CIVIL LIABILITIES ARISING FROM EXPLORATION AND EXPLOITATION OF PETROLEUM IN NIGERIA

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JANUARY, 2024

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BEING A PROJECT SUBMITTED TO THE SCHOOL OF FOUNDATION STUDIES, DEPARTMENT OF LAW IN PARTIAL FULFILLMENT OF THE BASIC REQUIREMENTS OF THE BAYELSA STATE POLYTECHNIC, ALEIBIRI

SUPERVISOR

ERNEST E. BRISIBE

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CERTIFICATION

This research project title 'CIVIL LIABILITIES ARISING FROM EXPLORATION AND EXPLOITATION OF PETROLEUM IN NIGERIA' is written by SITO TAMARAUPREYE KENNETH and this work has not been published for any purpose and all citations are referenced accordingly.

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APPROVAL

This research project title CIVIL LIABILITIES ARISING FROM EXPLORATION AND EXPLOITATION OF PETROLEUM IN NIGERIA has been read and approved by the following Officeers of the Polytechnic as meeting the requirements of Diploma in Law.

ERNEST E. BRISIBE. **-------------------**
SUPERVISOR. **DATE**

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HEAD OF DEPARTMENT. **DATE**

DEDICATION

I sincerely dedicate this research work to God Almighty, He alone gives wisdom, knowledge and understanding. He granted me the strength and enablement to pen down this piece of work and the grace to complete this program. May He forever be glorified. Amen.

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Lastly, to my parents, my wife and children who always stand by me whispering to my ears and always giving me words of encouragement. You shall all live long. May God never forget you in His blessings in Jesus name. Amen.

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> The Nigerian Extractive Industries Transparency Initiative Act 2007

> The Federal Inland Revenue Service Establishment Act 2007

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LIST OF ABBREVIATIONS

AC = Appeal Case.
All N.L.R = All Nigeria Law Reports.
C.C.H.C.J. = Selected Judgements of the High Court of Lagos State.
E.C.S.L.R. = Law Reports of East Central States.
E.N.L.R. = Eastern Nigeria Law Reports.
F.N.L.R. = Federal Nigeria Law Reports.
F.R.C.L.R. = Federal Revenue Court Law Reorts.
F.S.C. = Selected Judgements of the Federal Supreme Court.
L.L.R. = Law Reports of the High Court of Lagos.
L.R.N. = Law Reports of Nigeria.
M.S.N.L.R. = Law Reports of the Mid-Western States.
N.L.R. = Nigeria Law Reports.
N.M.L.R. = Nigeria Monthly Law Reports.
N.N.L.R. = Northern Nigeria Law Reports.
R.S.L.R. = Law Reports of Rivers State.
S.C. = Judgements of the Supreme Court.
U.I.L.R. = University of Ife Law Reports.
W.A.C.A. = Selected Judgements of the West African Court of Appeal.
W.N.L.R. = Western Nigeria Law Reports. Or Western Region of Nigeria Law Reports (W.R.N.L.R.).
W.S.C.A. = Judgements of the Western State Court of Appeal.
N.W.L.R. = Nigeria Weekly Law Reports.
Q.B.D. = Law Reports Qeen’s Bench Division.
Q.B. = Law Reports Queen’s Bench.
W.L.R. = Weekly Law Reports.

ABSTRACT

This research work is a study carried out on the liabilities that arises from the exploration and exploitation of petroleum products in Nigeria. It dwells majorly on pipeline Vandalism, oil theft, fuel scarcity, low production of fuel in Nigeria, and the role played by the Federal Government in curbing crude oil theft in Nigeria of recent.

1.1 # CHAPTER ONE
INTRODUCTION

BACKGROUND OF THE STUDY

The Nigerian Petroleum Industry has been described as the largest among all industries in the country. This is probably due to the belief that Petroleum is one of the major sources of energy worldwide. The size, international characteristic, and role assumed by the petroleum industry were noted to have originated from the notion that petroleum is versatile as it currently satisfies a wide variety of energy and related needs. Petroleum is the most vital source of energy, providing over 50 percent of all commercial energy consumption in the world. The revenues obtained from crude oil in Nigeria are of absolute advantage to expenditure commitments on various projects at the local, state, and federal levels. The Nigerian economy relies heavily on the revenue derived from petroleum products, as they provide 70 percent of government revenue and about 95 percent of foreign exchange earning. Apart from this, the contribution of petroleum to national development is many and varied; employment generation, foreign exchange earnings, income generation, industrialization, and improvements in other economic variables. [1] The Nigerian economy is starkly dominated by the petroleum industry since the oil boom of the 1970's. Therefore, it's economic growth and development also is dependent on the production and consumption of petroleum products and hence, a close connection between the state and oil companies in Nigeria. For instance, Wurthmann (2006) noted that oil accounts for about 40 percent of Nigeria's GDP, 70 percent of Federal government revenue and 92 percent of it's foreign exchange earnings. Also, daily domestic demand for petroleum products stands at 530,000 barrels per day (bpd) which is 85,000 bpd more than the never made 445,000 bpd installed refining capacity. As a result, petroleum products supply remains an acid aspect for successive governments in Nigeria. [2] With the inception of democracy in May 29th, 1999, the supply of petroleum products has improved but not without a price-frequent increase, yet demand for petroleum products is still higher than the supply. [3.] [1]

As a resu.., people clamour for deregulation of petroleum products. In Nigeria, the 2003 deregulation of the sector is expected to give room for competition and maximize supply sources which would transform the price and deflate scarcity. Prior to this

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[1] *Google, The Downstream Sector. 26 Dec. 2016. Research Gate.*

[2] *Okunroumu, (2004). Falenga & Okah, (1980), ResearchGate.*

[3] *Effects of Plants and Medical Plants. A paper presented at the annual conference of Botanical Society of Nigeria. 23 Sept. 2007.*

moment, attempts were made to invite private firms into the sector, most of whom, included NNPC itself, sought for the importation of petroleum products instead, yet fell out due to regulated domestic prices and whooping amount as subsidy to the consumers. [4] [2]

The private investors were also not willing to take over the dilapidated, disrepair, and poorly performing State owned facilities (refineries, depots and pipeline system). Thus, the sector is also plagued by, not only, low capacity utilization of the midstream sector inadequate distribution (pipeline, rail and road) networks and storage facilities, products diversion and adulteration, black-marketing, fire incidents, smuggling as well as inefficient monopolistic/ State control on prices.

