legal or the extra-legal approach which can be termed the community development approach or the alternative to monetary compensation approach as the curative approach to oil crisis management.

Development generally is the improvement in the quality of life or the standard of living of the people. It can be summed up by using such social indicators as literacy level, qualitative health, good living and good housing. A typical community perceived development is the improvement of certain key issues like employment, health, housing and quality infrastructure.

According to B.B. Conable, sound macro-economic policies and an efficient infrastructure are essential to provide enabling environment for the productive use of resources but they alone are not sufficient to transform the structure of African economies and, by extension, Nigeria. Major efforts are needed to build capacities to produce a better trained, more healthy population and a greatly strengthened institutional framework within which development can take place. This calls for a human-centered development strategy which involves investing in people, strengthening the enabling environment, capacity building, growth that is sustainable and equitable, agriculture, entrepreneurship development, sustainable funding for development, mobilization of domestic resources and communal integration in infrastructural development.

There is however the need to move from words to deeds which does not diminish the importance of words. As it is put by Grace Alele-Williams, we need to follow the money to see what it is doing in the communities and in government. This is because according to Akpezi Ogbuig we, we need to take hold of our own destinies in our hands and change from what we can get to what we can contribute. We must transfer the responsibilities for our development from others to ourselves and a means to do this would be the Partnership Team for Sustainable Development in each community to set out and accomplish the community's own objectives, goals and aspirations. Sustainable development means development that meets the needs and aspirations of the current generation without compromising the ability to meet those of future generations. It means improving the quality of human life while living within the carrying capacity of the supporting ecosystems.

Atsegbua *et al.* have canvassed the view that Nigeria is committed to a national policy on the environment that ensures sustainable development based on proper management of her natural resources in a manner which meets the needs of the present and future generations. This requires the balancing of her human needs against the potentials that the environment has for meeting them. A programme of action for sustainable development can only be sustained however if it arises out of consensus built on

dialogue. Government, oil companies, international donor agencies and the communities should intensify efforts in executing sustainable development that will create atmosphere of peace and environmental friendliness in the oil producing communities. These development efforts should reach the grass root and impact on their lives rather than enriching the few representatives of the communities. This therefore calls into question the issue of approaches to community development.

Two paradigms have been identified. The first is the top-bottom approach which, according to experts, neglects the community in taking decisions as to the type of projects or programmes that will be beneficial to it. The non-involvement of the host community creates more crises rather than managing it. This has resulted in un-sustainability of such projects and programmes in the areas because it is designed and implemented by the development agents at the top of the bureaucratic system without consulting the beneficiaries. The preferred bottom-top development approach involves the participation of the beneficiaries. It encourages sustainable development because it starts with the local community which evolves the plan, assesses its resources, priorities its needs and formulates its strategies from conception, projection, nomination to execution.

As rightly canvassed by Chinsman, development cannot and should not be imposed by a government or a development agency from the air. It is something which can only be crafted by the people themselves and in a way they want it. Participatory development initiative does not make the community the sole financier of the project but encourages cooperation between it and the donor company or the government or both. Its ups and strengths against the top – bottom paradigm and ultimately against the monetary compensation approach are that it is recipient driven in conceptualization, nomination, identification, design, execution and management. It accommodates the imperatives of local content which seeks to add value to the Nigerian human capital and material resources without compromising on health, safety and environmental standards. It therefore enhances capacity building, self-reliance and sustainability. It internalizes external inputs, creates greater relevance and cost-effectiveness. Its recognition of the central role of the beneficiary in terms of ownership, management, control and accountability is so advantageous in the light of the fact that the claimants' or victims' lack of technical skills and dearth of strong public and private institutions and infrastructures account more than anything else for the current predicament and development crises in the oil producing Niger Delta of Nigeria..

The True Strategic Tri-Sector partnership is thus the global trend adopted by most businesses and development agencies. As canvassed by Okaba, it involves the government (public), the oil company (private) and the community (civil society). It is a process of trust or consensus building, joint problem solving and relationship management between the three sectors. It implies aggregating and pooling of divergent resources which goes beyond mere information dissemination and consultation or dialogue. It means doing something practically and mutually together. This approach gives rise to a set of agreements designed to deliver a joint action. There is mutually accepted social responsibility. Government focuses more on governance and social welfare without necessarily emphasizing profit while the preoccupation of the private sector is profit. The community focuses on the translation of the equitable shares of business profit and government revenue into development projects.

