



**NIGER DELTA UNIVERSITY**  
WILBERFORCE ISLAND, BAYELSA STATE.

**56<sup>th</sup> Inaugural Lecture**

**PETROLEUM PROSPECTING  
IN NIGERIA: PARADOX OF  
CURSES AND BLESSINGS**

**DAMFEBO KIERISEIYE DERRI**

B.Sc; LL.B; BL; LL.M; Ph.D in Law

**Professor of Law (Oil & Gas),**

Niger Delta University, Wilberforce Island, Bayelsa State

Dean, Faculty of Law

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**NIGER DELTA UNIVERSITY**  
Wilberforce Island, Bayelsa State, Nigeria

**Motto**

Creativity, Excellence, Service

**Vision**

To be a centre of excellence defined by well articulated programme that will produce creative and innovative minds

**Mission**

To strive to maintain an international reputation for high quality scholarship, research and academic excellence for the promotion of the socio-cultural and economic well-being of mankind

**NIGER DELTA UNIVERSITY ANTHEM  
(THE BRIGHTEST STAR)**

Like the brightest star we are, to lead the way  
To good education that is all our due,  
The dream of our fathers like the seed has grown;  
Niger Delta University if here to stay.

In all that we do, let us bring to mind  
Our duty as staff and students of N.D.U  
Ev'rywhere to promote peace towards mankind.  
Creativity, Excellence and Service

Let us build on this noble foundation  
And with love, let our dedication increase,  
To rise and uphold this noble vision  
Ev'ry passing moment let our zeal never decrease.

**CHORUS**  
Rejoice, great people old and new, rejoice  
For the good fruit through us is shown;  
Be glad in our worthy contribution  
To the growth of humanity (x2)

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## **Protocol**

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Royal Fathers

Distinguished Guests

Members of the Press

Ladies and Gentlemen

## **1. PREAMBLE**

My professional career started as an applied chemist. There was a transition to law. So, although I started as a chemist, I ended up as a professor of Oil and Gas Law.

In this regard, I take the liberty of this moment to thank the former Vice Chancellor of this University, the late Professor Samuel Gowon Edoumiekumo for promoting me to the rank of professor. I also thank Professor Allen A. Agih, the reigning Vice Chancellor of this University for giving me the opportunity to deliver this Inaugural Lecture in front of such a distinguished audience, an audience studded with luminaries from all walks of life who have come and hear me speak. If my presentation agitates your minds to provoke more intellectual arguments, I will be absolutely thrilled.

In this lecture, Mr. Vice-Chancellor, Sir, I want to discuss the tension between the advantages that the government and the oil industry stand to gain and the difficulties that the host communities face, or the people who reside in the oil and gas-rich areas, must overcome. If having oil and gas resources on one's property is a blessing or a misfortune for that person is the main topic of the presentation. The legislative branch, the judicial branch, the federal and state governments, the oil and gas companies, as well as the owners of the oil and gas bearing lands (host communities), are all seeking a solution. They are all seriously analyzed. I discovered that the law and the other institutions mentioned above help advance the objectives of the governments and the oil firms, much to the agony and perplexity of the host

populations. Let me now proceed to the main topic of the day, the Inaugural Lecture, Chairman and Vice-Chancellor, Sir.

## **2. INTRODUCTION**

In the world, oil and gas are in the spotlight. This is true as certain nations<sup>1</sup>totally depend on oil and gas to maintain their economic viability, whilst other nations who don't produce oil<sup>2</sup>rely on petroleum products as feedstock for their respective industries. Gas and oil were once categorized as petroleum<sup>3</sup>and handled accordingly. The discovery that gas was associated with oil in the same reservoir served as the foundation for this method<sup>4</sup>. Large amounts of natural gas were recently discovered to exist separately. As a result, the present trend is to distinguish between the two names, while in some contexts, petroleum can be used to refer to both. These vital mineral resources have undergone various stages of development over the years. The next topic of my presentation is the background of this development in Nigeria and around the world.

### **(a) History of Petroleum**

The history of oil can be found in antiquity. There was mention of it in the Christian scriptures. In 440 BC, Job was remembering his childhood and exclaimed, "And torrents of

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<sup>1</sup>These Countries include Nigeria, Libya, Saudi Arabia, Iraq, etc.

<sup>2</sup>Examples of such Countries are Japan and Singapore.

<sup>3</sup>The word 'petroleum' comes from Latin and means "rock oil". It is customarily used to identify two closely related compounds – natural gas, also known as methane, and oil. Both substances seep to the surface through cracks in the earth.

<sup>4</sup>The 'oil' in this context refers to crude oil. The adjective 'crude' is consciously chosen because the 'oil' is not pure, since it contains other substances such as kerosene, gasoline, diesel, naphtha, lubricating oil, paraffin, wax, asphalt, pitch, bitumen, and tar.

oil gushed out of the rock at me."<sup>5</sup>In a similar spirit, Noah built a powerful vessel in accordance with divine instructions and sealed it with petroleum-derived pitch (tar) to prevent leaks. In the Holy Bible, it is said as follows:

Make thee an ark of gopher wood;  
rooms shalt thou make in the ark  
and shalt pitch it within and without  
with pitch.<sup>6</sup>

Petroleum was distilled to produce the pitch (tar) that Noah used in the Bible. In the past, pitch was used to make waterproof wooden ships and structures.<sup>7</sup>The Middle East, where Noah lived, continues to be the world's top producer of petroleum products. Thus, pitch or tar was accessible when Noah lived. Thus, petroleum was employed for many centuries before the advent of Christianity.

Petroleum has been used since the beginning of the ancient Egyptians, Greeks, Romans, and Indian civilizations.<sup>8</sup>Reports and essays with supporting documentation from eminent historians, travelers, traders, missionaries, and scientists,<sup>9</sup> such as Herodotus, Pliny, Dioscorides, Pedanius, Marco Polo,<sup>10</sup> Walter Raleigh,<sup>11</sup> Robert Bearl of Huntington<sup>12</sup>, Robert Mallel<sup>13</sup>, Sir William

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<sup>5</sup>See the Book of Job 29:10

<sup>6</sup>See the Book of Genesis 6:14

<sup>7</sup>Hornby, A. S. *Oxford Advance Learner's Dictionary of Current English* (8<sup>th</sup> ed). Oxford University Press.

<sup>8</sup>Kayode, S. (ed). *World Oil and Gas Source book*. (Lagos: Luber Services Associate, 1988) p.18

<sup>9</sup>*Ibid*

<sup>10</sup>In 1273, Marco Polo, on his way to China, records a thriving oil trade around Baku on the Caspian Sea. See *World Oil and Gas Sourcebook*, note 8, p.8.

<sup>11</sup>In 1595, Sir Walter Raleigh chalked his ships with Trinidadian pitch. See note 8 above.

<sup>12</sup>Robert Bearl Huntington, U. K. patented the first oil drilling rig in 1844.

Logan<sup>14</sup>, and Rudolf Diesel<sup>15</sup>, demonstrated understanding of petroleum in many global regions.<sup>16</sup>

Early in the 19th century, when the substance started to cause disturbance in brine wells, modern knowledge of petroleum was first discovered by an American named Samuel M. Kier.<sup>17</sup>Petroleum was first packaged and sold in 1846 as medicinal oil to treat illnesses.<sup>18</sup>Later, he began distilling crude oil and selling it as lighting oil.

The first oil corporation, the Pennsylvania Rock Oil corporation, U.S.A., was established in 1853 by another American named George Brisel and a few friends. The production of crude oil from hand-dug wells in Romania reached 275 tons in 1854.<sup>19</sup>There were also rumors that in 1857, an Ontario well that had been drilled to a depth of 65.5 feet had discovered oil that was running freely.<sup>20</sup>In 1956, Seneca Oil Company, USA overtook the Pennsylvania Rock Oil Company and Colonel Edward L. Drake was chosen to carry out significant field investigations on the leased territories close to Titusville, Pennsylvania. These investigations prompted the 69.5-foot-

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<sup>13</sup>Robert Mallet suggested to the Royal Irish Academy in 1846 that artificially created seismic waves could be used to explore the oceans.

<sup>14</sup>In 1848, Sir William Logan, Director of the Canadian Geological Survey notes the coincidence of oil seeps and artidiclinial traps.

<sup>15</sup>In 1896, the German Engineer, Rudolf Diesel, patented the compression engine which, with modifications, has born his name ever since.

<sup>16</sup>See note 8 above

<sup>17</sup>*Ibid*

<sup>18</sup>The streets of Babylon were paved with bitumen (a petroleum product), and the Egyptians also used petroleum substances for medicinal purposes and mummification process. See Awake (2003). "Oil: Will it ever Run Out?" Awake, November 8, 2003, p.3

<sup>19</sup>Atsegbua, L. (2004). *Oil and Gas Law in Nigeria: Theory and Practice* (Benin: New Era Pub., p.1).

<sup>20</sup>*Ibid*

deep well to be drilled,<sup>21</sup> under the direction of a brine driller and blacksmith W. A. Smith. The Well produced the first commercially significant amount of 20 barrels of oil per day on Saturday, August 27, 1859, sparking modern petroleum investments that eventually extended to other regions of the world. The oil era began as a result.<sup>22</sup>

Since the area on which the production was carried out was leasehold, the lessee had the right to utilize the oil during this initial phase of oil and gas production and control any oil found from the leased land. As a result, issues about payment for the compensation of land were not relevant. Since the operations were performed by those who possess the land's title as leaseholders, any remuneration was discussed when the lease was being negotiated. Environmental concerns were not given the attention they get now, and compensation claims were covered by the outdated tort of nuisance. It cannot be stated that landowners faced any problems during the early stages of the development of petroleum.

### **(b) Development of Oil in Nigeria**

Nigerian oil exploration operations were first carried out in the Okitipupa region (now Ondo State), some 200

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<sup>21</sup>c/f The first successful oil in Nigeria which was drilled in 1956 measured 12,008 feet deep.