[5] Hence, petroleum distribution is constraint by issues arising from poor maintenance of facilities and infrastructure by government; products adulteration and pipeline vanadalization; low investment opportunities; sabotage by cartels, large scale smuggling of crude and refined oil as well as importation of petroleum products, rampant black marketing etc. due to inefficient market structure caused by the state on price. [6] As a result, widespread petroleum products shortage and unending price hikes are the daily reports bringing untold hardship to the rapid growing Nigerian population. Therefore, the low petroleum products from local refineries, inadequacy of petroleum product importation at international prices, and particularly inefficiency of domestic prices of petroleum products set by the state and numerous constraint that have not yet been discovered by previous researches stand out as the core setbacks to petroleum distribution in Nigeria. Also, the rate at which oil spill reports increases every now and then in the oil producing areas, caused by the oil companies in Nigeria is a thing of great concern.It is against this background that this research work is triggered and based upon. [7]

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[4] *Nwafor, M. Et Al, 2006. The Effects of the Methanolic Extract of Cassia Nigerians leaves on Rat and Gastrointestinal Tract.*

[5] *Oriyoosu. Empirical Analysis of problems of Petroleum Products Destribution in Nigeria. PP. 113-115 2007.*

[6] *Ibid.*

[7] *Ibid*

1.2. STATEMENT OF THE PROBLEM

Many research efforts in the area of petroleum distribution in Nigeria have dealt with macro issues.In this regard, the research is focused on issues of liabilities in petroleum exploration, exploitation, fuel subsidy and scarsity of petroleum products as well as problems of poor management of petroleum products in Nigeria, infrastructures and illegal bunkering as well as problems of ineffective regulation of petroleum products in the Downstream Sector and inefficient utilization and maintenance of Nigeria's state-owned refineries and petrochemicals plants in Nigeria and the institutionalized corruption of government officials and independent marketers in charge of petroleum products distribution.

1.3. AIM AND OBJECTIVES OF THE STUDY

The central aim and objectives of this study is to examine the problem of oil pollution and causes of pollution in Nigeria, and to identify ways on how to minimize over and exploration and exploitation of petroleum in Nigeria.

1.4. RESEARCH METHODOLOGY

The research work will employ a library methodology as emphasis will be laid on primary sources to include; relevant statues, legislations, Reported Judicial Authorities etc. The secondary data will be obtained from the material such as Newspapers, articles by legal authors, internet resources, semi papers, and textbooks. These will in no doubt give holistic approach to achieving the aims of the study.

1.5. SCOPE/LIMITATION OF THE STUDY

The study covers the history of petroleum in Nigeria, liabilities, petroleum fuel scarcity, oil theft /Pipeline vandalizism, low production, fuel subsidy, main types of nuisance, the general rule, criteria for liabilities in nuisance, assessment of damages, and compensation.

1.6. SIGNIFICANCE OF THE STUDY

This study is of great relevance to the people of the Niger Delta and Nigeria entirely due to the hardship oil products scarcity and inadequate maintenance of our State owned facilities has subjected the people into, and the way out of this great pain. More so, the role government should play to bring us out of this mess and setback. And the role of the oil companies in Nigeria should also be made explicitly clear to stop petroleum products scarcity and increasing prices of the products in Nigeria that often affect all parts of the country.

1.7. ORGANISATIONAL LAYOUT

This research project is comprised of four chapters. The goal of the current chapter which is chapter one, is mainly to introduce the study. Provide a necessary discussion of the motivations to carry out this study and to place side by side the realities of the context of this study. It also outlined the aims and objectives and the answer this study intends to provide, and also created a closer look into the particular focus of this study. Chapter two is mainly focused on the legal framework and the institutional framework of the study. Chapter three provides a thorough description of the inquiry program and research study. While chapter four provides the summary and deal with the findings of the study, conclusion and recommendations.

CHAPTER TWO

2.1. LEGAL FRAMEWORK

2.1.1. The constitution of the Federal Republic of Nigeria 1999 as amended. [1]

This is the most outstanding authority that every other rules, laws, and regulations derived their nutrient and strength from. It is superior to every other laws, so long as Nigeria exists.

2.1.2. The Petroleum Industry Act (PIA) 2021.

.This is the act that regulates all activities in thepetroleum industry in Nigeria, or better still, to overhaul the petroleum sector in Nigeria.The act seeks to provide legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry. [2]

2.1.3. The Nigerian National Petroleum Cooperation Act 2004.

This is an act that was established by the dissolution of the Nigerian National Oil Cooperation. It's functions are to engage in all commercial activities relating to the petroleum industry and to enforce all regulatory measures relating to the general control of the petroleum sector through it's petroleum Inspectorate Department. [3]

2.1.4. The Nigerian Oil and Gas Industry Content Development Act 2010.

This act is known as the "Local Content Act". It governs Nigerian content matters in the Nigerian Oil and Gas Industry. The Local Content Act provides that Nigerian Content must be mandatorily considered as a key element of project development in the industry. [4] The implementing authority saddled with the responsibility of ensuring the the actualization of this objective is the Nigerian Content Development and Monitoring Board (NDCMB).

2.1.5. The Environmental Impact Assessment Act of 1992.

This act, among other things sets out the procedures and methods to to enable the prior consideration of environmental impact assessment on certain public or private projects.The act also gives specific powers to the Federal Environmental Protection Agency to facilitate environmental assessment on the projects [5] on the 15th Feb 2022.

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[1] *Sec.44 (3) of the 1999 Constitution of the Fed. Rep. of Nigeria. (as amended).*

[2] *The Petroleum Industry Act (PIA)2021.*

[3.] *The NNPC Act Cap 123, 2004. www.resourcedata.org.*

[4] *Sec. 4 of The Nigerian Oil and Gas Industry Content Development Act 2010.*

[5] *Article. www.mondaq.com.*

2.2. I. INSTITUTIONAL FRAMEWORK

2.2.1. The Nigerian National Petroleum Cooperation (NNPC).

The NNPC serves as an institution in Nigeria whose responsibilities are mainly to explore,produce, refine oil, market oil products, and retail petroleum products.It is also involved in Petrochemicals and Gas development, Oil and Gas Engineering, the supervision of government investment in the upstream sector, and the marketing of Nigeria's accurable crude. [6]

2.2.2. The Nigerian Petroleum Regulatory Commission (NPRC). Otherwise known as Nigerian Upstream Petroleum Regulatory Commission (NUPRC). It's main functions are to monitor the oil and gas industry to ensure compliance with relevant regulations and laws. It also oversees the safety and other regulations that relates to the exploration and importation of the products into the country. [7] The (DPR) Department of Petroleum Resources, also has similar functions. It has the statutory responsibility of ensuring compliance to petroleum laws, regulations and guidelines in the oil and gas industry.