For this approach to succeed, credible facilitators or animators that enjoy the confidence of the three sectors are desirable during the transaction. Thus Deirdre LaPin believes that when the communities are carried along, a great deal of confidence building is engineered especially when there is a communication process like Community Development Officers to whom the communities can relate with from time to time. By dialoguing instead of imposing solutions on rural community stakeholders, the Oil Company or government would ascertain the real aspirations and expectations of the community to be able to solve the root causes of restiveness rather than addressing the symptoms of the crisis. Thus according to Maarten Wink, 'we develop the community programme based on what we fell the needs are of those communities. It is a combination of factors: we get demands from them and they send tremendous demands. We also look at what is best for the community. And we try to align our development plan with those of the Federal, State and Local Government authorities and their agencies like the NDDC to ensure that our projects are complementary to theirs. We have conferences where we discuss these issues so that we align our programmes'. This is more so because according to Deirdre LaPin sustainable development is a global societal goal that can only be achieved through the involvement and commitment of all the various strata of the communities, NGOs, the Government and the industry.

According to Deirdre LaPin, the corporate policy of Shell on community development is anchored on the involvement of the communities in the production of their development plans spelling out their needs after extensive discussions and consultations in relations to the goals of the State and its agencies, donor agencies and non-governmental organisations. The Policy is hinged on the concept of sustainable development which is further built on the tripod of economic prosperity, effective environmental management and social responsibility. Shell's worldwide policy on community development is to establish a community development programme which applies standards of practice; work in partnership with host communities, government donors, non-governmental organization, community-based groups and other stakeholders; encourage the full participation of host communities in project planning, implementation, monitoring and ownership; maintain communication with all social segments of the host communities in order to address their needs; focus community development assistance on activities having high impact and broad benefits for the host population; pay special attention to the most economically vulnerable and disadvantaged social groups.

However, the interactions between the three sectors (Community, Oil Companies and the State) are just part of the total process of development partnership. It encompasses inter-sector interactions between the community, the industry and the State. The interaction between the State and the community may help explain how ecological and derivation funds are spent and allow the host community to make input on their felt needs. It gives the

State room to demonstrate transparency and accountability. Interactions between the State and the industry help to harmonise the efforts in the provision of amenities and complement one another rather than competing and duplicating efforts. It also helps the State and industry to compare notes and avoid accusations and counter accusations of shrieking responsibilities. The tri-sector partnership also encompasses intra-sector interactions which involve discussions within the communities to resolve differences between rival groups to enable them present a common front during the tripartite or bilateral sector interactions. Multiplicity of groups may create difficulties for the State and the industry to satisfy the needs of the community and maintain zero crisis relationship.

Machinery for Alternative Remedies

Civil action may lie against polluters but most of the legislations and remedies relating to environmental pollution are "not useful" in meeting the needs of victims because they do not entitle them to seek judicial redress but merely provide for the payment of indeterminate compensation. It is also extant that the right of action largely occurs where the parties fail to agree on the amount of compensation necessitating the invitation of the judicial arbiter to determine same. In the event, the court is enjoined to award such compensation (usually monetary) as it considers fit and just in the circumstances having regard to any disturbances caused by the company; any damages suffered by the victim; and any loss in value of land or interest in same. On the other side of the scale, it is common that the oil communities are in penury amidst the stupendous wealth of the oil companies whose perennial defensive mechanism is one of "malicious act of sabotage of a third party" in the certainty that most cases of pollution are perpetrated by disgruntled members of the communities itching to steal products and or lay claims for compensation.

Taking a balanced view of the polarities, it is canvassed that there is no wisdom in relying on neglect of the communities by the oil companies, no matter the degree, to recourse to and justify the sabotage and vandalization of installations. This is because the communities may be the worst hit by it. Where there is an act of vandalization or sabotage, an innocent victim may suffer without compensation and it is equally wrong and a "still birth" for an oil company to pay compensation for an act that was not occasioned by its fault, act or omission. It is therefore necessary for all the stakeholders, (oil companies, state and communities) to realize that environmental protection is a universal crusade. It might as well be better to consider ways and means of discouraging sabotage and vandalization by getting the communities to have an interest in the protection of and in the continuation of oil industry activities in their communities through the need for the communities to be given a financial stake of some sort bordering on 'local content' in the industry.

In a more direct approach for community participation in the oil and gas industry in Nigeria, the Niger Delta host communities under the aegis of Host Communities of Nigeria (Oil and Gas) had called for 50% derivation from gas exploration to be carried out by the Nigerian Gas Company to be set up by Government. Bolatsi Dudu made the presentation on behalf of the host communities at the public hearing on Down Stream Gas Bill organised by the Senate Committee on Gas as such an input would go a long way to douse tension and youth restiveness generated by the utter neglect of the oil and gas producing areas of the Delta.

Alternative Dispute Resolution Strategy

Litigation is evidently an option of last resort. But public expectations and professional attitudes tend to regard litigation as a first rather than a last resort. However, the costs, delays and risks of uncertainties of litigation have made the possibilities of other means of resolving disputes more attractive.