<sup>22</sup>For a detailed discussion on the evolution of the Petroleum Industry in the USA, see Givers, P. H. (1974). *The Early Petroleum Industry*. (Philadelphia: Porcupine Press); Dukert, J. M. (1980). *A Short Energy History of the United States*. (Alpha New Jersey: Sheridom Printing Co.); Daniel, Y. (1991). *The Prize*. (Simon & Scuster Ltd.); See also Akaaka, F. O. "Oil and Gas – The Issue of Ownership and the Nigerian Situation". *Fida Journal*. Vol.2, p.72; and Atsegbua, L. note 19.

kilometers east of Lagos, by the German Nigerian Bitumen business in 1908.<sup>23</sup>

The First World War caused the corporation to stop operating after its unsuccessful quest for oil. Later,<sup>24</sup> in 1937, a new firm called the Shell D'Archy was formed by the Royal Dutch and Shell Consortium (Dutch and English interests). The Second World War similarly halted Shell D'Archy's operations. The Company did not resume active business until 1946. The Minerals Act had been passed by that time. This colonial law gave the British Crown jurisdiction over mineral oil ownership and management in Nigeria. The Act's Section 3(1) states:

The entire property in and control of all mineral oils on, under or upon any lands in Nigeria, and all rivers, streams and water courses throughout Nigeria, is and shall be vested on the Crown ...<sup>25</sup>

The problem facing Nigerian communities that serve as petroleum host communities began with this. To become Shell-BP, British Petroleum (BP) partnered with Shell D'Archy<sup>26</sup> in 1946. Shell-BP was given an oil exploration

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<sup>23</sup>See Omorogbe, Y. *Oil and Gas in Nigeria*. (Lagos: Malthouse Ltd. 2001). p.5. See also Atsegbua, L. note 19.

<sup>24</sup>The German Bitumen Company did not return to Nigeria after the First World War, because Germany lost the War and Nigeria was under British influence.

<sup>25</sup>This appears to be the origin or genesis of government's ownership and control of oil and gas in Nigeria.

<sup>26</sup>Shell-BP continued operations in Nigeria until the BP shares were nationalized in 1979.

license (OEL) by the British government that included all 37,000 square miles of Nigeria.<sup>27</sup>

Beginning in 1953, Shell-BP relocated its activities to the Eastern region of Nigeria, establishing its headquarters in Owerri before moving to the Niger Delta. The Company established an operational base in the Oloibiri hamlet in the Niger Delta, which at the time served as the administrative center for the Ogbia district. After conducting several tests in this region, the company found its first commercial oil in Otabagi from a well of 12,008 feet. The finding was made at Oloibiri, according to the literature now in circulation,<sup>28</sup> however, my field research shows that the first oil well was discovered on Otabagi land, which was where it was discovered.<sup>29</sup> The initial oil workers may have stayed there with their equipment, which is how the idea of crediting the finding to Oloibiri may have come about, and that location, in addition to its size, served as the center of the local towns.<sup>30</sup> The real owner of the property where an oil plant is located is also faced with a problem when the facility is given the incorrect name. The wrong community frequently receives the attention that should normally go to the host community, it may lead to disputes between communities or families.

<sup>27</sup>Schatzl, L. H. (1967). *Petroleum in Nigeria*. (Ibadan: Oxford University Press, Ibadan).

<sup>28</sup>Olisa, M. M. (1987). *Nigerian Petroleum Law and Practice*. (Lagos: Jonia Ventures Ltd., 2<sup>nd</sup> ed., p.5).

<sup>29</sup>Kieriseiye, D. (2010). *Legal Regime of Compensation for Victims of Oil and Gas Operations in Nigeria*. (Unpublished Ph.D Thesis, Ambrose Alli University, Ekpoma, p.41)

<sup>30</sup>*Ibid*

At Afam in Rivers State, another discovery was made around the end of 1956.<sup>31</sup>The fast development of these fields led to the first Nigerian crude oil export to Europe in 1958.<sup>32</sup>Between the Well-head and the exporting point, the crude oil had to travel across great distances. The Oil Pipelines Act of 1956 was passed as a set of regulations to address the demands of this change in Shell-BP's business practices. The Petroleum Profits Tax Act, which had a retroactive start date of January 1, 1958, was established in 1959 with the specific aim of taxing realized profits of oil companies in a different manner from those of other businesses.

The Petroleum Profits Tax Act was passed, but the host communities' interests were not advanced by the federal government. This puzzle definitely got my attention.

### **(c) Utility of Oil and Gas**

There is no doubting that oil and gas have a wide range of uses. They are used as fuel for automobiles, vehicles, heating units, and the generation of electricity. Petroleum products are found in a wide range of cosmetics, paints, inks, medicines, fertilizers, plastics, and a plethora of other products. Compared to other materials, oil and gas offer the widest range of applications. Nobody disputes that oil and gas are essential to modern industry. Without oil and gas, human life will undoubtedly change significantly. This is

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<sup>31</sup>Ajomo, M. A. (1987). "Law and Changing Policy in Nigeria's Oil Industry" in Omotola, J. A. (ed) *Law and Development*. (Lagos: University of Lagos Press, pp.84-86)

<sup>32</sup>*Ibid*

what explains the strategic significance of oil and gas in the lives of nations.

These vital mineral resources are primarily taken from private lands owned by individuals in this country's Niger Delta region. The goose that produces the golden eggs is so discovered beneath some people's private property.

### **3. SOURCES OF CURSES AND BLESSINGS IN PERSPECTIVE**

Oil and gas resource extraction has caused a significant deal of trouble for landowners. They encounter many dangers. They face many issues and difficulties. While the government is the primary benefactor of the production of natural resources, they are in a difficult situation. The main topic of this inaugural lecture is how much landowners are impacted by the extraction of oil and gas.

#### **(a) Statutes or Legislation**

Colonialism and colonial rule in Nigeria are to blame for the issue of landowners with oil and gas resources. This is due to the Colonial Government's departure from the real definition of land in the Minerals Act. According to the established definition of land, the depth, height, onness, and below of the land are completely part of the land. It is said that *quic quid plantantur solosolocedit*. This means that whoever owns the land also owns anything attached to, below, or beneath it. Land with oil and gas is considered to be owned exclusively by the proprietors of the land, according to the original concept of land. However, this commonsense understanding of land was disregarded, and a division was formed between land and minerals through

legal fiat.<sup>33</sup>As a result, minerals were excluded from the definition of land.<sup>34</sup>

Right from the British era, the legal division of minerals and land within the scope of the idea of land has proceeded unabatedly. This serves to defend governmental authority over minerals, which are, by definition, a component of land.

### **(i)The Minerals Act, 1946**

Colonial legislation is what the Minerals Act of 1946 is all about. It grants the British Crown complete ownership and control over all minerals connected to oil. The Act stipulated:

The entire property in and control of all mineral oils on, under or upon any lands in Nigeria, and all rivers, streams and water courses throughout Nigeria, is and shall be vested on the Crown ...<sup>35</sup>

In other words, even if the Interpretation Act distinguished between land and the resources found beneath it, the British Monarch acquired ownership and management of those resources by the Minerals Act. With this, the allodial interest that host communities with oil reserves had in their territory was diminished.

### **(ii) The Petroleum Act**

The Act gives ownership of petroleum to the State. It

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<sup>33</sup>Etikentse, G. *Nigerian Petroleum Law*. (Dredew Pub. 2<sup>nd</sup> ed. 2004) p.6

<sup>34</sup>See Section 18 of the Interpretation Act.

<sup>35</sup>See Section 3(1) of the Minerals Act, 1946

provides:

All petroleum in, beneath, or on any property covered by this section shall be wholly owned and managed by the State.

(2) All land, including water-covered land, is covered by this section –

(a) is in Nigeria; or

(b) situated in Nigeria's exclusive economic zone; or

(c) constitutes a portion of the continental shelf; or

(d) belongs to Nigeria's Exclusive Economic Zone.

The transfer of ownership and management of petroleum found beneath the surface is similar to the Minerals Act and the land of oil-bearing host communities diminishes their ownership rights and causes severe harm to them.

The Minister of Petroleum is given extensive authority by Section 2 of the same Act. These powers include the following:

(a) license for oil exploration;

(b) a permit to prospect for oil;

(c) Oil mining lease: to look for, find, use, transport, and discard petroleum.

A firm that has its corporate headquarters in Nigeria is given the oil exploration, prospecting, and mining licenses.<sup>36</sup>

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<sup>36</sup>See Section 2(2) of the Petroleum Act

The legal philosophy is evident. Its purpose is to motivate Nigerian companies to take part in oil exploration efforts. How many landowners, though, can afford to form a company? Due to the fact that most landowners are impoverished farmers and fishermen who lack the financial resources to form a company and engage in oil prospecting activities, it might be stated that the law intentionally prevents them from receiving these rewards.

Second, the owner or grantee of the licenses and leases has the authority to enter the property and conduct a variety of operations, such as bush clearing, exploration activities involving powerful explosives, gas flaring, and production activities. Owners of land with oil and gas reserves suffer horribly as a result of these activities. The federal government collects rents in order for the purpose of exercising its ownership rights over the natural resources for oil and gas<sup>37</sup> and royalties<sup>38</sup> from those who have applied for these leases and licenses. Given that the purposes for which the Federal Government collects rent and royalties are associated with the people's land, this is an important consideration, why does it do so without giving the landowners any compensation?

### **(iii) The Oil Pipelines Act.<sup>39</sup>**

Before an oil pipeline is laid and operated, the route of the oil pipeline must first be surveyed. When the survey is

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<sup>37</sup>See the First Schedule to the Petroleum Act. Para 32; See also Section 60 of the Petroleum (Drilling & Production) Regulations.

<sup>38</sup>See the First Schedule to the Petroleum Act, para.33; See also Section 61 of the Petroleum (Drilling & Production) Regulations.

<sup>39</sup> Cap O7, LFN, 2004

completed, the laying of pipeline will follow suit, because “any person” with a license can survey an area<sup>40</sup> and install the oil pipeline. The owner of the survey permit may submit an application for a license to install and operate an oil pipeline after the survey is finished.<sup>41</sup> Those whose interests will be harmed may object to the granting of licence. Questions about the amount of compensation are not subject to challenge.<sup>42</sup>

What other grounds for objection are there, then, if issues relating to the amount of compensation are not important ones? This is a problem for the landowner.

### *Rights of Licencee*

A strip of land with a maximum width of 200 feet may be accessed and controlled under the terms of the license in order for the owner or to build, on his behalf, maintain and operate an oil pipeline and associated machinery. The owner is free to extract any gravel, sand, clay, stone, or other like materials from any land located within the licensing area. He cannot, however, profit from these substances by selling them.<sup>43</sup>

Is this not a back-door way for the licensee to make money if the value of these resources mined from the earth is worth hundreds of millions of naira? Once more, one may observe the size and dimensions of the land seized from the land

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<sup>40</sup>Reg. 1 of the Oil and Gas Pipeline Regulations require the oil pipeline route to be surveyed.

<sup>41</sup>See Section 7(1) of the Oil Pipelines Act.

<sup>42</sup>See Section 9 of the Oil Pipelines Act.

<sup>43</sup>See Section 11(1)(2)(3) & (4) of the Oil Pipelines Act.

owners by considering 200 feet. This is sheer wickedness that reeks of utter evil!