2.2.3. The Nigerian Petroleum Assets Management Company (NPAMC).

This company in conjunction with NNPC, will hold and manage assets under Production Sharing Contracts (PSCs) on behalf of the government, while the NNPC will be responsible for all other assets currently held by NNPC. [8]

2.2.4. Ministry of Petroleum Incorporated (MOPI). Mandate of the ministry is to formulate policies, supervise their implementation and regulate the Nigerian Oil and Gas (Energy) Industry. [9] The money ministry of petroleum resources is responsible for the articulation, implementation and regulation of policies in the oil and gas sector. [10] It also exercises the supervisory role over the operators and stakeholders,to ensure compliance with all applicable laws and regulations in the oil and gas sector. [11] The mission of the ministry of Petroleum Resources is to ensure an enabling environment to improve the oil and gas value chain, driven by the modern technology, industry, best practices, stakeholders engagement and innovations in alternative energy. While, the vision is to deliver a thriving oil and gas (energy) industry for Nigeria. [12.] 4

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[6] *The NNPC, www.world economic forum.*

[7] *The NUPRC, www.energyvoice .com.*

[8]. *The Petroleum Industry Act (PIA). PP. 25.*

[,9-12] *Ibid.*

CHAPTER THREE

3.1 HISTORY OF PETROLEUM IN NIGERIA

Oil was discovered in Nigeria in 1956 at Oloibiri in the Niger Delta after half a century of exploitation. The discovery was made by shell-BP, at the same time the sole concessionaire. Nigeria joined the ranks of oil producers in 1958 when it's first oil field came on stream producing 5,100 bpd.

After 1960, exploration rights in onshore and offshore areas adjoining the Niger Delta were extended to other foreign companies.

In1965, the EA field was discovered by Shell in shallow water south-east of Warri.

In 1970, the end of the Biafran war coincided with the rise in the world oil price, and Nigeria was able to reap instant riches from it's oil production. [1] Nigeria joined the organization of Petroleum Exportation Countries (OPEC) in 1971 and established the Nigerian National Petroleum Company (NNPC) in 1977, [2] a state owned and controlled company which is a major player in both the upstream and downstream sectors [3] Following the discovery of crude oil by Shell, D Arcy Petroleum, pioneer production began in 1958 from the company's oil field in Oloibiri in the Eastern Niger Delta.

By the late sixties and early seventies, Nigeria had attained a production level of over 2 million barrels of crude oil a day. Although production figures dropped in the eighties due to economic slump, 2004 experienced a total rejuvenation of oil production to a record level of 2.5 million barrels per day. Current development strategies are aimed at increasing production to 4 million barrels per day by the year 2010.

Petroleum production and export play a dominant role in Nigeria's economy and account for about 90% of her gross earnings.This dominant role has pushed agriculture, the traditional mainstay of the economy, from the early fifties and sixties, to the background. [4]

3.2. LIABILITIES, CIVIL/CRIMINAL

Liabilities [5] is a legal obligation, either due now or sometime in the future.Any legal responsibility, duty or obligation, the state of one who is bound in law and justice to do something which may be enforced by action. This liability may arise from contracts either express or implied or in consequence of torts committed.The liabilities of a

[1] *Kazeem Azeezat, The History of Petroleum in Nigeria, 7 Aug. 2020.*
[2-4] *Ibid.*
[5] Kodilinye and Aluko, The *Nigerian Law of Torts. PP. 115.*

person are not generally transferred to his representatives further than to reach the estate in his hands.

In First Bank of Nigeria Plc. V. OZOKWERE. The court of appeal, prisided over by Justice Galadima held that "As the money, the subject matter of the case, had not been recovered by Good-fif, Trading Company, the respondent was at liberty to sue the party in possession of the money". [6] The court of appeal stated that the respondent hinged his claim on the principle of money had, and received for a consideration that has failed. He did not claim damages against the appellant for breach of contract. [7] In Carlill V. Carbolic Smoke Ball Co. [8] It was held that the advertisement was an offer made to the world entirely, which ripened into a contract with the plaintiff who came forward and performed the condition on the advertisement. [9] In other words, the defendant's offer was made to the world at large of which the defendant was a member. [10] The plaintiff accepted the offer hence a contract in law which was sued upon matured. [11]

Liability in the legal sense, is the state or condition of one who is under obligation to do at once or at some future time something which may be enforced by action. [12.]

In Dunlop Pneumatic Tyre Co Ltd V. Selfridge Co Ltd, the Lord Dunedin adopted the judicial precedent set by Sir Fredrick Pollack when he said "An act of forbearance of one party, or the promise thereof,is the price for which the promise of the other is bought, and the promise thus given for value is enforced". In Miller and Lux, Justice Temple ascerted that "The word Liability has always been held to apply to responsibility for torts as well as for breach of contracts".However, Liability may be civil or criminal. [14]

1. CIVIL LIABILITY

Civil Liability gives a person right to obtain redress from another person e.g the ability to sue for damages for personal injury. There's also the right to obtain an injunction. For there to be an award of damages, the injured party has to have suffered an actual loss, be it personal injury, damage to property or financial loss. The burden of proof is

[6] *First Bank of Nigeria Plc. V. Alexander N. Ozokwere (2013) Dec. 20. 187 SC.*
[7] *Ibid.*
[8] *Carlill V. Carbolic Smoke Ball Co. (1893) 1 Dec. 7. Q. B 256 CA.*
[9-11] *Ibid.*
[12] *See e.g. Midwood V. Manchester Corp. (1905) 2 K. B. 597.*
[13] Dunlop V. Selfridge. 26 April (1915). UKHL 1, AC 847.
[14] Miller & Lux V. Kern County Land Company (1908) 154 Cal. 785 Dec. 23.

in a balance of probability which is lower than for criminal matters. If there has been a relevant criminal conviction in a particular matter, then the burden of proof in any related civil action is reversed, so that the defendant has to prove he is not liable. An example of this would be a conviction of a company for breach of health and safety legislation, followed by the injured employee suing the company for damages for personal injury. [15] A disincentive to suing is that the losing party pays the winner's cost. [16] In fact, this works out as a substantial proportion of the costs, rather than 100% so a successful plaintiff has his award of damages diminished in practical terms. As a matter of public policy, it is not possible to have an enforceable insurance policy in relation to criminal penalties. [17]

2. CRIMINAL LIABILITY

In criminal matters, it is always the duty of the state prosecuting the defendant before a magistrate, or a Judge and Jury in the crown court. [18] The assumption is that in criminal matters or liability, there is both a mental and physical element to an offense. [19] For example, theft involves dishonesty which is a question of mental attitude and appropriating which is a physical act. [20] The burden of proof for criminal offences is that of "beyond reasonable doubt". [21] It should be realized that various offenses in relation to, for example, road traffic laws or environmental laws have been so structured that the mental element is in fact required for a conviction. [22] This has been a matter of public policy to make it possible to obtain convictions which otherwise would be very difficult. [23] The penalties for criminal offences are: fines, caning, imprisonment, death, as well as other non- custodial punishments. [24]

[15] *Rylands V. Fletcher (1868) LR 3 HL 330.*
[16] *Ibid.*
[17] *Ibid.*
[18-24] *Criminal Code CAP "C38" 2007 Edition, Chapter 4,26.*

[25] *The Petroleum Industry Act (PIA) 2021, Sec. 318.*
[26] *Sec. 44 (3) of the Constitution of the Fed. Rep. of Nigeria. (as amended).*
[27] *Ibid.*
[28] *The PIA 2021, Sec. 318.*

3.3. PETROLEUM

What is Petroleum? Petroleum is a word derived from a combination of two words "Petra" a Greek word for "Rock" and "Oleum" a Latin word for "Oil". [25]

Petroleum is a composite natural liquid mixture derived from beneath the earth's surface.

