

# ARBITRATION AS A CONFLICT RESOLUTION APPROACH TO OIL SPILL COMPENSATION PAYMENT IN OIL PRODUCING COMMUNITIES OF RIVERS STATE, NIGERIA

**Chima Jack-Osimiri**

*Department of Physical Planning and Development  
Office of the Vice Chancellor, University of Port Harcourt  
Choba, Rivers State, Nigeria*

## ABSTRACT

*From time to time, the oil and gas prospecting firm seeks and obtains oil deposits in commercial quantity either offshore or onshore which belongs to the oil bearing community which she uses for exploration, exploitation and transportation of crude oil. But unfortunately; such crude oil and gas escape causing oil spill, consequent upon facility/equipment failure or any other cause(s), which subsequently destroys all economic assets used in fishing or cash crops and economic trees if it occurs on land. This unfortunate incident makes the oil bearing and host community to demand compensation, which in most times breeds in conflict such that the two parties engage in tirade of accusations and counter-accusations. The conflict is such that it has defiled all known antidotes, real or imaginary. Until arbitration was resurrected, studied and applied, before it became the messiah or saviour of the two warring groups. Hitherto, the conflict had led to the destruction of equipment/tools, loss of income, loss of company/man hours, peace, and abduction/kidnapping of expatriates/indigenous staffers. In the light of the grave consequences, the author recommended both direct and indirect approaches to deal with the incessant conflicts between the oil and gas firms and oil bearing and host community. Having known that conflict is an ill-wind that blows nobody any good.*

**Keywords:** *Abitration, Conflict resolution approach, Oil spill, Compensation, Oil Producing Communities*

## INTRODUCTION

The nature bestowed on the oil bearing and host community the mineral deposits found on or in the land, sea, river etc, which the oil and gas prospecting firm uses for the exploration, exploitation and transportation of crude oil. But unfortunately, such crude oil and gas escape from time to time to cause oil spill/pollution, consequent upon facility/equipment failure or any other cause(s), via terrific explosion or oil blow out, which often destroys all economic assets used for fishing or cash crops and economic trees if it occurs on land, cause terrible ecological degradation, loss of farming/fishing business and subject them into the worst health hazards to name but a few. Thus, prompting the oil bearing and host communities to ask and demand for compensation payment, which often times breeds conflict following the disagreement as per the actual items affected by the oil spill, the degree and extent of pollution and other reasons. As computation using oil producers' trade section rates, (rather than

open market value) gives an indication of gross under value. Of which we discovered that the sole cause of the conflict is meagre or as compensation at all. The conflict has defiled all known antidotes, of which arbitration is the only remedy. Hence its pros. Lack of agreement between them often results in destruction of equipment/tools, loss of income, loss of company/man hours, no peace, and abduction/kidnapping of expatriate/indigenous staffers as the conflict is an ill-wind that blows any person/party any good.

The obvious pros include relative simplicity, saving of time, non involvement of legal practitioners and consensus addendum (Hemuka, 1992). It is the contention of this study that if all possible causes, extent/degree of pollution and the period of recovery which are the potential sources of conflict are examined, analysed and solution raised and agreed upon, the relatively tranquility required for the success of the operations of the oil and gas firm is achieved. All the oil bearing and host communities, oil firms, the nation and indeed the society at large would know peace. The youth restiveness in the Niger Delta Region of Nigeria will be a thing of the past. The greatest undoing by the oil firm is that no immediate action is taken to establish the authenticity, genuineness or otherwise of the claims of the oil producing and host communities, that their environment has been impacted and devastated which occasioned the losses sustained by them.

Empirical studies have proved that the oil firm comes for inspection, enumeration and assessment after some 3 years, if at all they would come. Source: inspection surveys of 1992, 1993, 1994, 1995 ... 2009). Before then areas not previously impacted become impacted. As every report of the escape of crude oil is branded as sabotage by the oil firm, even though it is proven it occurred as a result of facility failure or corrosion, yet, trivializing the issue of oil spill, which is a criminal offence in the civilized society. When the oil firms accept liability, no mention or consideration of the period of recovery (i.e. When normalcy would return to the impacted area via scientific enquiry), as to enable them and the host communities resume their operations to earn a living is. A condition worsened by living from hand to mouth.

Unfortunately, a true and realistic value of loss does not actually emerge or may remain a mirage. Simply because the assessment of the polluted and impacted environment did not take into account the open market value basis, contrary to the "rule of the thumb" often used and adopted by the untrained damage clerks who represent the oil firm. The end result will be a "gross under-value" which is the reason the oil producing and host communities make trouble for or goes extra mile to do anything at its disposal, including kidnapping, killing and barricading of roads. As a comparison of the results using the Oil Producers Trade Section (OPTS) rates and Open Market Value (OMV) approaches will clearly portray the injustice or value lost on display glaringly.