*Malicious act of third party*

This is a defence available to the oil company. It is contained in the Oil Pipelines Act and is known as the sabotage defence.

Sections 11(5)(a), (b), and (c) of the Oil Pipelines Act define the license holder's responsibility to make compensation. The topic of paragraph (a) is the payment of damages for injurious affection of land. The payment of compensation due to any negligence on the part of the holder or his agent that results in harm to any person is covered by paragraph (b); While paragraph (c) addresses providing compensation to anyone who has suffered damage (other than due to his own fault or on account of the malicious act of a third party) any damage that is not otherwise repaired as a result of a pipeline rupture or leak from a supporting installation. This is the sabotage defense.

The aforementioned clauses are an example of how oil companies defraud host communities while hiding under the cozy cover of the sabotage defense to avoid responsibility. The deliberate destruction of oil facilities with the intent to harm the property is known as sabotage. Oil leaks from pipelines, wellheads, and flow stations are sometimes caused by sabotage activities.

Sabotage is a line of defense, not a basis for action. So, if oil contamination caused by sabotage destroys a person's farms, commercial crops, trees, and fish ponds, the oil firm may

invoke the sabotage defence to avoid responsibility. The foundation of this defense lies on the fact of *Rylands v. Fletcher*<sup>44</sup> that escape was made possible by a stranger's deliberate action or *vis majeure*. This defense disqualifies a claim for damages for crude oil spills.<sup>45</sup>

People's rights and community rights are typically damaged by oil spills, and the harm is typically assessed before compensation is paid. Damage assessment in pollution cases is problematic, particularly for the maritime environment since, in the event that the spill cannot be satisfactorily contained following the joint investigative visit (JIV) of all parties to the polluted location, it could spread to other locations. Because the compensation amount would not fully compensate the victims for their losses following the JIV, they feel duped.

Additionally, oil firms fund JIVs. As an illustration, consider the 1995 oil pipeline blowout that impacted Shell's Tora Manifold in the Nembe (Bassambiri) region of Nigeria's Bayelsa State.<sup>46</sup> Government officials find it challenging to make choices that would harm the oil firms that funded the visit.

According to the law, if someone sustains damage as a result of a clear act of sabotage, he is not entitled to

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<sup>44</sup>(1868) LR 3HL 330

<sup>45</sup>See *SPDC v. Amachree*. (2002) FWLR (pt.130) 1654; See also *Atubin v. Shell BP Pet. Dev. Co. Nig. Ltd.* (Unreported) Suit No. UCH/48/73 of 12<sup>th</sup> November, 1973.

<sup>46</sup>I was in the Nembe (Bassambiri) Delegation, which visited the spill site under the sponsorship of SPDC.

compensation.<sup>47</sup>It is the law that one should not profit from his or her own willful and unlawful act, which is consistent with both common sense and the law. The oil firms, however, have transformed this shield into a sword. This is due to the fact that spills caused by corrosion or device failure attract penalties.

In oil accounting, the operating company bears the loss, not its joint venture partners. Therefore, it becomes fashionable and common to drastically underestimate the amount of liquid spilled and then attribute the incident to sabotage. The major goal of these strategies is to put the victim of oil pollution in a difficult situation so that he would not receive fair compensation for his injuries. This goal goes beyond simply minimizing the company's punishment.

The oil industry's requirements for oil spill containment and management make sabotage a legitimate defense even in dubious situations. The usual technique is to locate the leak, stop it at the closest supply flow station, and isolate the pipeline. If the pipe is buried, remove it and then clamp or seal the ruptured area. Install booms later to stop its spread.

The operating company is the only entity that can identify the alleged cause of the spill during all of these procedures, which are carried out very quickly. Under normal

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<sup>47</sup>Ehigialua, I. *Environmental Protection Law*. (Warri, Nigeria: New Pages Law Pub. Co., 2007) p. 184

conditions, they ought to notify the Department of Petroleum Resources (DPR), to which they are required to report before repairing leaks. The DPR is only given the chance to observe the alleged sabotage through a joint inquiry in cases of obvious sabotage.

The Emergency Spill Response Procedure Guide is sometimes used as an excuse by companies to avoid taking responsibility. In doing this, they tamper with or obliterate evidence and turn around to accuse natives for the spill. These pipelines, however, are situated in dense forests and marshes that can only be traversed by helicopters and other specialized vehicles owned by the oil firms themselves. Even the DPR lacks access to such transportation, thus if it needs to get to the spill site, it must rely on the offending company's obstinate cooperation.

The assertion that sabotage is a full defense after it has been proven is untrue. The argument over if an innocent person was harmed by an unintentional act of sabotage should continue to suffer without receiving recompense is another component of this complex topic of sabotage. A morally upright person would react badly to this. The argument is that no one should benefit from his own turpitude. But it has a limited range. Respectfully, it cannot extend to the pain or agony endured by a victim who was unwittingly inflicted by a dangerous material that its owner intentionally placed nearby knowing that it would cause harm and mischief if it were sabotaged (not by the victim).The injured party is entitled to compensation since the harm would not have

been imminent had the infringing item never entered the premises in the first place. This substance was not naturally there and may be dangerous if it were to escape.

An extreme example is if someone keeps a lion in his property and a troublemaker releases it, he cannot rationally escape responsibility if the lion attacks someone else's sheep or child. This is based on the fairly limited exception to the rule in *Rylands v. Fletcher* that a stranger's mischief was the reason for its escape. *Rylands v. Fletcher* did not anticipate that crude oil would be pumped across several kilometers of marsh and, moreover, that it would be a valuable commodity that would attract thieves, robbers and bunkerers. The owner is responsible for any damage caused by the expected theft to a third party. One cannot help but agree that this should be the law since it makes sense.<sup>48</sup>

#### *The issue of unoccupied land*

A licence holder who causes damage to unoccupied land is not entitled to compensation, by virtue of the Land Use Act. Vacant land is not mentioned or defined.<sup>49</sup> Developed land means:

Land where there exists any physical improvement in the nature of road development services, water, electricity, drainage, building, structure or such improvement that may enhance

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<sup>48</sup>Kieriseiye, D. note 29

<sup>49</sup>See Section 51(1) of the Land Use Act.

the value of the land for industrial, agricultural or residential purposes.

Vacant land and rivers in fishing villages are usually left undeveloped to attract and draw fish. Water covers land in creeks, rivers, and canals. It is, to put it mildly, an insult to the owners of these structures to continue to be denied compensation due to lack of use or development of unoccupied land.

#### **(iv) The Land Use Act**

Section 1 of the Land Use Act provides that the governor of each state shall hold in trust and manage all land in his state for the benefit of all Nigerians. In addition, the Governor and the Local Government are empowered to grant both statutory and customary rights of occupancy under Sections 5 and 6 of the Act, respectively.

Therefore, oil and gas-rich landowners are made tenants of the governor and the local government by legislative fiat. Furthermore, the governor has the authority to withdraw an occupancy right for overriding public interest.<sup>50</sup> Oddly enough, the need for land for mining and oil pipelines, or any other associated purposes is included in the concept of overriding public interest.<sup>51</sup>

Additionally, in order to determine payment of compensation, the criteria to be used is that the land is needed for public interest by the President.

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<sup>50</sup>See Section 28 of the Land Use Act.

<sup>51</sup>Section 28(3)(b), Land Use Act.

During my investigation, Mr. Vice-Chancellor, Sir, I found that legislation enacted by military decree had made buying and selling land in Nigeria more difficult and complicated. One excellent example is the Land Use Act.<sup>52</sup> According to this law, a state's governor is given ownership of all land on its territory, and it is his responsibility to manage it for the good of all Nigerians. Oil firms refused to pay host communities acquisition money as a result of this legal requirement. In 1979, my community, Bassambiri Community, sold a location to Shell. When Shell sought to develop the area in 1996, the Community demanded to view the purchase documents through a committee I led. When the records were further examined, it became clear that Shell had used the Land Use Act as an excuse to justify paying the acquisition money to the Rivers State Government.<sup>53</sup> I was required to send a letter of opinion to Shell by the Bassambiri Community, and I did. According to what I wrote, Section 1 of the Land Use Act does not remove any earlier land rights that landowners may have had. I requested Shell to come for new negotiations and cited pertinent authorities, and this was done. Without that action, the Community would have lost more than N20m (twenty million naira).

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<sup>52</sup>Damfebo, K. D. "The Land Use Act, 1978: How Legislation by Military Fiat can Complicate Land Transactions in Nigeria" in Badaiki, A. D. *Sowing Seeds of Justice and Legal Development*. (ed) (Lagos: University Law Pub. Co. Ltd., 2019) 180; See also Badaiki, A. D. "Changing Concepts of Ownership". *EDSU Law Journal*. (1993-94).

<sup>53</sup>Kieriseiye, D. note 29 p.98

Table one

S N	NAME OF WELL	AREA ACQUIRED	AMOUNT PAID AS COMPENSATION (₦)	PERSON RECEIVING PAYMENT	DATE OF ACQUISITION PAYMENT
1	Well-3 Santa Barbara North	25.7 acres	117:16:6	Bassambiri Community	19-06-1972
2	Santa Barbara A ONE-1 (Not Drilled)	3,588 hectares	N358.00	Rivers State Government	13-12-79
3	Santa Barbara ANDY-1 Drilling Location (Not Drilled)	10.4 hectares	N854.00	Rivers State Government	14-07-78
4	Santa Barbara Deep Drilling Location	3.1598 hectares	315.00	Rivers State Government	02-12-81
5	Santa Barbara BMMW -1 (Not Drilled)	8.2787 hectares	N733	Rivers State Government	06-01-87
6	Well-5 Santa Barbara BMNA-1	11.1196 hectares	1,050.00	Rivers State Government	06-01-87
7	Well-2 Santa Barbara AMMY-1	8.2077 hectares	820.77	Rivers State Government	04-05-93
8	Well-4 Santa Barbara Deep AYNE-1	7.0968 hectares	N679.48	Rivers State Government	20-04-93

Source: Lands Department, SPDC

Regarding SPDC's land purchases and payments in Bayelsa State's Bassambiri Area, see the table above.<sup>54</sup> According to table 1 above, just one acquisition's compensation was given to the Bassambiri Community out of the eight that were made, with the rest going to the Rivers State Government. Before the Land Use Act was enacted, the acquisition that was made in 1972 was given to the community.