It is a natural occuring fossil fuel found in a geographical formation beneath the earth's surface.[26]

It can exists in gaseous, liquid, and solid form. [27] When it is found as a solid, it is either coal, slate, tar sands or bitumen. [28] In liquid form, it is referred to as crude oil; while in its gaseous form, it is called natural gas. [29]

Sec. 318 of the petroleum industry Act (PIA) 2021, defines petroleum as "Hydrocarbons and associated substances that exist in it's natural state in strata, and includes crude oil, natural gas condensate and mixtures of any of them but does not include bitumen and coal". [30]

The PIA went further to define crude oil in Sec. 318 as follows: "Crude oil means Petroleum which is in liquid conditions upon product from a reservoir either in it's natural state or after extraction of water, sand or other foreign substances from it" but before any oil has been refined or otherwise treated other than oil extracted by distructive distillation from coal, Bituminous Shades or other stratified deposits". [31] Crude oil therefore, is petroleum in it's liquid form, even though the two terms are loosly used interchangeably. [32]

There are two theories of the formation of oil and gas i.e (Petroleum) which is the inorganic theory and organic theory.The inorganic theory of formation

states that, oil and gas were formed as a result of the chemical reaction of hydrogen and carbon. [33] Put simply, it is the coming together of hydrogen and carbon that gave birth to oil and gas.

[34] It is scientifically accepted that crude oil is substantially made by the reaction of hydrogen and carbon. [35]

[29] *Sec. 44 (3) of the Constitution of the Fed. Rep. of Nigeria (as amended).*
[30] *The PIA 2021.*
[31] *Ibid.*
[32] *Ibid.*
[33] *www.sciencedirect.com.*

The organic theory of formation which is most accepted by scientists state that, oil and gas were formed as a result of chemical changes taking place in animal remains through the process of erosion. In other words, it is generally accepted that crude oil is the residue of inorganic waste from land, plants and marine life. [36]

It is believed that sediments consisting of both organic and inorganic materials were carried from lands down to the rivers together with various forms of marine life and settled on the ocean floor, lakes and coastal areas to form oil and gas which is petroleum. [37]

4 FUEL SCARCITY

In 2022, Nigeria's oil sector was riddled with numerous challenges, most notably the fuel subsidy crises that hit the different parts of the nation and crippled businesses. [38] In the first half of the year, the country's oil revenues dropped and or fell drastically due to a decline in production occasioned by crude oil theft and Pipeline Vandalism. The situation, exagerbated by the rising crude oil theft hindered the developmental aspirations of Nigeria, a country heavily dependent on oil revenues to meet its needs. [39] This year 2023, due to its inability to refine oil locally, Nigeria also spent significant part of its oil revenues on importation of petroleum products and subsidy. [40] The high prices of oil due to the Russia- Ukraine war also increased the landing cost of petroleum, [41] increasing subsidy payments. [42]

Off-spec conundrum

At the begining of the year, millions of Nigerians were thrown into chaos amid a scarcity of fuel in petroleum outlets across the country.

[43] As the scarcity continued to bite harder, the government in February said the discovery of high amounts of methanol in imported fuel caused the shortage as authorities tried to replace the off-spec products across the country. [44.]

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[34] *www science direct.com.*
[35] *Journal of power and energy, vol. 8, Aug. 2020.*
[36] *Kazeem Azeezat, History of Petroleum in Nigeria.*
[37] *Ibid.*
[38] *Premium Times News Nigeria, 24 Jan. 2023.*
[39-42] *Ibid.*
[43] *Premium Times News Nigeria, 24 Jan. 2023.*
[44] *Ibid.*

Consequently, the minister of state for petroleum, Timipre Sylva, said there would be a major investigation into the circulation of the unsafe quantity of methanol in petrol imported into the country.

Following the investigation, the Nigerian National Petroleum Company (NNPC) Limited, which coordinates the government's direct sale and direct purchase of fuel policy, listed for oil marketers (MRS, Oando, Duke Oil and Emadeb / Hyde / AY Maikifi / Brittania-U Consortium) for the importation of the adultrated fuel. [45] However, MRS dismissed the claim by NNPC Limited, [46] noting that NNPC Limited is the sole importer of the fuel.

President Muhammadu Buhari later directed that producers and providers of substandard fuel imported into the country must be held accountable. On it's part, the House of Representatives asked the NNPC Limited to suspend companies involved in the importation of the contaminated fuel and also directed its Committee on petroleum resources (downstream) to probe all imports of premium motor spirit and other petroleum products. [47] [9]

However, when the NNPCL, group managing director, Mele Kyari, appeared before the investigative panel on February 16, he said the marketers refused to bear the liability for importing the methanol-contaminated fuel.Mr. Kyari said the marketers claimed they imported the specification requested by the country, noting that Nigeria does not test for methanol. [48]

Meanwhile, in April the House of Representatives exonerated the oil marketers accused of importing adultrated fuel into the country. The decision to exonerate the oil marketers followed the consideration of the report of the Committee on petroleum (downstream).

NNPC transit into a public Liability company

In July Mr. Buhari unvailed the new Nigerian National Petroleum Company Limited, a landmark event that officially changed the oil firm from a wholly State-run entity to a commercial oil company, limited by shares. [49] "we are transforming our petroleum

[45] *Punchnigeria.com, Newspaper.*
[46] *Ibid.*
[47] *Premium Times Newspaper, 24 January 2023.*
[48] *Ibid.*
[49] *Premium Times News, 24 Jan. 2023.*

industry to strengthen the growth today July 19 2022. NNPC Limited now will operate as a commercial oil company with over 200 million sharesholders with integrity and excellent, “ Mr. Buhari said at the event.

The official unveiling came after the corporation’s transition into a company whose operations will be regulated by the Companies and Allied Matters Act (CAMA). [50] The legal transition, based on the new Petroleum Industry Act 2021, [51] took effect on July 1st.

The new entity became a commercially oriented and profit-driven national petroleum company independent of the government, although, government bodies remains its shareholders. It will be audited annually.

Following its transition as a limited liability company, NNPC, on 4th October, announced it had sted a profit after tax in sum of # 674 billion for 2021. [52]

3.5 OIL THEFT / PIPELINE VANDALISM

In April, the Group Managing Director of the NNPC Limited, Mele Kyari, disclosed that Nigeria lost $4 billion to oil theft at the rate of 200,000 barrels per day in 2021. [53]

He added that the country already lost $1.5 billion so far in 2022 because Pipeline Vandalism has escalated . Mr. Kyari said the country was losing 95 per cent of oil roduction to oil theft at Bonny terminal, Rivers State. [54]

According to the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), the country lost over $1 billion directly to oil theft between January and March this year alone. [55] Also, in September, the NNPC said that the country loses 470,000 barrels of crude oil monthly amounting to $700 billion to oil theft. [56.]