To all intents and purposes, it was discovered during surveys that the main

cause of the conflict between them is inadequate or no compensation at all. Source: mobile spill 1998. Until and unless, this issue of inadequate or no compensation at all is addressed, the conflict would continue unabated. That is both parties would not know peace. In law compensation payment is recognized, consequent upon the provisions of Land Use Act (1978 S. 29 SS1) (now cap 202 laws of Federation 1990) and oil pipeline Act 1956 (now Cap 338 laws of Federation, 1990). The values arrived at if the valuer confines himself with their provisions gives results short of expectations of the claimants i.e. far from the open market value.

Hence this author recommended both direct and indirect approaches to deal with the incessant conflicts between both parties. That is, arbitration via the use of memorandum of understanding (MOU) from the onset inclusive.

The escape of the crude oil often causes untold hardship to the oil bearing and host community as their sources of domestic and industrial water are polluted and their sources of livelihood are extinguished; sometimes, trekking several miles/kilometers to buy water from areas not affected and/or vacating their original places of residence. For instance Ikwoke in Andoni went in search of places not affected by the oil spill to settle down for their fishing/farming activities. Sometimes, they go all the way from Okrika Local Government Area of Rivers State to Azuzuama community in Southern Ijaw Local Government Area of Bayelsa State and vice versa. Whilst there, they pay rents and suffer all forms of inconveniences, contrary to their wishes. Abode

The oil and gas prospecting firm often foot drags when it comes to the payment of compensation to the oil bearing and host community. Thus, the oil bearing and host community contributes or borrows fund with which to hire and retain the service of the professionals (that is, lawyers, estate surveyors and valuers, land surveyor and the environmental scientist) in their respective professional capacities to claim the compensation damages from the oil and gas prospecting firms; litigations at the Federal High Court inclusive. When the matter is filed by the oil bearing and host community, the oil and gas prospecting firm who branded the incident as a sabotage would either arrange with a shameless chief of the community to say that it was a sabotage after greasing his palms or hire the services of a Senior Advocate of Nigeria and pay him a whopping sum of N3M as consultation fee, and over N300M as professional fee (FHC/UY/CS/16/09 unreported) which is far greater than what is being asked by the oil bearing and host community.

The oil bearing and host community together with her professionals will go to the court to commence and conclude their testimonies. The oil and gas prospecting firm with its agents would not show up. And this may continue for 5-10 adjournments. When eventually they come the learned Senior Advocate of Nigeria announces his and other persons' appearances usually from his chambers to intimidate the oil bearing and host community. On the next adjourn date the learned Senior Advocate of Nigeria is no where to be seen. He has therefore sent his junior in chambers who would merely announce his appearance but without any authority to commence with the

case adjourned to that day. In which case, the lawyer sent would say "*I hold the brief of ....The matter is thereby adjourned to another day*".

Sometimes multiple dates are given, yet the Senior Advocate of Nigeria would not show up. He is busy with a criminal matter at the Court of Appeal or in another High Court, junior in chambers would tell the trial judge and the audience. If the trial judge notices this continuous absence by the Senior Advocate of Nigeria he awards a cost of N2,000.00 or N3,000.00 in favour of the oil bearing and host community, which is too meagre, compared to what the oil and gas prospecting firm derives from their soil on daily basis. Eventually, when the learned Senior Advocate of Nigeria comes he sponsors one motion or the other arising from lack of jurisdiction of the court and time/statute barred which is often granted by some shameless judges. The Senior Advocate of Nigeria does this to derail or delay the case, having known that the oil bearing and host community has a good case.

This situation continues for upward of 5-10 years, before the case will eventually start in earnest, thus prolonged case in the Court of law if not complete abandonment. In between the commencement and conclusion of a case, more than 3 judges might have tried it before they were transferred. Meanwhile, the claimants/plaintiffs are dying of hunger, children's school fees not paid and are prepared to vent their anger at any one nearer to them, including the oil and gas prospecting firm. Sometimes, those original claimants/plaintiffs who started the action have all died and new ones substituted by an application or motion for substitution. The case therefore suffers DE-NOVO ie to start all over, following the transfer of the trial judge. It is only when one party, especially the plaintiffs, concludes its own side that the trial judge may go to his new station with the case file. In which case there will be no DE-NOVO.

When the oil and gas prospecting firm/defendant realizes that the plaintiff has a good case, and as a result may go against her, it resorts to sponsoring troubles in the communities as in Ogoni and Rumuekpe and/or giving or dashing the oil bearing and host community /plaintiff what the lawyers call EX-GRATTIA ie what they feel like giving to the oil bearing and host community/plaintiff, but not even 1/1,000,000th of the compensation figure as assessed by the private sector estate surveyor and valuer retained by the oil bearing and host community. Of which both the "basis and method of valuation" applied by the defendant remain incognito. If by any reason(s) the EX-GRATIA is rejected by the plaintiff only God knows when or whether the oil and gas prospecting firm will pay her or not. Also the rejection of the EX-GRATIA by the oil bearing and host community creates room for conspiracy between the oil and gas prospecting firm and the unsuspecting claim agent who poses as the oil bearing and host community, primarily to receive the EX-GRATIA and divide it with the staff of the oil and gas prospecting firm. Tomorrow the oil and gas prospecting firm arms itself with the so called indemnity certificate issued by the fake claimant (oil bearing and host community).