When SPDC paid the sole administrator of Eket Local Government Area of the erstwhile Cross River State for land acquired for the Eket North-1 Drilling Location, Akwa Ibom State, a similar situation occurred.<sup>55</sup>

Without altering the provisions of sections 34, 36 and 1 of the Land Use Act, compensation can still be paid to land owners for acquisition of land.<sup>56</sup> The rights of land owners are presumed to be preserved and acknowledged by these provisions.<sup>57</sup>

### *The Issue of Overriding Public Interest*

When examining Section 20(5) of the Oil Pipelines Act, it is important to take into account the matter of overriding

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<sup>54</sup>Source: Lands Department, SPDC

<sup>55</sup>*Ibid*

<sup>56</sup>Fekumo, J. F. "Compensation for Oil Pollution in Nigeria: A New Agenda for Sustainable Development." in Simpson & Fagbohun (eds) *Environmental Law and Policy*. (Law Centre, Faculty of Law, Lagos State University, 1998) pp.316-317

<sup>57</sup>See the case of *Abioye & ors v. Yakubu & ors*. (1991) 5 NWLR (pt.190) p.130

public interest. When there is a statutory right of occupancy, the words "the requirement for the land for oil pipelines, mining operations, or other relevant public purposes" is used to describe the overriding public interest. Mineral resources such as oil and gas are not prospected for public use. They are instead extracted to help international oil companies who are focused on making profit. The Land Use Act should not have stated that the public's overall welfare justifies the necessity for land for oil pipelines. The sector is a successful business enterprise, with dividends going to the partners that invested. Schools, hospitals, and railroads are examples of social institutions that operate purely for the welfare of the community. It is unfair for the government to take someone's private property and then transfer it to an oil company so that the company can make the most profit possible.<sup>58</sup>

Despite the NNPC owning 60% of the oil companies' shares, it is acknowledged that the land is not owned by the Federal Government. Only the oil and gas deposits are owned by the federal government. The remaining 40%, which the government is giving to oil firms, is not in its interest. To ensure that oil corporations compensate landowners fairly and equitably for the loss of surface rights

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<sup>58</sup>Nwosu, L. E., "Compensation for Environment Damage in Oil and Gas Operations". Being a Paper presented at the Annual General Conference of the Nigerian Bar Association, Port Harcourt. (August 28, 2006).

or usage, the government should have restricted their acquisition to only 60% of the land's economic value.<sup>59</sup>

Even the 60% interest for the government, the landowner is not included. It is a big conundrum. To solve this issue, the government should grant landowners a specific portion, say 10% of the 60%, in exchange for the payment of capital gains tax. An alternative would be to transform the land's worth into a percentage equity, such as 10% compensation for the loss of the owner's rights.

We should all be interested to learn that groundnut land lacks oil, which is essential to the country's economy, Mr. Vice-Chancellor, Sir. As a result, while a person from the desert of Kano is permitted to cultivate groundnuts for his or her own benefit, his or her counterpart from Bayelsa is prohibited from cultivating cassava, plantains, or building fish ponds since the land was taken from him because oil was discovered there or because it was oil-bearing land. Will it be improper of me to state that the Nigerian government sees the extraction of oil and gas as a scourge on the localities that serve as the reservoirs for these resources? However, the benefits of oil and gas extraction are spread over all of Nigeria.

SPDC states that:

its operations have taken approximately  
280 square kilometres of land, or 0.3%  
of the total area of the Niger Delta and

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<sup>59</sup>*Ibid*

that measures are being undertaken to reduce the land, such as the introduction of “horizontal drilling” and to rehabilitate land no longer needed, for example, by replanting the land cleared for seismic surveys.<sup>60</sup>

These numbers may make the amount of land taken seem a bit minor, but under the current legal system, anyone affected by expropriation may suffer very negative effects. According to the Land Use Act, people, families, and communities have only limited rights to the land they have been utilizing. As a result, government organizations and private businesses are free to disregard traditional land use rights in oil-producing regions as well as elsewhere and do so without seeking their input. For instance, the locals in "Oloibiri" when the first oil was discovered, did not completely comprehend the implications of oil drilling and exploration activities or the economic potential of oil. Interview with Sunday Foster Ikpesu, an Oloibiri chief and clan leader, yielded this information.<sup>61</sup> According to Chief Ikpesu:

The elders of the community thought the oil workers were part of the ruling Colonial Government, and did

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<sup>60</sup> SPDC. "People and the Environment: Annual Report, 1996." In recent years, Shell has introduced a programme of replanting seismic lines in mangrove areas, though local environmental groups claimed that it is poorly managed and ineffective.

<sup>61</sup>The interview was conducted on December 16, 2007 at Oloibiri.

not challenge them. Before they came, the Divisional Officer in charge of the Division told the natives that they (Shell) represented the Government. That was why people suffered a lot without challenging Shell. Nobody even dared to ask for compensation.<sup>62</sup>

Land is still an extremely valuable resource. The great economist Reverend Malthus asserts that land is the primary ingredient in production. The other three are entrepreneurship, labor, and capital. A thought-provoking statement was given during the Niki Tobi-led National Conference by Mr. Leedum A. Mitee, a lawyer, MOSOP leader, and the lone survivor of the horrible judicial murder of the Ogoni Nine. He claimed that when people claim to have won an "oil block," they frequently fail to realize that what they really mean is that they have gained their neighbors' cassava fields, ancestral lands, backyards, compounds, loved ones' graves, holy sites, fish ponds, and woods.

Gas and crude oil pipelines currently cover a distance of about 39,000 kilometers through the Niger Delta. These pipes, which have different external diameters, are occasionally laid on the surface and are installed in

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<sup>62</sup>Kieriseiye, D. note 29, p.44; See also Damfebo K. D. "Legal Basis for Compensation for Oil and Gas Operations in Nigeria" in Badaiki, A. D.

backfilled dugout pits.<sup>63</sup>The right-of-way for the pipeline is typically 200 feet wide. If 200 feet of land are multiplied by 39,000 kilometers, it is possible to comprehend the scope of the land taken from Niger Delta landowners. There is also a land area that contains 100 helicopter landing pads that are each 3 acres in size, 100 oil well locations that are each 2 acres, and over 2,000 oil well locations at Escravos, Forcados, Brass, Bonny, and Qua-Iboe; crude oil terminals, each occupying around 1,000 acres, and several liquefied natural gas and natural gas liquids installations, each taking up comparable amounts of space. Similar sized air strips are also present in Eket, Brass, Bonny, Osubi, Forcados, Port Harcourt, and Escravos. In addition, there are more than 2,000 kilometers of 200-foot-wide access roads to the various installations. Whose advantage is this seizure of land, one could wonder? There is no way it could be for the owner of the oil-rich territory. It is a paradox of good fortune and bad fortune; a case of robbing Peter to pay Paul.

#### **(v) Pollution Compensation Tax**

A tax is a financial amount deducted from one's income or a charge imposed on one's revenue-producing assets. From this vantage point, it is challenging to defend the practice of certain state governments withholding taxes from initial inadequate compensation payments.

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<sup>63</sup>My field surveys revealed that the Oil Pipeline from Kugbo to Bonny to convey the first oil was constructed by Taylor Woodrow is laid on the surface.

The Rivers State Pollution Compensation Tax Edict was enacted in 1984. Treating the money handed to the victims as compensation, the State Government levies a tax of 5% in order to compensate for pollution.<sup>64</sup> A comparable law for the implementation of a 10% pollution compensation tax was passed by the Bayelsa State Government in 1998.<sup>65</sup> The following is stated in the preamble to this statute:

A law to make provision for the imposition of compensation tax by persons who suffered damages arising from petroleum operations and for other purposes connected therewith.

The statute intends to "tax people who were injured by petroleum operations," as the preamble makes clear. Section 1(2) of the law stipulates:

1(2) the tax shall be payable by the person who is paid compensation as a result of the pollution or damage to his property, land, water or environment, caused by blowout of crude oil wells, oil pipes or oil spillage or seismic activities or any other cause resulting from the activities of any company over such land, water or environment.

1(3) stipulates that –

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<sup>64</sup>See section 1 of the Edict

<sup>65</sup>See the Pollution Compensation Tax (Cap. P6) Laws of Bayelsa State.

The rate of the tax payable is ten percent of the gross receipt of the compensation and shall be deducted at source by the company paying the compensation.

Before the oil company will pay out any compensation to the person injured by pollution, taxes must first be deducted.<sup>66</sup>This rule has no foundation because it further impoverishes those who possess oil-bearing land. If a tax on pollution compensation is necessary, it should be levied on the oil firms rather than the people who are affected by the pollution. The imposition of tax on oil firms would be appropriate given their role in environmental degradation through their pollution-related activities. Additionally, the term "pollution compensation tax" is inaccurate. The phrase "pollution tax" would be more fitting, as it should be imposed on the oil companies as they are the ones who create the pollution.

Following is a visual example of the injustice in the law: A person may have to pay N500,000.00 to have his fish pond and fish examined if petroleum operations have polluted it. Based on the OPTS rates utilized for the evaluation or the outdated land procedure rules, this sum is fundamentally insufficient. The victim of pollution would no longer receive even the N500,000.00 because 10%, or N50,000.00, has already been taken out at the source. The victim actually

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<sup>66</sup>*Ibid.* 1(4)

receives N450,000.00. The sufferer should not be expected to pay taxes on his useless, contaminated pond.<sup>67</sup> It appears that government is interested in the money paid as compensation to the victims of pollution and wants to benefit from it. The government is not interested in the agony and misery suffered by the people. But why should this be the case?

The provisions in the Constitution and Federal Statutes that deal with fair and adequate compensation have been severely curtailed through the incredibly arbitrary pollution compensation tax. Therefore, the Pollution Compensation Tax Edict is against the law and violates the constitution.<sup>68</sup>The Akwa-Ibom State Pollution Control Law of 1998 provides a more practical legal framework in this regard by requiring a 5% pollution tax and just restitution from the polluter. The idea that compensation is taxable income is false.

### **(vi) Gas Flaring**

The most horrible way to regularly harm people's health and longevity of life in oil-producing countries is the reckless flaring of gas into the atmosphere. A few risks of gas flaring

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<sup>67</sup>Kieriseiye, Damfebo, note 29. p.198

<sup>68</sup>The conventional instruments of taxation are: income tax, resource rent tax (RRT) or additional profit tax (APT), royalty withholding tax and petroleum profit tax. On this, see Ochieze, C. "Fiscal Stability: To What Extent Can Flexibility Mitigate Changing Circumstances in Petroleum Production Tax Regime". (2006) THAT IS L. T. R. p.252.

<sup>68</sup> See sections 21 and 27 of the Pollution Control Law, 1998. Akwa-Ibom State under this law, it is the polluter, rather than the victim who pays the tax

include carbon monoxide,<sup>69</sup> excessive radiation, toxic basic sediments that evaporate and condense and eventually wash down the towns when it rains.