It was also reported that Nigeria, amid dwindling revenue, lost $10 billion to crude oil theft in seven months.

[57] The Federal Government in its draft fiscal strategy paper for 2023 through 2025 said that oil revenue underperformed due to significant production shortfalls such as shut-ins resulting from Pipeline Vandalism and crude oil theft as well as high petrol subsidy cost due to higher lending costs of imported products. [58]

[50-56] *Ibid.*
[57] *Premium Times News, 24 Jan. 2023.*
[58] *Ibid.*

In a bid to curb crude oil theft, the Nigerian government launched an application in August to mornitor incidence.

The NNPC also awarded a multi-million naira Pipeline surveillance procurement to a former leader of the Movement for the Emancipation of Niger Delta, Tompolo. Despite the controversy that trailed the contract, the company reportedly discovered several illegal connections into major Pipelines.major Pipelines.

In October, Mr. Tompolo said he had discovered at least 58 illegal points in Delta and Bayelsa States where crude oil is been stolen. [59]

In less than one week, after its discovery, a private oil oil pipeline surveillance team, Tantita Security Services, led by Mr. Tompolo announced that it uncovered another illegal pipeline attached to the Trans Forcados Export Trunk line. The vessel was subsequently destroyed. [60]

In October, the NNPC also announced that it had uncovered an illegal oil connection from Forcados Terminal that operated for nine years. [61]

Mr. Kyari who disclosed this at the Senate's Joint Committees on Gas and Petroleum (Upstream and downstream) said that 395 illegal refineries had been deactivated, 274 reservoirs destroyed, 1,561 metal tanks were destroyed and 49 trucks seized so far. [62]

"Oil theft in the country has been going on for over 22 years but the dimension and rate it assumed in recent times is unprecedented" Mr. Kyari said. [63]

3.6. LOW PRODUCTION

In February, Russia invaded U

price of Brent crude hit $130

States and its allies sanctioned Russia over the invasion of Ukraine. [64]

Following the rising international prices of crude oil, the Nigerian government in February, expressed concern, saying the increase was not good for the nation. [65]

Nigeria, one of the producers of crude oil in the world, could not exploit the rising oil prices to generate more revenues for the country due to its inability to refine locally

[59-63] *Ibid.*
[64] *Premium Times News 24 Jan. 2023.*
[65] *Premium Times News, 5 / 6 Oct. 202*

and meet the oil production quota set by the organisation of petroleum exporting countries (OPEC).

According to data from OPEC, Nigerian production fell in the first seven months of the year to about 1.1 million barrels a day of crude equivalent in July from 1.4 million barrels in January. [66]

With an average of 1,083,899 barrels per day in July, Nigeria's crude oil production plunged below one million barrels per day (972,394 pbd) in August, the lowest revenue in several years.

In October, the governor of Central Bank of Nigeria (CBN), Godwin Emefiele, lamented how the Nigerian National Petroleum Company (NNPC) Limited, has not been remitting proceeds from the crude oil sales, to the nation's foreign exchange reserves. [67]

"The official foreign exchange receipt from crude oil sales into our official reserves have dried up steadily from above $3.0 billion monthly in 2014 to an absolute zero dollar today, Mr. Emefiele said. [68]

3.7. FUEL SUBSIDY

The debate on subsidy is also one of the country's most polarizing public discussions in 2022. The Nigerian government has for decades subsidized fuel and fixed retail prices of petroleum products. [69] But in November 2021, the Federal Government announced its plan to remove fuel subsidy and replace it with a monthly #5,000 transport grant for poor Nigerians. Later in the month, the government suspended its planed removal of subsidy after the Nigeria Labour Congress (NLC) and Trade Union Congress (TUC) threatened to embark on mass protests. [70]

Following the reversal of the fuel subsidy removal plan by the government, the NLC on 26 January announced it had suspended it proposed nationwide protest action. [71]

The government said it will retain fuel subsidy indefinitely and will work on amending the 2022 budget to provide funds for that purpose. The government added that it would spend #3 trillion on subsidies in 2022. In April, President Mohammadu Buhari wrote to the National Assembly to make adjustments to the 2022 budget to raise the amount to #4 trillion after oil prices rose in the international market. [72]

[66-68] *Ibid.*
[69] *Guardian Newspaper.*
[70-72.] *Ibid.*

3.8. MAIN TYPES OF NUISANCE.

The common law tort of nuisance could be said to be the most potent of all the torts as they relate to pollution in general. [73] Nuisance is an act or omission that is an interference with, disturbances of or annoyance to a person in the exercise or enjoyment of: [74]

a. Right belonging to him as a member of the public when it's a public nuisance or,

b. His ownership or occupation of land or of some endorsement, profit or other rights used or enjoyed in connection with land, when it's a private nuisance. [75]

1. PUBLIC NUISANCE

A public nuisance is usually considered to be a crime while private nuisance is always a tort. [76]

A public nuisance is akin to statutory or common law nuisance. [77] A public nuisance is committed where a person carries on some harmful activity which affects the general public or a section of the public, for example, where the owners of a factory cause or permit fumes and smoke to pollute the atmosphere in the locality, or where an obstruction is caused on the public highway. Public nuisance is basically a crime, [78] actionable by the Attorney-General. It is a tort actionable by an individual plaintiff only where the latter can show that the defendant's conduct has caused him"particular damage"over and above that suffered by the general public. [79]

public nuisance has been abolished by the 1979 Constitution. [80] The restriction that is imposed at common law is now void by virtue of section 6(6)cb) of the 1979

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[73] Penal Code, ss 192 and 194.
[74] Kudilinye and Aluko, The Nigerian Law of Torts, PP. 96.
[75] Ibid.
[76] Kudilinye and Aluko, The Nigerian Law of Torts, PP. 96.
[77] Ibid.
[78] Criminal Code, Sec. 234.
[79] Amos V. Shell B. P. (Nigeria) Ltd. (1974) 4 E. C. S. L. R. 486 at P. 488.
[80] The 1979 Constitution of the Fed. Rep. of Nigeria, Sec. 6 (6) (b).
[81] Adediran V. Inter land Transport Limited, (1991) 9 NWLR (pt. 214) P. 155.

Constitution. Action in public nuisance can now maintained by any member of the public without the consent of the Attorney-General. [81]

2. P

The rationale and origins of private nuisance are quite different from those of public nuisance. Whereas public nuisance involves injury to the public at large, and the rights of the private individual to receive protection in tort where he can prove particular damage to himself and irrespective of his ownership or occupation of land, the law of private nuisance is designed to protect the individual owner or occupier of land from substantial interference with his enjoyment thereof. [82] 14

e main differences between the two types of nuisance are as follows:

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(i) Public nuisance is a crime, [83] and is a tort where particular damage is proved. Private nuisance is a tort only.