Pre-action Notice and Negotiated Settlement

The pre-action protocol is the first step towards achieving an alternative remedy. According to Lord Woolf, pre-action notice is to build on and increase the benefits of early but well informed settlement which genuinely satisfy both parties to the dispute. It aims to create more pre-action contact between the parties, better and earlier exchange of information, better pre-action investigation by both sides and settlement of cases fairly and early without litigation. In these ways, the governing considerations are that it saves expenses and deals with the case in ways which are proportionate to the amount of money involved, the importance of the case, the complexity of the issues, and the financial status and position of the parties.

Litigating against Nigerian Oil Company

Litigation against the NNPC is an uphill task. By virtue of Section 12 of the NNPC Act, no suit against the corporation for any act done in pursuance of execution of any enactment or law, or of any public duties or authority, or in respect of any alleged neglect or default in the execution of such enactment or law, duties or authority, shall lie or be instituted in any court unless it is commenced within twelve months next after the act, neglect, or default, complained of or, in the case of a continuance of damage or injury within twelve months next after the ceasing thereof. Furthermore, by virtue of Section 12(2), it is mandatory for a plaintiff in an action against the corporation to give a pre-action notice of one month before commencing the action. The notice shall state the name and place of abode of the intending plaintiff, the cause of action, the particulars of the claim and the relief sought. It has been canvassed that the above provisions have negative implications regarding actions for breaches committed by the corporation to be brought for adjudication.

As held in Arinze V NNPC any action which is commenced in default of the stipulated provisions and conditions is bound to fail. Thus in Eboigbe V NNPC the plaintiff in 1985 commenced action for damages for destruction of a large part of his family farmland by the bulldozers of the defendant. The act of the defendant was committed in 1979. Relying on the 12 months statutory period within which an action is to be commenced against the defendant, the Supreme Court of Nigeria unanimously held the action of the plaintiff was statute barred as time began to run in 1979 when the cause of action accrued. However, with respect to the provision of a mandatory one-month pre-action notice, it appears that there could be a waiver of the requirement if the corporation does not raise the issue within reasonable time in its pleadings. Thus in NNPC V Sele and Ors the respondents sued the corporation for damages resulting from a spillage of crude oil from the corporation's pipeline along Abura 2 and 4 locations covering an area of 480 hectares. At

the trial High Court, 7 million was awarded to the plaintiffs. On a further appeal to the Supreme Court, the award was not only scaled down but the Supreme Court failed to agree with the corporation that the failure of the respondents to give the appellant the mandatory one-month pre-action notice was fatal to the case of the respondents because the appellant did not plead and raise the issue at the trial court. In other words, a suit commenced in default of service of a pre-action notice is incompetent as against the party who ought to have been served with a pre-action notice provided such a party challenges the competence of the suit as, the law is clear that conditions imposed for the benefit only of a particular person or class of persons can be dispensed with by that person or class of persons.

In Mobil V LSEPA it was held that a pre-action notice which is for the benefit of the person or agency on whom or on which it should be served is not to be equated with processes that are an integral part of the proceedings-initiating process. Its purpose is to enable that person or the agency to decide what to do in the matter, to negotiate or reach a compromise or have another hard look at the matter in relation to the issues and decide whether it is more expedient to submit to jurisdiction and have a pronouncement on the point in controversy. Therefore, service of a pre-action notice on a party intended to be sued pursuant to a statute is, at best, a procedural requirement and not an issue of substantive law on which the rights of the plaintiff depend. It is not an integral part of the process for initiating proceedings. A party who has served a pre-action notice is not obliged to commence proceedings at all or, barring any limitation period, to commence one any time after the time prescribed for pre-action notice. The argument that a pre-action forms part of the cause of action of the plaintiff is misconceived and untenable as it ignores the distinction between matters of substance and matters of procedure.

However, the distinction between substance and procedure is blurred. It is generally accepted that matters including facts which define the rights and obligations of the parties in controversy are matters of substance defined by substantive law, whereas matters that are mere vehicles that assist the court or tribunal in going into matters in controversy or litigation before it are matters of procedure regulated by procedural law. In other words, facts that constitute the cause of action are matters of substance which shall be pleaded while facts which relate to how a party is to invoke the jurisdiction of the court for a remedy pursuant to his cause of action is a matter of procedure outside the realms of pleadings.

In the above cited case of Mobil V LSEPA, Ayoola, JSC had observed that much stress has been placed on the argument that non-compliance with the pre-action notice leads to a question of jurisdiction which can be raised at any time and which if resolved against the plaintiff renders the entire proceedings a nullity. His Lordship further observed that the foregoing argument is a rather mechanical approach to the issue that tends to ignore the distinction between jurisdictional incompetence that is evident on the face of the proceedings, and one, which is dependent on ascertainment of facts.