More gas is flared in Nigeria than any other nation on the planet.<sup>70</sup> A 1969 Nigerian legislation required oil companies to construct facilities to use the "associated gas" from their activities five years after they started production.<sup>71</sup> Section 3 of the Associated Gas Re-Injection Act addresses the issue of gas flaring.<sup>72</sup> As long as oil companies pay fines (penalties) to the federal government in the form of royalties, the clause permits gas flaring. The Niger Delta is home to many villages that blame gas flares for the acid rain that corrodes metal roofs. Gas flares can occasionally be found relatively near to communities. Even worse, the flares are rarely moved or even secured with fence to make them safe. Human Rights Watch reported in July 1997<sup>73</sup> that they saw women creeping directly into the walled pit where the flare was blazing. The women had placed cassava on the ground near the flame to dry. A flare malfunction or poor

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<sup>69</sup>See sections 21 and 27 of the Pollution Control Law, 1998. Akwa-Ibom State under this law, it is the polluter, rather than the victim who pays the tax.

<sup>70</sup>The World Bank Estimates that Nigeria gas flaring releases some 35 million tones of carbon monoxide annually. See Environmental Resource Managers Ltd. "Niger Delta Environmental Survey Final Report" Phase I, Vol.1 p.242.

<sup>71</sup>See Regulation 43 of the Petroleum (Drilling and Production) Regulations. See also the Associated Gas Re-Injection Regulations.

<sup>72</sup>(Cap.A25) LFN 2004

<sup>73</sup>Human Rights Watch Interviews Lezere, Delta State (July, 1997).

footing could have devastating repercussions. The cassava is probably also contaminated by the soot from the flare.<sup>74</sup> It is regrettable that it is the federal government instead of the party that suffered damage by the gas flaring that takes the money even when a company is forced to pay fine for gas flares which damage the environment. When lamenting that "the communities that were impacted by gas flaring do not receive any of the fine money that the oil firms pay for gas flaring," the Ogbomudia Report acknowledged both this paradox and the unfairness done to the oil-producing communities.<sup>75</sup>

### **The legality of gas flaring being put to Question**

Since 1984, it is not permitted to flare gas. A Nigerian Federal High Court in Benin City ruled in 2005 that, gas flaring was unlawful because it is a violation of the rights to life and dignity guaranteed by the constitution.<sup>76</sup>The Associated Gas Re-Injection Act and its Allied Act were both specifically declared illegal by the court.

Since the 1970s, the Nigerian government has set numerous deadlines to put an end to gas flare-ups. The previous deadline for banning gas flaring was 2020; this was again

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<sup>74</sup>Isichei, A. O., and Sandford, W. W. "The effects of Waste Gas Flares on the Surrounding Vegetation n South-Eastern Nigeria" (1976). *Journal of Applied Ecology*. Vol.13, pp.177-178.

<sup>75</sup>The Ogbomudia Report is the report of the Special Committee on oil producing areas. It was set up by President Olusegun Obasanjo. The Committee submitted its report on Tuesday, 19<sup>th</sup> February, 2002. See page 19 of the Report.

<sup>76</sup>See *Gbemre v. SPDC &ors*. Unreported Suit No. FHC/B/CS/53/05 at Benin City per C. V. Nwokorie.

postponed to 2025, and the new target is 2030. It is common practice to move the deadlines to stop gas flaring as the goals grow closer. The majority of the time, lobbying by the oil industry causes deadlines to be moved.<sup>77</sup> The Petroleum Industry Act (PIA) 2021 has repealed the Associated Gas Re-Injection Act,<sup>78</sup> and prohibits gas flare-ups.<sup>79</sup> However, a number of flaws in the Act's provisions ensure that the same gas flare system would remain basically unchecked. The Act lays out the circumstances in which gas flaring is permissible. Among them are: (a) in the event of a crisis; (b) pursuant to a waiver that the Commission has granted; or (c) in accordance with existing regulations, as an acceptable safety practice. Further clarification states that a licensee or lessee may be given permission by the Authority or Commission to flare or vent natural gas for a predetermined amount of time – (a) when it is necessary for a facility's startup; or (b) for testing as well as for operating objectives.<sup>80</sup>

However, outside of testing, the Act doesn't define what "strategic operational reasons" are. Additionally, it doesn't specify the timeframe permitted for flaring during facility startup or to achieve tactical operational goals. These regulations could be readily violated and used as a license for unrestrained behavior and persistent harm to the

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<sup>77</sup>Kieriseiye, D. note 29, p.80

<sup>78</sup>1979, (Cap. A25) LFN, 2004

<sup>79</sup>See section 310(1)(a) of the Act

<sup>80</sup>See section 107(a)&(b) of the Act

environment and health of communities (as has already been done).<sup>81</sup>The Act further states that "the commission shall send any money it receives from gas flaring fines in accordance with this paragraph to the Midstream Gas Infrastructure fund for the purpose of funding midstream gas infrastructure projects in the host communities of the settlor who is subject to fines."<sup>82</sup>Without giving any thought to the communities affected by gas flaring or taking steps to mitigate those effects, it suggests using the fines from gas flares in more income-producing initiatives. Evidently, the Act views gas flaring as an abuse that should be compensated for using up economic resources rather than as a waste that harms the environment, human health, and community livelihoods.

### **(vii) Revenue Allocation**

The transition to fiscal federalism began in 1953. It led to the commission of inquiry headed by Sir Louis Chick. The Chick's Commission on Revenue Allocation placed a strong focus on derivational principles as one of its main characteristics. According to the Chick's formula, 100% of all mining profits, rental income, and royalties went directly to the regions of origin. This occurred before the commercial discovery of oil in 1958 in the Niger Delta.

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<sup>81</sup>See *Atlantic Post*, Thursday, September 9, 2021.

<sup>82</sup>See Section 104(4) of the Act

A different commission, The Riesman Commission, issued a suggestion for a 50% cut and a redistribution of the proceeds from minerals following the 1957 Constitutional Conference.: 20% goes to a distributable pool account, 30% goes to the center, and 50% goes to the areas of origin.

Oil has been exploited in Nigeria for a while, but it is the first and only natural resource whose ownership and advantages have been spread outside of the area where it was discovered. Tin and bauxite were formerly exploited, but only for the benefit of the Northern Region.

The 1960 and 1963 Nigerian Constitutions firmly established the distribution of resources based on derivation. The 1963 Constitution's Section 140 states: "Each Region will receive payment from the Federation equal to 50% of that amount of whatever royalties it has accrued as a result of minerals mined in that Region."<sup>83</sup> According to the law, the regional government collected all mineral resource money and sent 50% of it to the Lagos-based national government. The amount of derivation from fifty percent fluctuated between zero percent in 1979 and thirteen percent in 1995.

The government currently uses the derivation principle as a foundation for revenue allocation, among other things, in order to compensate the oil-producing states (not communities). According to this rule, the state (not the

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<sup>83</sup>Nokedi, R. *Revenue Allocation and Resource Control in the Nigeria Federation*. (Enugu: Snaap Press Ltd., 2001). See also section 134 of the 1960 Constitution which is to the same effect.

community) should receive at least 13 percent of any natural resource revenue that is received by the Federation Account. The problem here is that the landowner from whom the natural resource is extracted is left out of the allocation formula. The owner of the oil-rich land is in a challenging circumstance. The second concern is how carelessly some state governors use this money without consulting the owners of oil-bearing land in their states, while being fully aware that they received the funds despite the fact that the land utilized as the basis for distribution belongs to local communities, families, or individuals of their states.

For instance, Oluasiri Communities of Nembe (Bassambiri) are host Communities to the Soku Gas Plant despite the Rivers State Government's assertion to the contrary that the Soku Gas Plant is in Rivers State. The Soku Gas Plant in Oluasiri has now brought to Bayelsa State more than 10 billion naira in revenue. How did the Bayelsa State government spend that enormous amount of money? With some of that money, the government built a bridge in the flyover design close to the NNPC Filling Station, Ekeki, Yenagoa. Oluasiri Communities received nothing from that money. However, Oluasiri Communities will be the first casualty in the event of a significant disaster caused by the Gas Plant. What a conundrum! Oh no, Oluasiri Communities are under a curse! And to add: Yenagoa is very blessed!

As recipients of the derivation fund, some governors spend the money on fruitless foreign vacations with a harem of

free women, while the landowner who provided the source of the fund endures continued hardships such as hunger, poverty, frustration, deprivation, chronic illness, and misery, the wealthy continue to amass properties for themselves in faraway nations as well as for coquets who massage and console them. This brings to focus the teachings of Karl Max that the law protect elitist interests. Professor A. H. Yadudu was alerted to the careless way state governors were using the 13% derivation cash and made the following caustic remark:<sup>84</sup>

While fairness demands it and we can relate well to and sympathise with the argument which canvases the need to attend to the devastating ecological and environmental problems associated with the exploitation of oil and gas in these areas, *those in authority in these areas, to whom billions have been paid on grounds of derivation on the basis of the current formula, have neither justified nor rendered satisfactory account in the way and manner they have deployed the funds made available to date. Rather*

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<sup>84</sup>Yadudud, A. H. "Building Consensus Around Resource Control Issues: Dialoguing from Known to Unknown." Memo to Committee on Revenue Allocation and Fiscal Federalism and Committee on Environment and natural Resources Reforms." *National Political Reform Conference, Abuja*. 2005.

*than ask for more, we should all vow to hold such leaders accountable.*<sup>85</sup>

During the National Political Reform Conference in 2005, the debates over revenue allocation erupted once more and nearly tore the country asunder. On this particular subject, the South-South geopolitical zone's representatives were arrayed against other zones, particularly the North commanded by Yadudu.

Delegates from various sources responded to Yadudu's memo in different ways.<sup>86</sup>In fact, the Conference's steadfast refusal to discuss the income allocation formula prompted the South-South geopolitical zone's delegates, led by Prof. Kimse Okoko, to give a speech at a global press conference and then stage a walk-out on June 14, 2005. A portion of the news release stated:

We came with a mandate of 100% resource control. We conceded that demand to merely accepting 25% in the interim, which is being denied. Therefore, we can no longer

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<sup>85</sup>Emphasis supplied.

<sup>86</sup>See the Rejoinder to Professor Yadudu's Memo by the following persons at the National Political Reform Conference, Abuja.

- (i) Barrister Otono Dougla, 15<sup>th</sup> April, 2005
- (ii) High Chief Lionel Jonathan-Omo, 20<sup>th</sup> April, 2005
- (iii) Hon. Fred Ekiyegha of the Bayelsa State Secretariat, 10<sup>th</sup> April, 2005.

participate in the proceedings of the Conference.<sup>87</sup>

Owing to its difficult geography, the oil-producing villages in the Niger Delta, has long received special attention. Because of the challenging topography, the Niger Delta was designated as a special development effort and focus area by the several constitutional conferences prior to independence. For instance, the Commission appointed to investigate minority worries and ways to allay them produced the Willink's Report in 1958.