(ii) To succeed in private nuisance, the plaintiff must have an interest in land. [84] In public nuisance, there is no such requirement. [85]

(iii) Damages for personal injuries can be recovered in public nuisance. [86] Whether such a claim will lie in private nuisance is doubtful. [87] Notwithstanding these basic differences, there may be occasions where the facts of a particular case will give rise to liability in both public and private nuisance: for example, where large-scale pollution to the atmosphere causes particular damage to the plaintiff's property. Furthermore, the two causes of action share some common principles. For instance, in both public and private nuisance, the interference complained of must be substantial and unreasonable, and "the law of give and take" applies to both. [88]

3.9. THE GENERAL RULE OF LIABILITY

The general rule has been strictly applied in some Nigerian cases. The first amongst these is Jinoh Lawani and others (for themselves and on behalf of other inhabitants

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[82] Kodilinye and Aluko, The Nigerian Law of Torts (1999) P. 94-95.
[83] Malone V. Laskey (1907) 2 K. B. 141.
[84] Street, Op. Cit. P. 214.
[85] See e.g. Castle V. St Augustine's Links Ltd. (1922) 38 T. L. R. 615.
[86] Kodilinye and Aluko, The Nigerian Law of Torts (1999) P. 94-95.
[87] Street Op. Cit. P. 229.
[88] Kodilinye and Aluko, The Nigerian Law of Torts, P. 92-96.
[89] (1973) 3 U. I. L. R. (pt. 4) 457.

and farmers of Ewekoro, Ibagun, Egbado, Alaguntan and Otun villages near Itori Abeokuta) V. The West African Portland Cement Company Limited, [89]

where the action was taken by all the inhabitants of the five villages who live within the neighbourhood of the operations of the defendant company.

The plaintiff claiming one million one hundred thousand naira(N1,100,000) as damages due to their crops, buildings and other properties as a result of nuisance caused by the defendants company or factory from 1971 until the nuisance was abated, and an injunction restraining the defendants from continuing the nuisance. The plaintiff in paragraph 9 of the statement claim, specifically pleaded as follows:

The defendants also built and keep in their factory a chimney through which they cause fumes and dust from their factory to enter into the atmosphere and settle on the land, the farmlands, the crops, the building and the stream of the plaintiffs.[90]

In this claim, the defendants prayed the court that the statement of claim be struck out because the acts complained of denoted to public nuisance and as such, only the Attorney General could sue and that the plaintiffs had no right to bring the action.

The court held that the nuisance upon which this action was founded was a public nuisance and therefore, the plaintiffs had no right to bring it, and that the only way it could be brought was by an action exclusively by the Attorney General.

However, in the case of Interland transport limited V. J. A. Adediran and Anor (as representatives and on behalf of all members of Ire-Akori Housing Estate Association, Isolo) the court emphasised the great Constitutional significance of Sec. 6(6)(b) of the 1979 Constitution and held that there was no more need to sue in public nuisance through the Attorney General.[91] that case, the plaintiff/respondents took a representative action on behalf of all members of Ire-Akari Housing Estate Association Isolo for damages and injunction. The members complained of nuisance caused by the defendants(appellants to them by way of violent and disturbing noises, damages to road, telephone poles and water pipes, depositing waste engine in gutters around. That trial Judge found for the plaintiffs/respondents and awarded N20, 000.00 for private nuisance. However, on appeal to the court of Appeal, the court of Appeal while allowing the appeal by a majority with Ademola J. C. A. Dissenting Held:

1. That the nuisance complained of was not a private nuisance but a public nuisance, as the residents of the estate including the respondents from the public or class of the public or class of the public to be affected by the nuisance complained of and. [92]

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[90] *Chief A. S. Amos and Ors (for themselves as individuals and on behalf of Ogbia Community Brass Division) V. Shell B. P Petroleum Development Company of Nigeria Ltd. and Anor. (1977) 6 SC 109 affirming (1974) L. R. SC 21.*

[91] *The 1999 Constitution of the Fed. Rep.of Nigeria, Sec. 6 (6) (b).*

[92] *(1985) 2 NWLR (pt. 6) 221, (1985) 6 SC 246.*

2. That after 1st of October 1979(i.e under the 1979 Constitution) it is still the Attorney General who can sue for public nuisance consequently, such suit is outside the civil rights andobligations of the individual can sue, not withstanding, section 6(6)(b) of the 1979 Constitution, distinguishing the case of Ronson Kuti and Ors, which was relied upon by the plaintiff/respondents on the issue of Locus Standi. [93]

As it submitted with the greatest respect that the Ransom Kuti case equally extends to public nuisance, as his Lordship for the majority (Nnaemeka-Agu J. C. A as he then was) also recognized the action as fiction- a “hypothesis” which anachronism has been removed by Sec. 6(6)(b) of the 1979 Constitution,as was stated by ESO,J.S.C. in the Ransom Kuti’s case in relation to petition of right, as it were in Section 6(6)(b) of the 1979 Constitution which provides the avenue for the defendants just claims made pursuant to this and other constitutional provisions must not be defeated merely on grounds of technicalities in court procedures and practice or by vicissitudes of enactments of rules of law archaic to contempory Nigeria. [94.]

3.10 THE EXCEPTIONS TO THE GENERAL RULE

The two exceptions to the general rule that the Attorney General is the only person to sue where a public right as involved are:

1. Where the interference with the public right is such that some private right is at the same time interfered with [95] and

2. Where no private right suffers special changes peculiar to himself from the interference with public right. [96] In the case of Chief P. U. Ejowhomu V. Edok-Eter Mandalas Limited, [97] the appellants poultry farm were rendered inaccessible when the respondents in the course of construction of the Kokori inland-Eku road, destroyed three bridges, the only means of access across the Onven river to the plantation farms. The Court held that the construction of the high way amounted to public nuisance does

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[93] *Per Nnaemeka-Agu J. C. A (as he then was), (1986) 2 NWLR (pt.20) 78 at P. 78 (1986) 2 C.A (pt.1 18 at PP. 30-31.*

[94] *Per Nnaemeka-Agu J. C. A (as he then was), (1986) 2 NWLR (pt. 20) 78 at P. 78; (1986) 2 A.C (pt. 1) 18 at PP. 30-31.*

[95] *(1986) 2 NWLR (pt. 20) 78 at P. 99.*

[96] *Per Eso, J. S. C. in Ipadeola and Anor V. Osowale and Anor (1987) 5 S. C 376 at P. 393; Lonrho Limited V. Shell Petroleum Company Limited (1986) A.C 173.*

[97] *(1986) 9 S. C 41.*

not necessarily depend on contiguity of the high way to plaintiff's property injured by the nuisance is sufficiently proximate to be affected by the nuisance. [98] The case of Lase Fajuke V. O. O. Kupoluyi [99] ,

is also instructive, the response as plaintiff before the High Court of Osun State, Ilesha Judicial Division claimed against the appellant 5,000.00 (five thousand naira only) being general damages suffered by the respondents as a result of the appellant's nuisance which consisted of erecting building on the respondent's land, blocking his right of way to the land and failure to leave the necessary statutory road set back as well as an injunction to restrain the appellant from further entry on the land and compelling the demolition of the structures on the land. The Court held that a private individual has no right of action irrespective of a public nuisance if he can prove that he has sustained. [100]

A particular damage other than and beyond the general inconvenience and injury suffered by the public, and that the particular damage which he has sustained is direct and substantial. The Court in the instance case allowed the claim for nuisance.