The main purpose of this study is to investigate the potency or usefulness of arbitration, as a tool of conflict resolution in oil spill compensation payment to the oil producing and host communities by the oil firm. Others include: to examine the method of valuation currently in use and point out its short comings; to discuss the extent of conflict generated as a result of the inadequacies of the current method; to highlight the need for a change in method; and to determine the alternative method(s) that could be used to resolve the impasse

## ARBITRATION

Hemuka (1992) defines arbitration as the simplified process of adjudication whereby the adjudicatory process or judicial role of the courts are kept in abeyance for the time being, while the parties try to settle the dispute between them by a perfectly legal and statutorily sanctioned, but extra-judicial means. Conflict is an active disagreement between people with opposing opinions or principles or fighting between two or more groups of people or countries, while resolution is to solve or end a problem or difficulty approach as the way of considering something (Cambridge 2003). Alamina (1991) and Echomgbe (1998) define compensation as the payment made to countervail the loss suffered by one party (hereinafter called the oil bearing and host communities) as a consequence of the act or negligence of another party (hereinafter called the oil and gas prospecting firm) and in the present circumstance, if it is to be fair, reasonable and adequate, the entire loss suffered as a result of the spillage must be quantified so as to be redressed. This is necessary in order to keep the afflicted community in almost the same position she was immediately before the incident.

Corroborating the views of the above professional valuers, Dixon J. of the High Court of Australia in the case of *Nelungaloo Pty Ltd. v Commonwealth*: "*Compensation is a very well understood expression.....*"

Akujuru (2000). The resultant environmental damages have necessitated a clamour for compensation that will restore the well being of the inhabitants of the region to their expected standard of living. In several instances, this clamour had resulted in conflicts between the oil bearing and host communities on one hand and oil and gas prospecting companies on the other hand. Compensations for damages to the environment have been controversial, he concluded. As cash crops have been valued by reference to the crop compensation rates applicable to the area or the Oil Producers Trade Section (OPTS) rates adopted by oil and gas companies in determining the compensation payable no distinction had been made between acquisition and environmental damages. No scientific basis is adopted in the process.

Otegbulu (2003) submits that in assessing compensation, the oil companies rely on two (2) documents viz. (i) The SPDC of Nig. Ltd.'s lands Department procedure guide and (ii) the oil producers trade section of Lagos chamber of commerce and industry compensation rates (OPTS rates).

Both documents complement each other and are preferred to any State Government compensation rates. Use of these predetermined rates results in "gross under valuation".

### **PROS OF ARBITRATION**

Arbitration could be seen as a process for the settlement of dispute whereby parties to an agreement or contract agree in the event of dispute to refer their dispute to a third party for settlement. Thus, the major pros of arbitration over litigation to individuals and communities are its relative simplicity. That is to say relative to the complicated process of instituting and following up a legal action in the courts or other regularly, constituted tribunals, and it is essentially between two parties who have agreed among themselves to invite a neutral umpire to settle their disputes for them. Most litigation "strictu sensu" are time consuming, any reasonable individuals who perhaps would want a dispute settled quickly and decisively, arbitration saves time and is therefore ideal.

In litigation, there is usually no element of "consensus adidem" ie the parties used not to agree to submit to litigation before either party aggrieved or feels himself aggrieved can institute action in the courts. But in arbitration, there is usually consensus adidem. In other words, the parties agree to:

- (i) Submit any dispute that arises to arbitration and
- (ii) Nominate or agree to nominate a third party to arbitrate between them.

To any reasonable individual, arbitration is ideal in that he will not be taken by surprise as the above comparison would show. Again, the procedures in arbitral cases are much simpler. So long a certain basis requirements are met, arbitration does not require the complicated processes required in the courts. Parties stand to call witnesses, including expert witness as in above, they may tender documents, but the procedure set down in our laws of evidence do not necessarily applies.

Furthermore, it does not appear as if the presence of legal practitioners is required in arbitral proceedings. In fact the individual nominated by the parties need not be judicial personnel. It can be any person. The essential thing is for the umpire to be agreed upon by the parties.

### **CONFLICT SOURCES IN COMPENSATION PAYMENT**

Many factors combine to trigger off lingering conflict between the oil bearing and host communities and oil and gas prospecting firm. These are summarized broadly in two angles.