The locals of the Niger Delta seek for an improvement in the revenue allocation formula since the lack of resource management brought on by oil exploration activities has greatly affected their environment. The situation is illustrated in the table below:

Table two: Oil spillage date: 1991-1996

Year	No of Spills	Qty Spilled (Barrels)	Qty Recovered (Barrels)	Net Loss to Environment (Barrels)	%age Loss to environment
1991	258	108,367.01	2,785.96	105,581.05	97.43
1992	378	51,187.90	1,476.70	49,711.20	97.12
1993	453	8,105.32	2,937.08	5,168.21	63.76
1994	495	35,123.71	2,335.93	32,796.78	93.38
1995	417	63,677.17	3,110.02	60,567.15	95.12
1996	156	39,903.66	1,183.80	38,719.86	97.03
Total	2,159	306,364.77	13,829.49	292,544.28	95.49

Sources: (i) Azaiki: Inequalities in Nigerian Politics, The Department of Petroleum Resources (via NDES Vol.1 modified), p.249 (ii).

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<sup>87</sup>See the Press Statement by the South-South Delegates Forum, National Political Reform Conference, Abuja, 2005.

The above table makes it evident that the communities that produce oil require special consideration in the form of enhanced income allocation so that they may use these monies to develop their unique requirements.

While I am arguing for the inclusion of the oil-producing towns in the income allocation model, Mr. Vice-Chancellor Sir, I concur with Professor Yadudu that “those who have received billions of dollars due to deductions made using the present formula must justify the payments and provide an accurate account of how they have used the monies made available so far.”!

### **(b) The attitude of the legislature**

The branch of government or institution with the power and duty to pass laws for the effective governance of the nation is the legislature (parliament),<sup>88</sup> developing legislation and regulations for the use of petroleum. This is without prejudice to the assertion made by Justice Wendel Holmes and his colleagues from the American Realist School, such as Gray, that what defines law is not what is put into statutes but rather the decisions of the courts.<sup>89</sup>

The legislature, which has the authority to enact laws, has a responsibility to craft progressive legislation that protect the rights of landowners who own oil and gas bearing land. Considering the preferences of the host communities, the

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<sup>88</sup>See Section 4 of the Constitution of the Federal Republic of Nigeria (as amended) 1999.

<sup>89</sup>See J. M. Elegido, *Jurisprudence* (Ibadan: Spectrum Books Limited, 2002) p.99

legislature should take on the challenge of abrogating, repealing, or revising unjust legislation. According to Karl Marx, the legal system serves as a tool for the defense and upkeep of social elites.<sup>90</sup> Because they are the ones who own the majority of the shares in the oil firms, the foregoing legislation' continuous retention in our statute books serves to further advance the interests of our society's elites. The owner of an oil and gas-rich land is in a difficult situation since he cannot afford to establish an oil prospecting or services company or to purchase stock in either of these businesses. Since he cannot afford any of the aforementioned pricey solutions, he would be satisfied if the legislature fulfilled its promise to create decent legislation. The Petroleum Industry Act (PIA) creates a framework for the distribution of development advantages to the localities that aid the oil and gas sector, which outlines the rules for setting up and running a petroleum host community development trust. However, the Act expressly designates that the local oil corporations operating there are solely responsible for establishing this trust, and it grants them absolute authority to choose the individuals that will be its members and take part in various forms of government. The guidelines for the creation and management of the Host Communities Trust explicitly support the involvement of oil firms while devaluing community involvement. The PIA

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<sup>90</sup>See V. D. Mahajan. *Jurisprudence and Legal Theory*. (Eastern Book Company Lucknow, 2014) p.105

merely requires the firms to 'consult' host communities when nominating candidates for the Board of Trustees.

In addition to the startling 3% of oil firm operational expenses designated for the development of host communities,<sup>91</sup>this Act's provision, in my opinion, is a blatant statement of the PIA's desire to continue managing host communities to serve as oil colonies for opportunistic businesses and sacrifice zones, as it has historically done. It also shows that the government continues to retain the regrettable and mistaken belief that communities where crude oil is extracted lack the autonomy to manage their own affairs. This is offensive in addition to being untrue. Contrary to what the PIA now says, I recommend to the National Assembly, that oil companies should not pick the host communities. Instead, representatives from each host community should create and run the Host Communities Trust. I have observed that this consistently results in arguments. In order to do this, it is highly advised that the laws, in Sir Frederick Von Savigny's words, "should represent the mindset and attitude of the landowners who hold oil and gas-rich land."<sup>92</sup>

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<sup>91</sup>See Section 240(2) of the PIA

<sup>92</sup>For Savigny's views of what is law, see Funso Adaramola. *Jurisprudence*. (Durban: Legis Nexis) p.298

### **(c) Judicial Response**

An examination of the judiciary's reaction to the ongoing issues highlights how the courts have exacerbated the issue for landowners who own oil and gas-rich land.

The Niger Delta oil-bearing land owners are entitled to fair and adequate compensation<sup>93</sup> from oil and gas businesses which cause damage to their property. However, the phrase "fair and adequate" compensation is not defined. The Court of Appeal made an attempt to define it:<sup>94</sup>

The Petroleum Act did not define the meaning of the expression "fair and adequate compensation". In my view, however, such compensation ... to which they are entitled for damage to their land. The principle is to restore the person suffering the *damnum* for as far as money can do that, to the position he was before the *damnum* or would have been put but for the *damnum*.

Courts have a lot of discretion because the phrase "fair and adequate compensation" is not defined, which may result in cases where plaintiffs are not fairly paid for their unique circumstances.

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<sup>93</sup>Damfebo K. Derri, "Common Law Basis for Compensation for Oil and Gas Operations in Nigeria". *Journal of Private, Property and Comparative Law*. Vol. 1 & 2 (2006-2008)

<sup>94</sup> SPDC v. Farah (1995) 3 NWLR (Pt.382) 148

The claimants' *locus standi* is another problem they have to deal with in court.<sup>95</sup> Numerous people, sometimes an undetermined number, are impacted by public nuisance. Exploration practices like gas flaring that harm the environment may not affect anyone or any property. Non-compliance with the Environmental Impact Assessment Act and the National Environmental Standards and Regulation Enforcement Agency (Establishment) Act of 2007<sup>96</sup> may not specifically impact anybody. If a plaintiff seeks to enforce his claims in any of the aforementioned circumstances, he will not be successful. In *Amos v. Shell BP Development Company Nigeria Limited*<sup>97</sup>, Holden C. J. stated in rejecting the plaintiff's claim as follows:

Kolo creek is agreed by both sides to be a public waterway. Blocking it up is a public nuisance. No individual can normally recover damages. This is an attempt by a section of the general public (and quite a large section too) to sue generally in respect of losses suffered by them

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<sup>95</sup>Damfebo K. Derri. "Litigation Problems in Compensation Claims for Oil and Gas Operations in Nigeria" in Emiri and Deinduomo (eds), *Law and Petroleum Industry in Nigeria*. (Lagos: Malthouse Press Ltd., 2009).

<sup>96</sup>Damfebo K. Derri and Abila Sylvanus. "A Critical Examination of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007" in Emiri and Deinduomo (eds). *Law and Petroleum Industry in Nigeria: Current Challenges*. (Lagos: Malthouse Press Ltd., 2009).

<sup>97</sup>(1978) E.C.S.R. 488

generally and in my view it cannot succeed.

Similar technicalities were employed in *SPDC v. Otoko*<sup>98</sup> and *Oronto Douglas v. SPDC*.<sup>99</sup> The courts are required to examine the legal foundation for oil and gas-bearing landowner's compensation claims with broader latitude.<sup>100</sup> However, the court's stance in the *Gbemre* case deserves praise.

#### **(d) The Role of Government**

The federal government's main duty is to create policies that will promote the rapid development of oil-producing regions. The Federal Government had established a variety of organizations in this area of policy creation, including the Oil Mineral Producing Area Development Commission (OMPADEC),<sup>101</sup> Niger Delta Development Commission (NDDC),<sup>102</sup> Petroleum Training Development Fund (PTDF),<sup>103</sup> and Petroleum Trust Fund (PTF).<sup>104</sup> Without doubt, the goals behind the creation of these intervention agencies are admirable. In reality, however, the institutions hardly ever succeed in their intended goals and objectives.

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<sup>98</sup> (1990) 6 NWLR (Pt.150) 693

<sup>99</sup> (1999) 2 NWLR (Pt. 591) 466

<sup>100</sup> Damfebo K. Derri and Abila Sylvanus. "A Critical Examination of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007" in Emiri and Deinduomo (eds). *Law and Petroleum Industry in Nigeria: Current Challenges*. (Lagos: Malthouse Press Ltd., 2009).

<sup>101</sup> Established in 1992 by Decree No.23

<sup>102</sup> Cap. N86 LFN, 2004.

<sup>103</sup> *Ibid*, Cap. P15

<sup>104</sup> *Ibid*, Cap. P14

This is because the federal government lacks the political will to act decisively against individuals who mismanage their resources and waste the money granted to the institutions for their own self-serving agenda, as well as the corruption of those in charge of these agencies. There were far over 3,000 abandoned projects, according to the NDDC's most recent forensic audit report. This is unfortunate.

In certain circumstances, the leadership of these agencies lacks focus and is unable to set priorities for how the institutions' funding should be used. So, more than six years after its founding, the Niger Delta Development Commission (NDDC) was still working on putting up a regional development master plan. This is hypothetical gibberish, to put it mildly.

In other instances, the bodies either start irrelevant projects that have no influence on how neglected the oil-producing regions are or have no significance at all, or they repeat the work of other well-established government departments. Some of these agencies, like the NDDC, frequently provided trash cans<sup>105</sup>to move dirt, offer writing desks for elementary schools, renovate hospitals and educational facilities. One wonders what the Ministry of Education, the Ministry of Health and the Environmental Sanitation Authority, would be doing if the purpose of the NDDC was to offer such amenities.