The Court held further in the instance case that the Attorney General need not be joined in an action or public nuisance by a private individual. The Court stated further that a plaintiff can sue without joining the Attorney General in two cases. [101]

1. Where the interference with the public right is such that some private right of his at the same time interfered with (e.g where an obstruction is so at the place in a high way that by reason of the obstruction interferes with his private right to access from and to his premises to and from the high way) and
2. Where no private right is interfered with that but the plaintiff in respect of his public right Suffered special damages peculiar to himself from the interference with the public right. [102]

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[98] *See also Oyidobu V. Okechukwu (1972) 5 S. C 191 at PP. 198-199 Per Elids Teolim C. J. N .*
[99] *Lase Fajuke V. O. O Kupoluyi (Upra) P. 8 .*
[100] *(2005) All FWLR (pt. 277) P. 33 C. A.*
[101] *Fay V. Prentice (1845) E. R. 789.*
[102] *Kiddle V. City Business Properties Ltd. (1942) 1 K. B. 269.*

3.11 CRITERIA FOR LIABILITIES IN NUISANCE

In relation to the subject matter of oil pollution, there are two criterias to be considered, they are:

1. The foreseeability test, and
2. The reasonable use of the defendant’s premises as well as negligence.

Foreseeability

Foreseeability as a criterion of liability presupposes at least some degrees of culpability, thus making the tort of nuisance akin to negligence. This may be true in private nuisance but may not apply to public nuisance. In Vaulghan V. Menlove (1837) [103] 132 E. R. 490. [104]

In determining whether the defendant in his actions came up to the standard of a reasonable man, the Court will measure those actions against the conduct expect of a person of normal intelligence, and the defendant will not be excused for having acted to the best of his own judgement, if his best is below that to be expected of a man of ordinary intelligence. [105] Thus it is no defence that the particular defendant had usually slow reactions or a low-than-average intelligence or possessing unusually quick reactions will notbejudgedby his own high standards, and will not be liable for having failed to use those exceptional qualities. [106]

Causation is still the more relevant test in causes such as Rylands V. Fletcher. [107] where the foreseeability is not applicable. Foreseeability test will only be applicable when test is supported by the factors of the case.

Where pollution claims are concerned, the relevant questions are: (1) who caused the pollution claims, and (2) what was the effect of the pollution? The issue of whether damages done to the victims were foreseeable should generally not arise any more. To import negligence into the issues is to compound rather than enhance remedy. [108]

[103] *Vaulghan V. Menlove (1837), Per Tindal C. J .*
[104] *Vaulghan V. Menlove (1837), Per Tindal C. J .*
20 [105] *Vaulghan V. Menlove (1837), Per Tindal C. J .*
[106] *Woodridge V. Summer (1962) 2 All E. R. 978.*
[107] *Exxon Valdez Oil Spill, Alaska, 24 March.*
[108] *Exxon Valdez Oil Spill, Alaska, (1989) 24 March.*

Reasonableness:

Reasonableness signifies what is legally right between the parties taking into account all the circumstances of the case.

There are two major considerations in the determination of whether reasonableness could afford a defence in oil pollution claim. They are:

1. Conduct of the defendants, and
2. The seriousness of the interference with the plaintiff's use of land.

The first the usefulness of the defendant's act and the second is the extent the harm done. The two considerations are very relevant to oil pollution liability as could be found in Nigeria's most serious Oil pollution disaster. The Texaco oil well blow-out North AP (also known as Texaco's Funawa-5 Oil Well Blow-out, Rivers State) which occurred on the 17th of January, 1980. [109.]

This type of nuisance, once there is possible physical injury to property, then there is an actionable nuisance regardless of whether, on balance, the use of the law by the defendant was respectively reasonable. In this regard, there is hardly only difference between nuisance and the rule in Rylands V. Fletcher. [110] which is a rule of strict liability. [111]

The three basic elements for liability in negligence that emerge from the subsequent cases are:

1. A duty of care owed by the defendant to the plaintiff;
2. Breach of that duty by the defendant; and
3. Damage to the plaintiff resulting from the breach. [112]

In order to establish the duty of care, the first question to be determined in any action for negligence is whether the defendant owed a duty of care to the plaintiff.

In general, a duty of care will be owed wherever in the circumstances, it is foreseeable that if the defendant does not exercise due care, the plaintiff will be harmed. This

[109] *This view is supported by Lord Reid in oversea's Tankship (U. K) Limited V. The Miller Steamship Company Property [The Wagon Mound (No. 21) (1967) A. C 617, at P. 639.] Where he said that " Negligence is not an essential element in nuisance".*

[110] *Rylands V. Fletcher (1866) L. R. 1 Ex. 265.*

[111] *Ibid.*

[112] *Onasanya V. Western Nigerian Marketing Board (1975) 5 CCHCJ 825, at P. 835. Per Gomes J.; Adewale V. Sowale (1972) 6 CCHCJ 70 at P. 73, Per Odesanya J.*

[113] *Ann's V. London Borough of Merton (1977) 2. All E. R. 492 at P. 498-499.*

foreseeability test was laid down by Lord Atkin in the celebrated case of Donoghue V. Stevenson, [113]and is known as “the neighbour principle".

There are a number of common situations in which it is well established that a duty of care exist, for example:

The driver of a vehicle on the road owes a duty of care to other road users, pedestrians, and occupiers of premises abutting the highway to drive carefully. [114] The occupiers of premises also owes a duty of care to lawful visitors to ensure that the premises are reasonably safe. [115]

1.12 ASSESSMENT OF DAMAGES

In the case of trespass by oil pollution affecting farmlands and economic trees, the general principle is to restore the property to it's original position. The mode of assessment with respect to economic trees is supported by the case of S. D lar V. Stirling Astaldi (Nigeria Limited). [116] In private nuisance, the assessment is along the line of trespass which is the difference between the monetary value and interest before and after the nuisance and thus no provision is made for general damages. In public nuisance unlike private nuisance, general damages are allowed and the respondent is liable to pay the total damages for the loss suffered by the plaintiff. [117]

The assessment of the damages in negligence is relevant to oil pollution with respect to personal injuries and where death was the assess as it was recorded in the case of the Texas Oil Blow-out. The two main factors are:

1. The financial loss resulting from the injury, and
2. The personal injury, actual shortening of life and more discomfort or inconvenience.

The fullness and adequacy of damage awarded as compensation will in each case depend on the proved solid facts of the case and a just and fair assessment of the effect of the injury complained of. [118] In case of deaths, then report must be made first to the police before commencing civil litigation since it is a case of involuntary manslaughter not punishable by death.