Providing a complete guideline, His Lordship proceeded as follows: (i) where on the face of the proceedings a superior court is competent, incompetence should not be presumed; (ii) where on the face of the proceedings the court is incompetent, the court should of itself take note of its own incompetence and decline to exercise jurisdiction, even if the question had not been raised by the parties. If it does not, the question of its incompetence can be raised at any time or stage of the proceedings because the fact of its incompetence will always remain on the face of the proceedings; (iii) where the competence of the court is affected by evident procedural defect in the commencement of the proceedings and such defect is not dependent on ascertainment of facts, the court should regard such incompetence as arising ex facie; (iv) where the competence of the court is alleged to be affected by the procedural defect in the commencement of the proceedings and the defect is not evident but is dependent on ascertainment of facts, the incompetence cannot be said to arise on the face of the proceedings. The issue of fact if properly raised by the party challenging the competence of the court should be tried first before the court makes a pronouncement on its own competence; (v) where competence is presumed because there is nothing on the face of the proceedings that reveals jurisdictional incompetence of the court, it is for the party who alleges the court's incompetence to raise the issue either in the statement of defense in a proceedings commenced by writ or by affidavit in cases commenced by originating summons; (vi) a judgment given in proceedings, which appear ex facie regular, is valid.

Negotiated Settlement: the Alternative Development Option

Negotiation is the process of discussing or dealing with a matter with a view to arriving at a mutual agreement, settlement or compromise. It is the antipode of adjudication, which involves a third party making a decision, which is binding on the parties by litigation through court. It is also different from mediation, which is a non-adjudicatory process by which parties engage the help of a neutral third party to resolve their dispute by negotiated agreement. Conciliation is equally a variant of mediation.

Furthermore, the parties to the cause of action may sometimes engage in negotiation for settlement out of court. In Eboigbe V NNPC it was held that as for the period during which the parties engaged themselves in negotiation, the law is that when in respect of a cause of action, the period of limitation begins to run, it is not broken and it does not cease to run merely because the parties engage in negotiation. The best cause for the person to whom a right has accrued is to institute an action against the other party so as to protect his interest or right in case the negotiation fails. If the negotiation does not result in a settlement or in an admission of liability, the law will not allow the time devoted to negotiation to be excluded from the period which should be taken into consideration for the determination of the question whether a claim has been statute-barred. Thus an admission of liability makes it inequitable and unjust to invoke the limitation of action if the admission is reneged.

The purpose of negotiation is to set in motion, a process which will resolve a conflict or disagreement between the parties. In the case of the victim of pollution, it is hoped that the process will lead to the early acceptance of liability and an offer of compensation at the best obtainable figure or to some other remedy which is sought such as development projects and programmes. In the case of the oil company, the process may convince the victim claimant that he has no cause of action and that he should withdraw otherwise, the

defendant polluter oil company may hope to escape from an impending litigation, as cheaply as possible, by buying off the claim for a considerably lesser amount than the maximum which the court might eventually order it to pay or to yield to a development project or programme which is relatively better to it in terms of forward and backward linkages and economies of scale.

The alternative remedy to monetary compensation has the capacity and the tendency of bringing the stakeholders to a round table and dialogue. It enables the parties develop mutual concern, interest and support and places them in a non-acrimonious atmosphere that allows them reveal their genuine intentions, fears and aspirations. It reduces the cost of reaching settlement (through litigation). It is done without prejudice and very amendable to situations where the relationships between the parties are in a continuum and where the disputed issues between the parties arise from a breakdown in communication and or misunderstanding about procedures to be adopted or differences in technical issues and details. By generating consensus building and fostering cohesion amongst the members of the community particularly between the youths and the elders, monetary compensation is de-emphasized and mutual mistrust and suspicion are staved.

Projects and programmes are thereby nominated and agreed upon with the "local content" ensured. It leads to what is generally understood to be a "Memorandum of Understanding".

Memorandum of Understanding

In the course of this research, Appendix H, a Memorandum of Understanding between Umusadege Community, Kwale, Delta State and Mid-Western Oil and Gas Company Plc was obtained. To effect from January 2006 and terminating when its operations cease in the community, the MOU was to establish and consolidate a mutually beneficial relationship between the entire members of the community and the oil company. Between a Public Limited liability company desirous of engaging in the upstream sector, licensed by the relevant regulatory authorities and awarded the Umusadege Marginal Field by the Department of Petroleum Resources on the one hand, and a community willing to grant the company consent to commence operation in the oilfields within its lands and in consonance with the Federal Government of Nigeria's policy trust on Marginal fields that the host community must be a stakeholder on the other hand, the MOU was actuated to achieve the following objectives:

to foster a mutual understanding and promote peaceful co-existence within the community, to ensure a hitch-free operation while the company brings about sustainable development of the community; to create a governance model for the community with responsibilities to determine, select projects, plan and excuse same in consonance with transparency and accountability.