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<sup>105</sup>See Note 29

It was claimed that SPDC in particular, coerced NDDC into partnering a road project that it had originally intended to build independently to link numerous communities in its operational area.<sup>106</sup>The Otuegila-Nembe Road was the focus; it was first intended by SPDC to connect a block of thirteen (13) settlements. The majority of stakeholder expectations are met by the road, and SPDC has completed all pre-construction efforts, including environmental impact assessments (EIA), surveys, soil tests, and assessments of damages. This has improved the company's reputation for keeping the commitments that have already been made and made public. In fact, SPDC had already issued a call for bids for the construction of the 42-kilometer road and had a specified deadline for completion. In spite of these obvious realities, the majority of the areas who would have benefited from the route were blocked off as NDDC continued to work with SPDC to build an abridged version of the road. A letter of protest to Chief Olusegun Obasanjo, the President of the Federal Republic of Nigeria at the time and an international press conference by the Otuegila-Nembe Road Project Forum' to halt the NDDC and SPDC's revised proposal were unsuccessful. This is the very pinnacle of the NDDC's unrepentant and dishonest attitude. Additionally, the Federal Government's stance exhibits blatant insensitivity and a lack of political will. The proprietors of

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<sup>106</sup>See the communique issued by the Otuegila-Nembe Road Project Forum on the 4<sup>th</sup> of November 2004, in Yenagoa. See also *The Guardian*, Monday August 27, 2001.

the lands with oil and gas deposits are the ones who suffered from all of this.

Etekpe<sup>107</sup>said the following to better express this:

... the Federal Government does not still have the political will to develop the Region ... the difficulty is compounded by the NDDC itself as in spite of the inadequate funding, NDDC has not equally made significant impact on the welfare of the people of the Niger Delta with the N35,949 billion it has received as at 2004. Our investigation shows that after five years of operations (2000-2005), the Commission has been able to execute only three major road projects, two bridges, 60 boreholes, awarded 1,008 scholarships, and *supplied unspecified number of dustbin dumps*<sup>108</sup> and vehicles. These were not sustainable programmes and projects that were long awaited for in the Region. Thus, instead of embarking on real development programmes and projects, such as construction of network of roads and canals to open up the rural areas, human

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<sup>107</sup>Ambily Etekpe. *Politics of Resource Allocation and Control in Nigeria: The Niger Delta Experience*. (Port Harcourt: Harey Publications Coy, 2007) p.71

<sup>108</sup>Emphasis supplied

capacity building and provision of infrastructural facilities, it has rather concentrated on routine activities as if it is a service agency. Thus, the general perspective is that, NDDC has failed as its predecessors.

**(e) The role of land owners**

In some circumstances, landowners are to blame for their own predicament. This is the case where landowners purposefully damage production facilities, such as wellheads, pipelines, and trunk lines to generate significant oil spills in order to obtain compensation money or cleanup contracts. Oil pollution has negative effects that far surpass any financial payback. No compensation is due when sabotage results in an oil leak.<sup>109</sup> Additionally, landowners are not eligible to receive cleanup contracts for oil spills caused by sabotage. Thus, the owners of oil and gas-rich property directly contribute to the environmental risks they encounter and thereby to their own predicament by purposefully generating oil spills.

Second, monetizing the claim is standard procedure in compensation disputes. Rarely are compensation claims expressed in non-monetary terms. Communities and families rip themselves apart before the reparation is paid when monetary compensation is required. If compensation

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<sup>109</sup>See Section 11(5)(c) of the Oil Pipelines Act.

is paid in another way than with the payment of money, this major setback might be avoided. Therefore, instead of focusing only on quick revenue, the landowner should seek out alternatives such as restitution, restoration, remediation, or the alternative provision of social amenities and initiatives. Thirdly, the landowner is cautioned against making broad assertions that lack support. Victims frequently begin negotiations with extremely big demands in the hopes of obtaining an acceptable settlement. The exaggerated and unsubstantiated charges frequently paint the victims as careless individuals. The victims should view the oil leak as a tragedy or a source of sorrow, not as a way or a chance to profit.

**(f) The role of oil companies**

The host communities' plight is mostly also the fault of the oil tycoons.

*(i) Giving wrong name to oil company facilities.*

Families and communities frequently disagree over the names that the oil corporations give to their facilities. When a facility is named after a neighborhood, individual, or building, it may give the idea that the neighborhood or building is the facility's owner. For instance, the ownership of the SPDC facility is the subject of a Supreme Court case between Bayelsa State and Rivers State. The structure is known as the Soku Gas Plant and is located in Oluasiri, Bayelsa State. The community called "Soku" is located in

Akukutoru Local Government Area of Rivers State. Although the gas plant is called "Soku", Bayelsa State is where the gas plant is actually located. The name "Soku Gas Plant" erroneously suggests that the gas plant is situated on Soku-owned property or community. Due to this, the Rivers State Government and the Bayelsa State Government are at odds over who is the rightful owner of the gas plant.

Another illustration is Odeama Creek Flow Station. The Bassambiri community in Nembe Local Government Area of Bayelsa State is home to the Odeama Creek Flow Station. A community in Brass Local Government Area of Bayelsa State is called Odioma. Due to the Flow Station's naming, the Odioma people are claiming ownership of Odeama Creek Flow Station. The Oloibiri Oil Well is another example. It was said that Oloibiri was the site of the first industrial oil well.<sup>110</sup>

During my fieldwork, I learned that Otabagi Community, not Oloibiri, owned the area where the first oil was found. Otabagi and Oloibiri are communities in Ogbia Clan. Because the first oil well is named after Oloibiri, it is erroneously believed that Oloibiri owned the oil well where it was situated. Oil corporations have a social responsibility to carry out development initiatives in the areas where they operate.

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<sup>110</sup>Damfebo K. Derri, note 105

Projects could be carried out in the incorrect locations if a facility is given the incorrect name. Conflicts in families and communities could result from this.

(ii) *Arbitrary amount of compensation.*

Mr. Vice-Chancellor, Sir, as part of my research, I surveyed how much money was given to landowners as compensation for the taking of their land. The fact that the individuals owned the land formed the basis for the compensation. The survey included the years 1956–1964, 1965–1985, and 1986–2007, separated into three sections. Because the payments were made according to no established formula or scale, I came to the conclusion that they were arbitrary.

(a) 1956-1964

Consideration is given to acquiring land from the Emaguo-Kugbo people. This community, which is close to Oloibiri, had its land taken over for the purpose of building crude oil pipelines for export.<sup>111</sup>In comparison to the extent of the land, a very tiny amount of money was provided as compensation. The following receipt was given to the Nigerian Shell-BP Development Company in 1957 by the Ibe Family of the Emaguo-Kugbo:

I, Edoghotu Omu, for myself and on behalf of the Ibe Family in Igwe Compound at Emaguo-Kugbo in the

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<sup>111</sup>The Oil Pipelines Act of 1958 was enacted for the purpose of providing the framework for transporting crude oil for export.

Degema Division of Eastern Region of Nigeria, the owner of the land specified below being the person entitled to compensation under Clauses 2 and 12 of the Oil Prospecting Licence No.22 operative from the 19<sup>th</sup> January, 1957 in respect of oil prospecting operations carried out by Shell-BP Petroleum Development Company of Nigeria Limited acknowledge receipt to my entire satisfaction from the said company the sum of £40 (forty pounds) representing one year's compensation per acre per annum for the use by the said company as from the 26<sup>th</sup> January 1957 for such time as the company shall occupy my land during the term of the said licence any renewal thereof any mining lease granted in accordance with the terms thereof approximately 80 (eighty) acres of land of my property situate at OTIBE in the aforesaid Division. I also agree to indemnify the said company against any costs it may incur as a result of a third-party

establishing title to all or part of the said land.<sup>112</sup>

Clauses 2 and 12 of Oil Prospecting Licence No. 22 outlined the basis for the payment. Generally, these clauses provide for the payment of compensation to the land owner. According to the aforementioned receipt, the landlord stated that he was completely satisfied with the forty pounds paid in exchange for the eighty acres of property. The company's own attorneys carefully drafted the receipt. Although the landlord's level was clearly indicated or clarified by his thumbprint on the receipt, there was no proof that the landlord understood the contents of the document.

The landlord made decisions under the effect of ignorance in these circumstances. The same family's 1961 receipt from the same company further demonstrated their ignorance. This other contract totally and finally recompensed Oloibiri/Kugbopeople for the use of land that is five miles long and fifty yards wide for an oil gathering line and access road, the Family got £8 (eight pounds). It is argued that the absence of evaluation parameters renders the compensation amount arbitrary.

#### (b) 1965-1985

The land acquisition made in 1973 for the 16-inch Nun River/Kolo Creek Pipeline is the subject at hand. Through its claims agent, Shell-BP Petroleum Development

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<sup>112</sup>The receipt was dated 12<sup>th</sup> February, 1957, and was thumb-printed which showed the level of the landowner.

Company of Nigeria gave N243.60 (two hundred and forty-three naira sixty kobo) to nine Agbura households in Yenagoa Division of the old Rivers State. This receipt serves as proof of the transaction:

We, Chief Clinton Ehie for myself and on behalf of Orashi United Company acting for all the Claimants; Woribogha Owuloviemo for myself and on behalf of Owuloviemo Family; Vincent Egba for myself and on behalf of Emerere Family; Oluku Obesi for myself and on behalf of Obesi Family; Reuben Elai for myself and on behalf of Wonkoro Family; Simon Okeleke for myself and on behalf of Weke Family; Adogiyeri Moronu for myself and on behalf of Adogiyeri Family; Friday Oruku for myself and on behalf of Gboyefigha Family and Adigha Obele for myself and on behalf of Fonye Family all of Agbura Village in the Yenagoa Division of Rivers State in the Federal Republic of Nigeria the owners of the land specified below being the persons entitled to compensation under section 11(5) of the Oil Pipelines Act 1965 hereby acknowledge receipt to our entire satisfaction from the Shell-BP

Petroleum Development Company of Nigeria Limited, holder of an Oil Pipeline Licence No. 181, the sum of N243.60 (two hundred and forty-three naira sixty kobo) representing five (5) years compensation in advance for the occupation and use by the said company for twenty (20) years as from 1<sup>st</sup> April 1973, for a strip of land approximately 12.18 acres in area of our property situate at Ogugudieni near Agbura in the aforesaid Division in accordance with the terms of the Oil Pipelines Act, 1965. We also agree to indemnify the said company against any costs it may incur as a result of a third party establishing title to all or part of the said land.<sup>113</sup>

Chief Clinton Ehie for Orashi United Company signed the aforementioned form on April 26, 1973, and the claimants thumb-printed it.<sup>114</sup> The table below displays the specifics of the acquisition:

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<sup>113</sup>This is a complex document executed by illiterate natives.

<sup>114</sup>One Frank Egbe did not thumb-print but managed to write his name (signed) for WorigboboghaOwuloviemo for Owuloviemo Family.