[114] *(1932) A. C. 562 at P. 597. In Ann's V. London Borough of Merton (1977) 2. All E. R. 492 at P. 498-499. Lord Wilberforce. Schiffahrt Und Kohlen. GmbH V. Chelsea Maritime Ltd., (1982) 1 All E.R. 218.*

[115] *See PP. 61-63; Post, See PP. 71-82; Post.*

[116] *(1977) 11-12 S. C 53, at PP. 56-57. See also UAL of Nigeria Limited V. Ekunwe (1986) 4 S. C 366 at PP. 38-39.*

[117] *Ibid.*

[118] *(1965) 2 All NLR. 183, at P. 186.*

3.13 COMPENSATION

The general right to compensation is laid down in the 1999 Constitution [119] of the Federal Republic of Nigeria and apart from this, there are specific matters which come directly on the subject of discussion and they are the Oil Pipeline Act [120]. The Petroleum Industry Act, (the Petroleum drilling and production regulations) [121] and Oil in Navigable Waters Act. [122]

The legal position on compensation arising from damages caused by oil pollution and oil pipeline leakage was strictly stated by Ovie Whiskey J. in San Ikpede V. The Shell B P Petroleum Development Company Nigeria Limited. [123]

In summary, the Court held that notwithstanding the fact that the provision of section 11(5) (b) and (c) of the Oil Pipelines Act, incorporate the Common Law remedies of nuisance, negligence and the rule in Rylands V. Fletcher, there is no need alleging any of these duties to pay compensation as statutory. It is sufficient to prove that the damage was caused by the defendant, arising from the executions of works authorized by statue.

It is important to note that section 11 (5) (c) of the Oil Pipelines Act [124] states the holder of an oil licence shall pay compensation to victims of oil spillage . The Petroleum Act (PDPR) [125] Section 2 makes provision for the Minister of Petroleum Resources to [126] also sets out the measure of damages in the case of oil spillage resulting in losses to individuals and Communities.

[119] *Per Karibi-Whyte J. S. C in Ediajbonya V. Dumez (Nigeria) Limited and Anor (1986) 6 S. C 149 at PP. 164-170.*

[120] *See Sec. 6 (6) (b) of the 1999 Constitution of the Fed. Rep. of Nigeria.*

[121] *Cap. 07, Laws of the Federation of Nigeria, 2004.*

[122] *Cap. P10, Laws of the Federation of Nigeria, 2004.*

[123] *Cap. P10, Laws of the Federation of Nigeria, 2004*

[124] *Cap. 07, Laws of the Federation of Nigeria, 2004.*

[125] *Cap. P10, Laws of the Federation of Nigeria, 2004.*

[126] *Sec. 2 (1) Cap. Flo Laws of the Federation of Nigeria, 2004 for the compensation of the Agency.*

Section 21 deals with Spiller's responsibility on the evaluation of discharge and costs to third parties in form of reparation, restoration, restitution or compensation as may be determined by the Agency from time to time [127] .

The items for assessment for compensation as could be inferred from paragraph 36 of Schedule 1 of the Petroleum Act 2nd regulation 23 of the petroleum drilling and production regulations are economic trees, structures affixed to land, fishing rights, shrines and vulnerable objects. It will also include compensation for injuries and disturbance of the surface rights of the claimant. The claimant is entitled to fair and adequate compensation.

[127] *Ibid.*

4.1.1 **CHAPTER FOUR**

CONCLUSION AND RECOMMENDATION

SUMMARY

As a result of the 1989 Exxon Valdez Oil Spill in Prince William Sound, congress passed the Oil Pollution Act of 1990 (OPA90), and withing that legislation, the Oil Spill Recovery Institute (OSRI) was born.

This report assessed the strength and weaknesses of this research project, with emphasis on the activities of oil producing companies in Nigeria, particularly on petroleum, fuel scarsity, oil theft, pipeline Vandalism, low production of fuel, fuel subsidy and compensation/remedies etc.

The historic and continued activities of the oil industry have fueled environmental emerncy, a silent health crisis, and deep economic hardship. This overwhelming tide oil contermination has turned the Niger Delta home to some of the planet's largest mangroves and fresh water swamps, forests, and Africa's largest wellands - into one of the most polluted places on Earth.

As much as 40 percent of the mangrove forests have been lost.

The human impact has been just as devastating. One study estimate that in 2012 alone, oil spills in Nigeria, and predominantly in the Niger Delta resulted in over 16,000 additional neonatal deaths.

4.1.2. FINDINGS

The findings shine light on the pollution catastrophe engulfing the Niger Delta, particularly Bayelsa State and its underlying causes. Some of the underlying causes are the systemic failings of international company operators with the complicity of Nigeria's political classes and a dysfunctional Nigerian regulatory state.

While the State accounts only for over one percent of Nigeria's total pollution, it is estimated to have suffered over a quarter of total recorded instance of oil pollution.

The environmental, ecological and health consequences on the Niger Delta as a whole and on the people of Bayelsa have been catastrophic. They have suffered in silence for too long.

This report sets out a proposal to end decades-long cycles of contamination and neglect by the oil and gas industry.

Safer and cleaner oil Company operations will not be enough to end Bayelsa's pollution nightmare.

The fossil fuel generated climate crisis has also destroyed Bayelsa's ecosystems. It is worthy to note that the government is only interested in the money they make out of crude oil and not the pains and surfferings of the people it affects directly.

4.1.3 CONCLUSIONS

The current page is to obviate the victims of oil pollution proving that the polluting company, body or person (s) is at fault in causing the pollution, especially in Nigeria where the burden of proof of an incident is on a person who has the least know-how of the subject matter of the incident, and who has no control over it will work great difficulty. It will be sufficient if the plaintiffs (victims) were made only to prove that the defendant caused the pollution and leave the fact of how the pollution was caused and its justification (if any) to defendant.

It is also recommended that civil liability and statutory remedies should be pleaded in the alternative in the oil pollution litigation.

And in assessment of remedies, expert evidence to assess the damage done and compensation to be awarded is indispensable.

Lastly, fuel scarsity problems in Nigeria is like a worm that eats up the intestines of a living being. This fuel scarsity of a thing is ravaging the country and is dragging us backwards, and because we have sleeping government at all levels, it will be difficult to come out of this nightmare of fuel scarsity because the government is not ready to make things better for us.

4.2 RECOMMENDATIONS

I therefore recommend that steps should be taken to reduce the over exploration and exploitation of Petroleum resources in order to reduce much damage and effects it has on the environment and the living organisms including humans. More emphasis should be put in the agricultural sector which is profitable as well as ecological friendly.

Recommendations may appear counter intuitive.

These will only be achieved with concerned local, national and international action, leadership, solidarity and dedicated support.

Now is the time to act. Oil producers are already beginning to divest themselves of their onshore assets to evade potential liability for historic pollution. There is an urgent need for action now. And I recommend that the government of the Federation should also allow local refining of the product in order to curb fuel scarsity in Nigeria.

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