- (i) From the oil bearing and host community
  - a). Unwillingness of the oil prospecting firm to pay adequate compensation. The sharp refusal of oil and gas prospecting firm to pay the declared valuation compensation figure attracted the wrath of the people. Aware that due to the oil pollution, they suffered incalculable damages which among others included destruction of both their aquatic and marine lives, contamination of

the sources of drinking and bathing water, environmental degradation, long time loss of income, the people took laws into their hands by disrupting normal operations of the oil and gas prospecting firm.

In the opinions of some Chiefs "they wondered why the later should be wicked and mindless of the fate of the people, despite the huge profits annually declared by them, they cannot readily pay them".

The situation is not peculiar to Rivers State, but also in the other States that make up the Niger Delta region of Nigeria. In 1991, because of the insensitivity of Shell Petroleum Development Company of Nig. Ltd. to the fate of Rumuechem people, there was fight which claimed some lives.

b). Carefree attitude of the oil and gas prospecting firm: The worry of the oil bearing and host communities is the non challant attitude displayed by the oil and gas prospecting firm at the early period of noticing oil slick on their creeks, channels, rivulets e.t.c. Because the staff of the oil and gas prospecting firm has nothing to loss directly, they treated with the wave of the hand the report that oil spillage had occurred.

Consequently, before they could complete bureaucratic processes the exercise entailed, the oil effluents had spread to greater areas, through tidal wave causing more havoc and damages.

In an effort to drum the occurrence of the oil spillage into the ears of the oil and gas prospecting firm, the youths had to carry placards. With this type of treatment, the people who may demand for a paltry for thousands of Naira may turn to demand for millions of Naira after retaining the services of the professionals, especially the estate surveyor & valuers.

If, no sooner the oil spillage occurred than it is clamped upon or contained ie. without reaching wider dimension the claimants can ask for and receive small amounts or if settled immediately the conflicts that would have so generated would have been nipped at the bud.

c). Protracted litigation: The oil bearing and host communities having been dissatisfied with the way and manner the compensation matter was handled resorted to court action to coerce the oil and gas prospecting firm to pay. Yet their dreams are not always achieved, consequent upon the long time it takes a court to decide a compensation case. According to 98.2% of respondents interviewed the oil and gas prospecting firm is responsible for the delays in courts today, hence their lawyers send in numerous and unwarranted adjournment letters to the judges, who often times comply.

d). Pursuit of selfish interest by some community representatives: The oil bearing and host communities always frown at the selfish interest of their once accredited representatives who in course of their contacts with the representatives of the oil and gas prospecting firm, got their palms greased. Hence no amount of complaints emanating from the oil bearing and host communities would force the oil and gas prospecting firm to effect a change

of the Judases of the community. The oil bearing and host communities would take it as a challenge and as a reason to create an un-conducive atmosphere for the operations of the oil and gas prospecting firm.

- e). Desire for infrastructures: my interviews with the respondents unanimously revealed that apart from the immediate financial succor in form of compensation, expected from the oil and gas prospecting firm, the oil and gas prospecting firm should in addition provide social infrastructural facilities for the people such as: provision of education and health facilities and tarring of roads. The scenario according to the people is akin to destroying "the bird that lays the golden egg". It is a puzzle why the oil and gas prospecting firm after operating for more than a decade shall be proud of immeasurable rate of progress and growth while the oil bearing and host communities should suffer degradation, devastation and retrogression in corresponding rate.

In the conflict between Rumuechem community in Rivers State v Shell Petroleum Development Company of Nig. Ltd and Warri Community in Delta State in early 90's, people vehemently demanded the construction and expansion of roads, construction of health centres, schools and awards of scholarship and contracts to a significant number of youths, participation in the rural electrification programme of the Federal/State Governments, offer of plum jobs to their youths etc. In reaction to the above demands the oil and gas prospecting firm considered it absolutely unreasonable to embark on such social projects after compensating the affected persons or communities for damages done to their farms.

Consequent upon the above stubborn stance of each party, the communities tenaciously resisted every effort and scheme employed by the oil and gas prospecting firm to continue operation, like the deployment of mobile police officers. In the clash that ensued, some oil locations and sophisticated equipment were set ablazed, two mobile officers were killed while the villages also lost about 30 people.

- a). Corruption: 100% of the respondents confirmed that the officials of the oil and gas prospecting firm want every one kobo paid as compensation to be shared between them and the oil bearing and host communities. This is sometimes resisted or accepted by the oil bearing and host communities. A refusal by the oil bearing and host communities to share it with the oil and gas prospecting firm will lead to the conclusion of the matter by the oil and gas prospecting firm. Sometimes with this development, the oil bearing and host community resorts to court action.

- b). From the oil prospecting firm's angle

**Over-valuation:** The oil bearing and host community conspires with the valuers or claim agent to over-value their interests affected by pollution. It is the opinion of this writer that the oil and gas prospecting firm uses this reason to condemn the good works of valuers; hence every valuation is hinged on the result of inspection, the principle, method and basis of that purpose. Why does it take them a minimum of 3 years before coming for inspection, after the incident has been officially reported?