The MOU which covered all production activities, drilling campaigns, seismic survey and shootings, platform fabrications, covering of waste pits, laying and replacement of pipelines and all jobs undertaken by the company covered the following indices of sustainable development: employment and gainful activities, education, technical skills acquisition, health, sustainable development projects, receptions and donations.

The drive to empower the indigenes of the community extends to employing suitably qualified indigenes in all facets of the company's operation in petroleum engineering, geology, geophysics, accounting, law, information technology and community relations. 70% of the Company's contractors, non and semi-skilled labour shall be indigenes and both the company and the community shall identify aspects of contracts to be handled by the indigenes in consonance with the objectives of local content and in the best practice of due process without abrasion and abnormal delays to the work programme of the company.

On training, and in consonance with Regulation 26 of the Petroleum (Drilling and Production) Regulations, the company is to provide skill acquisition training through any of its programmes for selected youths in trades like welding and fabrication, pipefitting and plumbing, electrical electronics to ensure gainful means of livelihood at the end of the training without a guarantee of employment by the company. The company is to support Students Industrial Work Experience Scheme by ensuring that indigenes annually acquire basic work/filed experience in all disciplines of oil field.

On education, the company is to provide educational assistance to qualified indigenes by awarding post primary and post-secondary school scholarships to study full time at recognized educational institutions in Nigeria subject to an annual report to the community for review. In Shell V FBIR, the appellant oil company created a scholarship scheme for Nigerian undergraduates in various disciplines in many Nigerian Universities. Though the beneficiaries were not bonded to work for the appellant after their graduation nor was the appellant obligated to employ the beneficiaries, it was held that the appellant had a policy of employing any of them it felt obliged who graduated in flying colour in the spirit of Regulation 27 of the Petroleum (Drilling and Production) Regulation. The company is equally to support the efforts of the Federal, State and Local governments in the health sector particularly on immunization health talks, facility refurbishment and provision of optical services.

The company is to pursue various means of improving the quality of life of the community through the implementation of sustainable development projects, interfacing with the Niger Delta Development Commission to avoid duplication of projects and ensure prompt execution of them. It shall engage the representatives of the community to agree on the number, type and timing of the projects to be developed and executed eachcalendar year in accordance with the established priority and within the limits of available technical and financial resources. Above all, the company shall not give cash to the community in lieu of projects.

In reaching a memorandum of understanding, all the stakeholders must be involved with a full understanding of the terms. This scenario played out in Bayelsa State where some communities withdrew from the process of reaching a memorandum of understanding. According to Samuel Oyadongha the absence of Bayelsa State government officials stalled the signing of the Global Memorandum of Understanding between the Anglo-Dutch oil giant, Shell Petroleum Development Company and its cluster host communities of Oloibiri, Oyiakiri, Ogboloma and Iduwini in Ogbia, Sagbama and Ekeremo Local Government Areas of the State. The host communities insisted that government officials must not only witness the signing of the memorandum but must be involved in the exercise as a party because of its significance as the memorandum was

expected to usher in an era of sustainable development and empowerment of the host communities as well as smooth operations for the oil company in the State. The host communities further insisted that they be allowed to take the document home for comprehensive study before endorsing it.

However, Craig Osborne has warned against the literature which suggests that negotiation is aimed at making all the parties feel satisfied about its outcomes as it is not a duel where the winner wins all and the loser looses all.

He has submitted that negotiation has, perhaps, a limited application in the field of litigation in oil pollution matters. This is because there is a crucial difference between the negotiation which takes place in other industrial relations and that which occurs between the polluter and the victim. Sometimes and often, the state intervenes either directly or through it agencies. Moreover, if it fails, the parties may still meet again and appear before the courts as another agency of state intervention. However, when the state is a party the favoured option to the polluter is renegotiation even when the polluter's rights are infringed.

Furthermore, there is a limit to what can be achieved through negotiated memorandum of understanding. It entails a lot of bulking passing and it requires a paradigm shift from the orthodox, traditional positions of the roles of the parties involved, if for anything, ideologically. According Iyobosa Uwugiaren a high-level meeting of the major players in the oil and gas industry was held in August, 1999 in the boardroom of NNPC Abuja attended by Ron Den Berg (Shell); Daniel Mancini (Addax); Andrew Jamieson (NLNG); Pierantomo Tassin (NAOC); M.B. Idiong (Mobil); S.A. Okolo (Pan Ocean) and G.L. Kirkland (Chevron) to review the security situation in the Niger Delta areas and agree on short, medium and long term activities that could guarantee a peaceful atmosphere for continued oil industry operations in the country. The security situation was later to be captured in September, 1999 by Egbert Imomoh as a 'situation whereby pressure on individuals, safe operation of staff, and facilities was becoming really worrisome. A number of hostages had been taken. Ransom demanded. Different communities go and shut facilities'. In the meeting, Gaius Obaseki of the NNPC noted that a situation where oil workers were being kidnapped and helicopters high jacked by protesting youths was no longer a protest. It had gone beyond banditry. Not blaming the youths, the NNPC's Chief Executive accused the NNPC's joint venture partners of neglecting the welfare of their host communities adding that they had failed over the years to develop any industry standard towards community development. Oil companies have failed over the years to achieve any peaceful coexistence with their host communities in spite of the huge sums of money voted for community development. But in 2002, Maarten Wink. General Manager, Shell hit back at the NNPC and the State. According to him:

'it is not our role to develop the communities. We cannot take upon ourselves the role of the government to develop those communities. We are not government. We can only do a certain amount which invariably is not sufficient for the communities where we work. We can only do as far as our shareholders can allow and government is aware of this. We will also make our contribution to the NDDC. You must realise that this is not our original charter which is to explore and produce hydrocarbons in good cooperation with the communities.'

Continuing, Maarten Wink observed that in Nigeria,

'we spend by far the largest percentage of our total expenditure on community projects compared to other parts of the world where we operate where the needs are substantially less in terms of community development projects. In Nigeria, the basic rudimentary needs are not there in most areas and we try to assist because we believe that one would certainly like to see that the communities do benefit to some extent since they are within our areas of operations. And we have extensive programmes in Nigeria to help the communities develop themselves. And we often realise that their needs are enormous and extensive. It is not our role to develop the communities.'

It is not uncommon to find oil companies being bedraggled into all shapes of communal conflicts not directly connected with their operations. These result from the failure of the State to meet its obligations of providing basic social amenities and infrastructure for the benefit of the communities. The state is actuated toward order and good governance, the industry is profit motivated, and the community is recipient driven. The problem of consensus building in this respect will be quite daunting. The aspiration of the stakeholders may differ. While the community may desire a school, the state may propose a road or a medical centre. While the company may propose a scholarship scheme, the leadership of the community may not have eligible beneficiaries and may desire monetary, cash compensation. And in most cases, the needs are many but the means and resources to satisfy them are scare and limited. In most cases, if not in all cases, the communities present a litany of demands.

For instance, about 21st July, 2002 the Abalagada community in Delta State in a letter coded IAOF/67/2002 made the following demands through the General Manager from Nigeria Agip Oil Company Nig. Ltd:

Signing of MOU and the implementation of all agreed projects. Agip to strictly respect the feelings of the community that all contractors to handle any project in the MOU must be, repeat, must be the choice of the community as approved by the Head of the family/Executive landlord. Road is our major headache and to be taken first, followed by electricity. Contracts for these projects must be awarded now and the contractors to be recommended by the community. Monthly payment should be made for the following contracts awarded to the head of the family: Ramp Maintenance, Location Maintenance, Camp maintenance. Dully Shipping Ltd appointed by the community to supply diesel should be issued LPO by your company immediately. Houseboat owners should come to us to discuss and agree on amount payable to the community on monthly basis. All outstanding claims should be settled without further delay: Oil spillage of 16th September, 1999, PAF claims file Nos 3640 and 3954, and payment of rent arrears since 1969 on Keonokpor "I" Location and Agwe A & B. Our head of family and Executive landlord, Chief Enebeli O. Ilonah must be given an outstanding duplex as designed by his architect, a beautiful saloon car, a speedboat and a 5KV generating set. Gladly enough, oil has been discovered in one well and the rest will also be same. God will help Agip and Aablagada Community for everlasting cordial relationship.

It is necessary to remark that on 23rd December 2002 when most of these demands had not been met, the youths of the community shot down the rig, and on 25 December, 2002,

the head of the community and his prominent followers were slammed into police custody and later arraigned on a criminal charge in MSH/IC/2003 Police Vs Simeon Ilona & 6 Ors. In an appeal to the Oil company for settlement and withdrawal of the charge, the community's solicitors wrote as follows on 13th April, 2004:

You will recall the events of 23rd December, 2002 which led to the arrangement of members of our client's community in the above mentioned charge currently pending before the Magistrate's court, Ashaka. You will further recall that the relationship between your company and our client was quite cordial before the said events of 23rd December, 2002 and ever since then, the cordial relationship has degenerated into litigation which will not serve the best interest of the community as a host to your company. In the light of the foregoing, wisdom demands that all outstanding disputes between your company and our client, particularly the above mentioned charge, should be settled and withdrawn from court so that the outstanding claims and benefits of our clients can be looked into and addressed. We are therefore to appeal to you to reconsider your company's stand on the said charge and to get same settled and withdrawn from the court in order to resume the cordial relationship preexisting between your company and our clients.