**Sabotage:** Each time there is an oil spill, it is often alleged by the oil and gas prospecting firm that their oil installations were tampered with at night by the villagers which resulted into pollution and for that reason the oil and gas prospecting firm refused to pay. Where were they when their oil installations were tampered with? This implies that there is no provision for the surveillance services in their acquired right of way. If at all this is truism the percentage of such incidents is negligible.

**Uncompromising posture of the claimants:** In the opinion of the oil and gas prospecting firm, even where reasonable compensation is offered to the oil bearing and host communities, it is often rejected and the matter goes to court. Who determines the adequate compensation, is it the oil bearing and host communities or the oil and gas prospecting firm or the oil bearing and host community's consultants?

**Multiplicity of agents:** According to the staffers of the oil and gas prospecting firm, it is usually inundated with chains of agents with different powers of Attorney to claim the compensation payment, of which they would authenticate the claims of the attorneys. In this situation, sometimes they refused to deal with any of them (Attorneys), preferring to deal with the claimants directly.

**Economic Down Turn:** The oil and gas prospecting firms hinged the payment of inadequate compensation on the economic down turn facing the country. As the Apex Government of Nigeria that owns 60% shares often finds it difficult to release the quota of NNPC - NPRC or has reduced drastically, for example.

**The ugly behaviour of community:** It is an allegation which has been confirmed that pollution cases linger in courts because of the behaviour of the local chiefs who always seek for their personal pockets.

## METHODOLOGY

The author has direct experience and involvement in over 3,500 oil pollution compensation valuation assignments. Some of which are pending in Federal High Courts in Port Harcourt, Yenegoa, Umuahia, Uyo, Calabar and Lagos respectively. The researcher went further to interview some of the experts namely private sector valuers who are involved in the oil spill compensation valuation and the claimants (i.e. community leaders of the study area and other places), land surveyors and environmentalists, some staffers of both Federal and State Ministries of Environment, Directorate of Petroleum Resources (DPR) of NNPC and NPRC, Lawyers and claim agents. Review of relevant textbooks, newspapers, journals, magazines including office files on the subject matter was also helpful. Lastly, the researcher designed Questionnaires and administered them on the respondents to elicit some vital piece of information which helped him to explain the situation on ground and proffered solution to the situation. A copy attached for ease of reference

The study is focused on all communities in Okirika Local Government area, wherein either it is an oil bearing community or oil pipelines traversed through it or

having the same terrain. Thus, the population comprises of all categories of persons (women and children inclusive) who fish, farm and live within the study area, where the incident is a regular event. Indigenes of the study area who are gainfully employed in other sectors of the economy (i.e. other business men and women and civil servants) are excluded. This is because the researchers do not see them as fishermen and women who actually bear the massive and unpalatable consequences of oil spill or who come in direct contact with oil spill consequences/effects. This category of persons was chosen because of their active participation in fishing/farming activity and who incur the colossal losses (that is, both quantifiable and unquantifiable) should any oil spill occur within the neighbourhood where they operate.

Other pertinent characteristics of the population are high propensity to consume with low propensity to save, as they live from hand-to-mouth and their itinerant nature i.e. moving from creek-to-creek- and from fishing settlement-to-fishing settlement in search of good yield/harvest. Due to financial constraint, it was not possible to carry out wide range survey within the whole Niger Delta region (Bayelsa, Rivers, Cross Rivers, Akwa Ibom, Delta, and Edo). The study was therefore carried out in Okirika communities, having an area of over 950 hectares or thereabout.

As it was impracticably impossible to study the whole Niger Delta, where the incident is a regular event and other logistic made the researcher to consider a sample of the population. The unit of analysis adopted for this study is all the communities in Okrika local government Area, either producing oil or the oil pipelines traverse through them and/or having the same terrain. As a result of the nature of the study area, a sample size of 41 communities was selected. This number was considered along side with the fishing population and the number of buildings.

In order to reduce the error associated with sampling, efforts were geared to study all the relevant sampling techniques, ranging from sampling to non sampling techniques viz systematic, cluster, stratified and quota. Others include Accidental, Judgemental, Multiple Stage, Panel and Double Sampling (Asika, 1991). As such it becomes easier or obvious to adopt or apply random, accidental and Judgmental sampling techniques, instead of systematic, stratified, Area, Panel and Double sampling techniques. Randomness in the selection was assured by the choice of every community in the Local Government Area.

Hence, randomization is a procedure of giving every subject in a population an equal chance in appearing in the selection (Asika, 1991). A researcher who is particularly interested in having a feeling or an idea of a phenomenon of interest may find convenience sampling very convenient (Asika, 1991) as interview is an integral part of this technique. In choosing some sampling elements the researcher may be guided by what he considers typical cases which are most likely to provide him with the requisite data or information (Asika 1991). For instance, cases of oil spill are typical of Niger Delta Region only. Consequently, we adopted the Random, Accidental and Judgmental sampling techniques, owing to those reasons. There are

similarities among the elements that make up the population of the study. Thus, a study of a few of these elements will give the researcher sufficient knowledge of what obtains in the entire population. Pattern of distribution or dispersion of the elements that make up the population of the study, from Island to Ogoloma are scattered or dispersed. The fishermen and women are not steady in one place, they move about in search of places of good yield. Thus, interview could be used to decipher the information the researcher would need, even on the surface of the sea. That is, inside the boat or at the foreshore or jetty or at any place one could see them. On the whole, one hundred and sixty-eight copies of study questionnaire were printed and distributed to the respondents communities. Of this number, one hundred and fifty-eight completed copies of questionnaire were recovered. This constituted 93.7% of the total number of questionnaire distributed. The other ten were either found to be inconsistently or carelessly completed or lost in transit as at the time of analysis. Another batch of 158 were distributed to the professionals and were all returned.

## RESULTS AND DISCUSSION

**Table 1:** Location of the communities/settlements affected

Options	Frequency	%
Oil firm presence	86	54.40
Pipe lines pass	50	31.65
Terrain	22	13.95
Total	150	100.00

**Source:** Field Survey 2010

From the foregoing, all the respondents confirmed the location of its community/settlement in Okrika L.G.A as either oil bearing/host community or having the pipeline of oil firms traversed in their communities or having the same terrain. In which case, once one community is affected by the oil spill, others who were not affected would be affected later through the action of tidal current because the creeks, rivulets, channels etc are interconnected.

**Table 2:** Means of livelihood of the respondents fishermen and women

Number of respondents	Frequency	%
No. of fishermen	158	100

**Source:** Field Survey, 2010.

The result of the analysis above indicated that all the respondents sampled are fishermen and women who had bore the brunt experience of oil spill and had lost one item or the other.

**Table 3:** The availability of oil companies

Options	Frequency	%
Yes	118	75
No	40	25
Total	158	100

**Source:** Field survey, 2010

¾ of the respondents confirmed the presence of oil firms in their communities, while ¼ agreed that oil company's pipeline pass through their communities.

**Table 4:** the admittance of liability immediately or subsequently

Options	Frequency	%
Immediately	156	98.73
Subsequently	2	1.27
Total	158	100.00

**Source:** Field Survey 2010

In the opinion of the majority of the respondents, oil firms did not admit liability immediately, whilst minority few opined that it admitted liability immediately. That is why have been at Federal High Courts, Port Harcourt since 1994 - 2010 to pursue the litigation. Why Arbitration is preferred over litigation, the 100% of the respondents agreed to the fact that its relative simplicity saves times and most ideal. *Consensus adendum* agreement to submit any disputes to arbitration and nomination of a 3rd party. Arbitration is ideal as no party is taken by surprise. Hence, all the respondents confirmed arbitration as the best approach to conflict resolution in oil spill compensation payment rather than litigations.

Inadequate compensation occasioned by a wrong valuation methodology is the bone of contention. Thus, open market value should be accorded recognition and its rightful position in the compensation palaver. The dictum "what is good for the goose is equally good for the gander" should be upheld by the oil firm. The dictates of Corporate Governance reveals that the operations of oil firms, causes and effects of oil spill are the same worldwide. Yet the activities and behaviour of the oil firm in Niger Delta Region of Nigeria leave much to be desired. They can pay billions of dollars for oil spillages in Mexico as compensations, but will pay peanuts as compensation or no compensation at all or can use the word "sabotage" at random to deny liability. There is no effective surveillance operations on the pipelines as to detect when the pipeline burst or equipment/facility failure and at worst sabotage.

To add salt to injury, the pipes laid since 1959 when oil was seen in commercial quantity have not been replaced. And when the oil spill is reported no immediate action is taken thereby exposing the inhabitants of the areas to different forms of danger and colossal losses. The study has also unraveled a fact that this inadequate compensation was occasioned by our peculiar legal system. It is against this backdrop that the writer suggests that Federal Government of Nigeria should "privatize" her shares in the oil sector, especially in the down stream sector to match with their policy of deregulation. This, the researcher believes will make the oil firms sit up, appreciate the importance of our environmental degradation and face the gravity or penalty or consequences of their actions. Part of the conflict also arose from the engagement of wrong professionals for assessment by the defendant.

A situation where a primary six or school certificate holder is made to work as a damage clerk (ie, who does not know the ABCD to Z of valuation is asked to decide the fate of the claimants or a valuer who is trained for the job and who is

engaged but is now imposed a limit or not relying on his valuation figure would rather compound the conflict, rather than solving it. The study further revealed that the oil producing and host communities would expect the oil firm to offer them other packages-construction of roads, bridges, schools, health centres, market stalls, award of contracts and scholarships to their deserving sons and daughters, so that they would feel the impact of their God given resources. A situation where they would be bearing all forms of ecological degradations, without corresponding goodies makes them to get aggrieved.