Again, the oil company did not heed the appeal but rather prosecuted the charge to the hilt. But in the end, the accused persons were eventually discharged and acquitted. Yet, the Abalagada– Agip cases were typically spills after spills effects due largely to equipment failure and not third party interference in the nature of sabotage, vandalisation and hostage taking. Briefly put, Agip presence in Abalagada Community in Ndokwa East Local Government of Delta State can be traced back to 1969 when Keonokpor 1 Location and Agwe A&B were drilled and corked. About 30 years later, precisely on 16th September, 1999 when the wells went into full production by being piped to the Benekuku-Okpai-Kwale Agip flow-station, the first major spillage occurred resulting in Suit No Hck/21/2000 Francis Egwuatu & 2 Ors V Nigeria Agip Oil Company Ltd & Anor**.** As the High Court of Justice, Kwale where the suit was initiated lacked jurisdiction to entertain same, it was withdrawn and recommenced before R.N. Ofili-Ajumogobia J, sitting at the Federal High Court, Benin in 2005 by which time, another oil and gas explosion had occurred on 11th October, 2003 overtaking and superseding the one of 16th September, 1999. Occurring after the 23rd December, 2002 when the Abalagada Community had shut-down the rigs leading to the criminal charges in MSH/1c/2003 Commissioner of Police V Simeon Ilona & 6 Ors, the spillage and explosion of 11th October, 2003 culminated in Suit Nos. FHC/B/CS/64/2005, FHC/B/CS/89/2005, and FHC/B/CS/90/2005 consolidated.

The terms of the consent judgment bringing the consolidated suits touching on all the spillages in the Abalagada Community over the period 1999 – 2005 to an end reads in part:

IT IS HEREBY ORDERED that by the consent of all the Counsel for the parties, the terms of settlement executed by the same parties...comprising of 15 paragraphs filed and adopted as the Judgment of this court in the following terms and conditions.

1. *The 2nd to the 4th Defendants are the owners of all those land area constituting Abalagada Communities consisting of Abalagada main town, villages, camps and hamlets in Ndokwa East Local Government Area of Delta State and the 2nd Defendant in particular is the Head Landlord.*
2. *The plaintiffs in Suit No. FHC/B/CS/89/2005 Ogesue Onyenokwe and others Vs. Nigerian Agip Oil Company Limited and others are tenants affected at Edolka Village by the Oil and Gas explosion at the Nigerian Agip Oil Company Limited Oil Well Head of Onyuku No. 4 (Imomo Camp) in 2003.*
3. *The plaintiff in Suit No. FHC/B/CS/90/2005 Godwinn Ushi and others Vs. Nigerian Agip Oil Company Limited and others are tenants affected at Ogbogbor Village (Aseumuku) by the Oil and Gas explosion at the Nigeria Agip Oil Company Limited Oil Well Head at Onyuku No. 4 (Imomo Camp) in 2003.*
4. *The plaintiffs in Suit No. FHC/B/CS/64/2005 John Imomo and others Vs Nigerian Agip Oil Company Limited are tenants affected at Imomo Camp by the Oil and Gas explosion at the Nigerian Agip Oil Well Head at Onyuku No. 4 (Imomo Camp) in 2003.*
5. ……
6. ……
7. ……
8. *The parties hereto are the people affected by the spillage at the Oil Well Head location at Imomo Camp (Onyuku No. 4), which spread through the entire land of Abalagada and neighbouring communities in October, 2003.*
9. *The parties met severally with Nigerian agip Oil Company Limited who(sic) finally agreed to pay the sum of N 15,000,000.00 (Fifteen Million Naira) as compensation to those affected by the fire blow out.*
10. *The parties hereto have agreed that the compensation paid by the Nigerian Agip Oil Company Limited shall be shared between the Landlords and the tenants in the ratio 52% to the Landlords and 48% to be for all the tenants that is N 7,200,000.00 (Seven Million Two Hundred Thousand Naira) to the tenants respectively.*
11. *The tenants in the three suits have agreed among themselves that each community shall receive an equal portion of 16% that is N 2,400,000.00 (Two Million Four Hundred Thousand Naira only) respectively.*
12. ……
13. *The parties in these Suits have also agreed that the payment of the N 15,000,000.00 (Fifteen Million Naira) by NAOC Ltd. Shall be full and final settlement of all claims concerning, relating and pertaining to the Keonokpor 15/16 Location fire outbreak of 2003.*
14. …… ……..
15. *This settlement shall be a bar to further court actions by members of Abalagada, Imomo, Ogborgbor and Edolka Communities and environs in respect of the Oil and Gas spillage on 11th October, 2003.*

Finally, under the present quest for sustainable development, the role of law in balancing the goals of economic development against the right of the present generation to a healthy environment and the right of future generations to survival is invaluable more so when environmental consciousness is increasing at a time when economic problems and developmental needs of the oil bearing communities have become urgent. For an economy dependent on oil, there cannot be economic development

without environmental degradation capable of leading to interminable and or intermittent disputes. Disputes are, therefore, inevitable but their resolution in a manner most agreeable and acceptable to the parties becomes a desideratum necessity. For there to be peace and an enabling environment for the polluters, the victims and the state, regulatory participation should be instituted. It is the active participation of all the interested persons in the industry in the formulation of regulations in the regulated industry. Every environmental legislation or any legislation in the oil sector aimed at sustainable development in resource exploitation and management should therefore consider the stakeholders and the environment holistically and should be management driven instead of rule oriented.