In the same vein, the researcher discovered that all these "hullabaloo" between the two parties, is because our nation is not practicing true federation. True federation in United States of America means that land owners would tap their mineral deposits in, on, under and above the land and pay taxes to the government. Absence of true federation aggravates the demand for resource control by the minorities and formation of villantee groups like Niger Delta Militia, Oduduwa progressive congress etc

### **CONCLUSION AND RECOMMENDATIONS**

To all intents and purposes, arbitration is the best approach in resolving the impasses between the oil firms and the oil bearing and host communities, sequel to its obvious pros over litigation which was confirmed by the study as in table 5 above. As some oil spill cases which commenced in 1994 have not been resolved till now, some of which are still pending at Court of Appeal level? And each party is still tirading accusations and counter-accusations to each other. Hence, the situation has not identified any known antidotes to cure the defects, except arbitration. As lack of agreement between them often results in destruction of equipment/tools, loss of income, loss of company/man hours, no peace, abduction/kidnapping of expatriate/indigenous staffers. Thus, prompting the researcher to recommend both direct and indirect approaches to deal with the incessant conflicts between both parties. As conflict is an ill wind that blows no person any good.

When the data derived from the field survey was treated statistically, we derived the following:  $t_{cal} = -2.57$  and  $t_{tab} = 0.975$  respectively, suggesting that if  $t_{cal}$  is less than  $t_{tab}$ , we accept the null hypothesis that there is no significant relationship:-  $H_0: x = y$ ,  $H_0: x \neq y$ . Conversely, if the reverse is the case, there is significant relationship between the open market value compensation valuation as a tool for conflict resolution and oil bearing and host communities. Having examined the sources of conflicts in oil spill compensation payment between the former and the latter, the following approaches to resolving or minimizing the incessant conflicts are hereby recommended.

#### ***Direct approaches***

- i) Arbitration: The pros as examined above
- ii) Employment of in-house estate surveyors and valuers: Oil firms should give direct employment to estate surveyors & valuers who should be entrusted

with the inspection and assessment of damages when oil spill occurs and not the elementary six or WASC passers as damage clerks.

The current situation whereby multi-national companies like ELF, SPDC, NAOC do not have estate surveyors & valuers directly employed by them does more harm than good in matters of compensation. Also, the situation whereby the oil firms apply pre-determined rates, some of which are ridiculously low and out of the date, items to which consultant estate surveyors & valuers engaged by the oil bearing and host communities applied current rates, is a serious source of conflict. When two valuers work together conflict does not arise.

- iii) Prompt payment of compensation should be encouraged; it is the submission of this author that if compensation is paid promptly, the sole cause of the conflict would have been 96% addressed.
- iv) Infrastructural facilities: In addition to the compensation payable, the oil bearing and host communities should feel the impact of the oil and gas prospecting firm by way of enjoying the infrastructural facilities installed by the oil and gas prospecting firm, so that the notion of being neglected would be avoided.
- vi) Multiplication of claim agents should be eradicated, as they say "too many cooks spoil the soup"

#### ***Indirect approaches***

- i) An effective patrol should be made on daily basis to primarily identify when an oil spill occurs and take immediate steps to stop and cleanse it. Care should be taken when loading crude oil to stop incessant incursion of crude oil on the surface of the river which results in pollution.
- ii) A joint inspection between the oil bearing and host communities and the oil and gas prospecting firm should be embarked upon, determine the extent and degree of the reported pollution and the specific items affected to allay cheating on both sides.
- iii) Both the Federal and State Ministries of Environment should as a matter of urgency define operational guidelines for the handling of the environment.
- iv) In order to ease the delays characterizing compensation claims and payment, the government should put its machinery in motion to establish a VALUATION COURT in respective states of the Federation to be chaired by the chairman of the local branch of Nigerian Institution of Estate Surveyors & Valuers and assisted by the chairman of Nigerian Bar Association, Nigerian Institution of Quantity Surveyors, Nigerian Institute of Architects, Nigerian Institution of Builders etc.
- v) Environmental Impact Analysis (EIA) which takes inventory of pre-pollution items on the ground is recommended to avoid cheating as alleged by the oil and gas prospecting firm
- vi) Agreements reached between the oil bearing and host communities and the

- oil and gas prospecting firm should be religiously honoured. Any party reneging at the eleventh hour should be sanctioned.
- vii) Whereas, it is imperative that the oil bearing and host communities should provide the congenial atmosphere for the oil and gas prospecting firm to operate and succeed, the oil and gas prospecting firm should give employment opportunities to the youths, as a hungry man is an angry man.

## REFERENCES

- Akujuru, V. A.** (2000). Issues in Environmental Valuation. Being Branch of Nigerian Institution of Estate surveyors and Valuers Two-day workshop held on 12th and 13th December, at Banquet Hall, Hotel Presidential, Port Harcourt. p2.
- Akujuru, V. A.** (2005). Determining the value of an Oil/Gas bearing land for compensation in a Deregulated Economy. Being a paper presented at the 35th Annual conference of Nigerian Institution of Estate surveyors and valuers at Hotel Presidential, Port Harcourt, Rivers State, Nigeria between 5th -10th April.
- Alamina, B.** (1991). Valuation Report for Compensation Purpose. Re-oil spillage at Alakiri affecting Okrika creeks. Unpublished report.
- Asika, N.** (1991). Research Methodology in Behavioural Sciences. Lagos: Longman Nigerian Plc.
- Barton, D. N.** (1994). Economic Factors and Valuation of Tropical Coastal Resources. Bergen. The research council of Norway, University of Bergen, Norway. P32.
- Barum, A. and Mackmin, D.** (1983). The Income Approach to Property Valuation. London: Routledge and Kegan Paul.
- Bockstael, N. E and Mcconel, K. E.** (1981). Theory and Estimation of the Household Production Functions for wild life Recreation. *Journal of Environmental Economics Management*.
- Cambridge International Dictionary of English** (xxxx) (Low Price edition). London. Cambridge University Press.
- Carson, R. T.** (1997). *Valuation of Tropical Rainforests: Philosophical and Practical Issues in the use of Contingent Valuation, Ecological Economics*.
- Dharmatne, G. S. and Ivar, S.** (1999). Approach and Methodology for Natural Resources and Environmental Valuation. Centre for Resources Management and Environmental Studies, University of West Indies, Cave Hill Campus, Barbados p104
- Echomgbe, N. A. C.** (1998). Valuation Report for Compensation Purpose. Re:-oil spillage affecting farm land/swamps and creeks belonging to Umu-Azikie family of Edeoha Community in Ahoada East Local Government Area of Rivers State. Unpublished.
- Finine-Fekumo, J.** (1998). *Compensation for Oil Pollution in Nigeria: "A new Agenda for sustainable development"* in S. Simpson and O. Fagbohun (Eds.) *Environmental Land Policy* (1998) - law centre, Faculty of Law, Lagos State University).
- Freeman, M.** (1994). The Measurement of Environmental and Resources Values: Theory and Methods. Washington D.C.
- Freud, J. and William, F. J.** (1974). Modern Business Statistics. Pitman Publishing Ltd. London. p128.
- Gberesu, D. A.** (1998). Oil Spillage: A man-made Hazard in Rivers State of Nigeria. "Published proceedings of the International Workshop on Natural and Man-made Hazards in Africa (edited by Onuoha, K.M.S Ofodile M.E) fab. Education BLKS. Jos Nigeria in Ahoada East Local Government Area of Rivers State. Unpublished. p21
- Hemuka, N.** (1992). The Nigerian Institution of Estate surveyors and Valuers professional Examinations 1983 - 1988 questions and answers on legal studies. Published by Hemuka real estate publications Benin city. Pp 33-35.

- Holdgate, M. W.** (1977). A Perspective on Environmental Pollution. Published in Environmental Law by Justice Thorton and Silas Beckwith. p81.
- Ibeanu, L.** (2000). Oiling the friction. Environmental Conflict Management in the Niger Delta, Nigeria. p18.
- Land Use Act** (1978). S. 29 SS1 (Now Cap 202 Laws of Federation 1990).
- Mekhaus, S. and Lobber, D. J.** (1996). International Ecotourism and the Valuation of Tropical Rainforests in Costa Rica. *Journal of Environmental Management*, (47) 1 -10.
- Oil pipeline Act 1956** (Now cap 338 Laws of Federation 1990).
- Otegbulu, A. C.** (2003). Methodology for Improved Natural Resource (Environmental) Valuation Practice in Nigeria. Being a paper presented at Round Table on Natural Resource Valuation. Towards a legal framework for improved natural resources decision making in Niger Delta organized by Bioresources Development and Conservation Programme, Nigeria and Environment Law Institute Washington D.C. P44
- Onyekakeya, L.** (2005). Oil Pollution: causes, consequences and control strategies. The Guardian Newspapers, Tuesday June 14 & 21. pp23-24.
- Pearce, D.** (1998). Economics and Environment. Edward Elgar Publishing Limited. p13.
- Perman, R. Ma, Y, MacGilvray, J. and Common M. S.** (2003). *Natural Resources and Environmental Economics* (3rd Ed). Harlow. Longman, p73.
- Petroleum Act 1969** (now cap laws of Federation, 1990).
- Punch Newspapers**, Monday July 12, 2004. p18.
- Taylor, J. R. and Kinner, T. C.** (1979). Marketing Research-An Applied Approach, New York: McGraw HillBook Company,
- Zanden Bergh, J. C. J. M.** (ed) (1999). Handbook of Environmental and Resource Economics, Edward Elgar, Cheltenham.