Conclusion and Recommendation

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

This paper buttresses the view that monetary compensation bodes well with the litigation alternative to compensation in pollution matters while the non-monetary compensation approach accords with the non-litigation alternative or the alternative dispute resolution strategy which has been found in this paper to augur better for the sustainable development option through negotiated settlement of development projects and programmes for the community usually outlined in a memorandum of understanding. In comparative terms, the litigation option appears to address given isolatable individual cases while the development option appears to address the impact of oil operations on the community as a whole by integrating the stakeholders, harmonizing their goals and aspirations with a longer range of view to their mutual needs and prospects.

In all, agitations for resource control across the nine States of the Niger Delta region may be healthier if they would conduce to sustainable development of the States. But this study has shown that government and corporate goodwill for sustainable development in the Niger Delta is presently suspect. The alternative remedy to monetary compensation does not consist of and is not coterminous with sabotage, vandalisation, bunkering, hostage taking and all other forms of self-help and third-party interventions, actions and activities that generally border on criminality and negative out-crops of the prevailing state of affairs in the Niger Delta. However, there is no doubt that these pseudo-alternatives to monetary compensation have greatly thrown up to the fore, the utter neglect of the region and have attracted both national and international attention to bear on the plight of the human and ecological communities of the Niger Delta making the appeal of the development alternative to monetary compensation more imperative.

The imperative of the community development option is not necessarily the easiest alternative. It is strewn with political problems whose magnitudes are writ large and proportionate to situations in the past in which Truth Commissions have been called in post-apartheid South Africa and post military fascist Nigeria. To suggest that a Truth Commission be set up to look into the role multinational oil companies in Nigeria play together with the Nigerian state via-à-vis the alter neglect of the oil bearing communities of the Niger Delta may be viewed as an invitation to regional and partial analyses and an exercise not particularly in consonance with or driven by avowed nationalism but nothing could have been more revealing.

References

1. Abiola O. Sanni. Deductible Expenditure under the Petroleum Profits Tax Act. FBIR, LASU Law Journal,2001:4(1):56.
2. Adeyanju JA. Government and the Oil Pollution Crisis in Nigeria. International Journal of Environmental Issues,2004:2(1)2:224.
3. Arinze V. NNPC (1991) 1 NWLR Pt 166 at 285.
4. Atsegbua L, *et al.* Environmental Law in Nigeria: Theory and Practice. Lagos: Abada Press Ltd,2004:64.
5. Awhefeada UV. The Rules Governing Compensation for Degradation in Nigeria: An Analysis. Delsu Law Review,2006:2(2):411115.
6. Ayodele Adegbuyi. N-Delta Communities Seek 50% Derivation. Vanguard,2007:2:8.
7. Eboigbe V. NNPC (1994) 18A LRCN at 54.
8. Iyobosa Uwugiaren. Your Approach is Wrong. The News, 1999, 36.
9. Maureen Chigbo. Buy Garri in Dollars. Newswatch,1999:6:41.
10. Md Anisur Rahman. People's Self-Development, Perspective on Participatory Action Research. London: University Press Ltd.,1993:6.
11. Mobil V. LSEPA (2003) 104 LRCN 204 at 260.
12. NNPC V. Sele (2004) 1 NWLR Pt. 6 at 300.
13. Nwosu EO. Petroleum Legislation and Enforcement of Environmental Laws and Standards in Nigeria. The Nigerian Juridical Review,1998–1999:7:101.
14. Okaba BO. Petroleum Industry and the Paradox of Rural Poverty in the Niger Delta. Benin: Ethiope Pub. Corp,2005:209.
15. Petroleum (Drilling and Production) Regulation Cap. P10 LFN 2014.
16. Proceeding of the SPDC Integrated Environment and Community Development Stakeholders Workshop. Effurun Warri: Shell Petroleum Development Company,2004:5.
17. Samuel Oyadongha. Vanguard, 2006, 29:8.
18. Shell. A Model in Partnership. Tell, January 14, 2002 at 41.
19. Shell V. FBIR (1996) 8 NWLR (Pt 466) at 256.
20. Sub-Saharan Africa: From Crisis to Sustainable Growth, (Washington DC: World Bank, 1989) at xii.