Table three

SN	Name of Family	Family Representative	Size of Land in Acres	Amount Paid in Naira	Signature of Claimant
1	Egbe	Vincent Egbe	4.70	94.00	RTB
2	Obesi	Oluku Obesi	0.53	10.00	RTB
3	Weke	Simon Okeleke	0.57	11.40	RTB
4	Gboyefigha	Friday Oluku	0.86	17.20	RTB
5	Owuloviemo	Worighobogha Owuloviemo	1.08	21.60	Frank Egbe for WorighboboghaOwuloviemo
6	Emerere	Moremu Kuroworefa	0.60	12.00	RTB
7	Wonkoro	Reuben Elai	0.60	12.00	RTB
8	Adogiyeri Moronu	Adogiyeri Morenu	0.74	14.80	RTB
9	Adiegha Obele	Adiegha Obele	2.50	50.00	RTB

Table outlining the compensation received in 1973 from nine families in Agbura for land purchased.

Source: Field strip for Agbura drilling, reference LANE/RIV 37-D. 2009

The symbol for the right thumbprint is RTB

The receipt mentioned above demonstrates that the pay was expressly authorized by section 11(5) of the Oil Pipelines Act of 1965.

The section 11(5) provision of the Oil Pipelines Act makes no mention of a measure or amount of compensation. The argument makes the case that the payment of the compensation was arbitrary. There was no equality on the bargain because one of the parties was an illiterate.

The acquisition of another land from Nembe (Bassambiri) in the Brass Division by Shell-BP Development Company of Nigeria Limited is also very important to discuss. Bassambiri sold the company 25.7 acres of land in 1972. The Community was represented in the acquisition by three

chiefs. The chiefs were Chief B. B. Prince Damingo, Chief Otio Duguruyai, and Chief S. D. Kerema.

The information about the acquisition is shown in the table below:

Table four

Type of Land	No. of Acres	Rate offered by Company	Rate Demanded by Claimant	Agreed Rate	Total Amount Payable	Remarks
Mangrove Swamp	25.7	£40: 10 acres or part thereof capitalised		£40: 10 acres or part thereof capitalised	£120	One time compensation in full and final settlement

Source: SPDC 1972

From the table above, it should be noted that there is no indication that the Claimants requested a sum that was turned down by the Company.<sup>115</sup>The fee proposed by the firm was £40:10 for 25.7 acres.<sup>116</sup>The inference is that, as is customary in unequal negotiations, the claimant was not given the chance to make a demand. As a result, the claimants were arbitrarily forced to accept the amount offered by the Company.

Despite some claimants' vehement objections to the paltry amounts of compensation, the Claimants were forced to accept the Company's offer. A second purchase from the same Nembe (Bassambiri) Community by the same

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<sup>115</sup>See column 4 of the table

<sup>116</sup>See columns 3 and 5 of the table

company in 1978 serves as proof.<sup>117</sup>The table below shows the specifics of the compensation:

Table five

Type of Land	No. of Acres	Rate offered by Company	Rate Demanded by Claimant	Agreed Rate	Total Amount Payable	Remarks
Mangrove Swamp	8.54	₦100/ha	₦400/ha	₦100/ha	₦854.00	One time compensation in full and final settlement

Table showing acquisition of Santa Babara AYND-4 Location.

Source: SPDC. 1978

In the aforementioned transaction, the company's rate, which is displayed in column 3, matched the allegedly agreed rate in column 5. The claimant's demand or offer, as mentioned in column 4, was categorically ignored, as shown by this. In a conventional negotiation, the parties would have had to agree on a compromise price that would have been N250/ha or, at the very least, N200/ha because the purpose of a principled negotiation is for all sides to come out on top. Due to ambiguities created by the Land Use Decree, 1978, the Rivers State Government received the sum of N854.00 payable as compensation. The Community

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<sup>117</sup>One Chief Owolo James Yousuo, the entire Nembe Chief Juju Priest protested that the sum of N26,000.00 as compensation was grossly inadequate for the damage to and loss of fishing rights in the mangrove fishing swamp containing periwinkles, crabs, mudskippers, oysters and some other shel fishes.

has a problem with this.<sup>118</sup>Regarding the loss of creek and swamp fishing rights, there was a second issue. For a creek, the company used a standard charge per square meter of 0.97k, and for a mangrove swamp, it used a guideline rate of 10k per square meter.<sup>119</sup>These charges were less than the Company's allowed rates, which were N1.61 for a mangrove swamp and 12k per square metre for a watercourse.<sup>120</sup>The claimants were unaware of the Company's approved rates and were willing to take any payment made to them.

(c) 1986-2007

In SPDC's case, compensation payments for land and ground rent were made over a five-year period. 5.75 hectares of land in respect of Wells 8 and 11 in the Oloibiri Oil Field cost the firm N718,75 in 1992. The price per hectre was N50.00 for dry land and N25.00 for marsh, respectively.<sup>121</sup>The company paid N7.65 for approximately 1.8 hectares of land in 1998, continuing the same trend.<sup>122</sup>

In 2002, the Nigerian Agip Oil Company's rent per acre per year was challenged by Chief (Dr.) M. William Kemmer and others on behalf of the Twon-Brass Community. In 1971, the parties came to an agreement on a rent for 990.08 acres of land over a 50-year period of £5 (N10.00) per acre

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<sup>118</sup>The problem was solved when the community challenged the Company.

<sup>119</sup>See SPDC file Ref. LANE/RIVE 22-B

<sup>120</sup>*ibid.*

<sup>121</sup>See the payment receipt issued on 8<sup>th</sup> September, 1992

<sup>122</sup>See the payment receipt issued on 12<sup>th</sup> March, 1998.

per year. When the matter was submitted to arbitration, the rent per acre per year was raised to N27,000.00 while taking into account comparable prices from prior years, and a flat sum payment of N300,000,000.00 (three hundred million naira) was provided to make up for the loss of the use and exercise of surface rights.

About 105 hectares of land were acquired by SPDC from the Biseni area of Rivers State in 2007 for the sum of N1,500,000.00 (one million, five hundred thousand naira). In order to summarize, the table below shows the results of the survey of compensation during the time:

Table six

<b>Size of Land</b>	<b>Amount Paid</b>	<b>Period</b>	<b>Place</b>	<b>Year</b>
80 acres	40	1 year	Emaguo-Kugbo	1957
5 miles long and 50 yards wide	8	Indefinite	Emaguo-Kugbo	1961
12.18 acres	N243.60	5 years	Agbura	1973
25.7 acres	N120	Not specified	Bassambiri	1972
8.54 hectares	N100/ha	Not specified	Bassambiri	1978
4.93 hectares	N25/ha	5 years	Agbura	1989
6.7948 hectares	N100/ha	5 years	Bassambiri	1987
5.75 hectares	N50/ha	5 years	Oloibiri	1992
105 hectares	N1,500,000/ha	Not specified	Biseni	2007

Source: D.K. Derri, 2009

The accompanying table makes it abundantly evident that SPDC lacked a precisely defined scale or mechanism for the payment of compensation for the various time periods under

discussion.<sup>123</sup>This means that the firm chose how much compensation to pay, and the landowner is now in a difficult situation.

#### *Swindling land owners*

When oil companies utilize the sabotage defence to escape responsibility, they can swindle host communities. I have already talked about how the defence of sabotage is inimical to the interests of the host community.

## **4. CONCLUSION**

The owners of land with access to oil and gas have benefited greatly from the presence of oil companies. The Petroleum Industry Act of 2021 currently allows for 3% of oil corporations' budgets to go toward host community development. Oil firms are said to have built six-classroom buildings in some instances, awarded few scholarships to post-primary and tertiary students, and provided health facilities. It is, therefore, incorrect to assume that host towns receive no benefits from oil companies.

The SPDC made the following contributions to education in 2001, among other things:<sup>124</sup>

- (i) The award of scholarships; the construction, furnishing, and donation of classroom buildings to community schools. support of youth training

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<sup>123</sup>The 990.08 acres of land acquired at the rate of 5.00 per acre per annum for 50 years in 1971 at Twon-Brass is not included in the above table.

<sup>124</sup>SPDC: Sustainable Development Strategy, Revised Edition, February 2001.

- programs and secondary science education across all of the company's operational areas.
- (ii) Hospitals and other healthcare facilities in the community were being built and updated. Programs and projects relating to disease immunity that were implemented throughout the nation, including the Niger Delta region.
  - (iii) Implementing and donating communal water projects, as well as public sanitation systems.
  - (iv) Sponsorship of agricultural project; control of fisheries, poultry, and fish farms; Distribution to farmers of higher-yielding, disease-resistant seedlings produced in multiplication farms, as well as agricultural extension and consulting services.
  - (v) Construction of a range of infrastructure projects, including roads, bridges, market stalls, community centers, and town halls, as well as contributions to those projects.

According to Elf Petroleum Nigeria Limited (EPNL), over the years it had built and renovated schools, hospitals, rehabilitated roads, provided free health care, portable water, power, and scholarships in their host communities. It stated that the EPNL skill acquisition program had benefited well over 400 young people from Akwa-Ibom State. Children of Akwa- Ibom State received a total of 32 yearly postgraduate scholarships abroad, 620 post-secondary

scholarships, and 1,000 post-primary scholarships from EPNL as of the 2006–2007 school year.<sup>125</sup>

NAOC pledged to deliver the following in a Memorandum of Understanding (MOU) it signed with Twon-Brass Communities in the Brass Local Government Area of Bayelsa State:<sup>126</sup>

- (i) Renovation of Assembly Hall
- (ii) Renovation of staff room and library of Government Secondary School, Twon-Brass.
- (iii) Renovation of one 5-classroom block for the Government Secondary School, Twon Brass.
- (iv) 400 meters of a road between a consulate and a secondary school to be built, with four culverts and drains on both sides.
- (v) Construction of Twon-Brass General Hospital's surrounding fence and gate house.
- (vi) Provision for the Twon-Brass General Hospital with the necessary equipment.

Football contests at the local and international levels are said to have been sponsored or subsidized recently by AITEO, the oil prospecting company that succeeded SPDC.

It follows from the foregoing that the oil companies did in fact give their host towns certain advantages. These

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<sup>125</sup>Weekly Newspaper on Sustainable Development by Elf Petroleum Nigeria Limited, No.5 April – June, 2007.

<sup>126</sup>My field visits to Twon-Brass confirmed that the MOU was implemented.

sustainable development initiatives<sup>127</sup> were just mere incidents of human interaction. The companies are enjoined to do more.<sup>128</sup>

## 5. RECOMMENDATIONS

On the basis of the discussion, it is recommended as follows:

1. Legislature—Legislation that is proactive and supportive of landowners should be passed, and when necessary, current laws should be amended to reflect industry best practices. The dichotomy between land and mineral resources beneath the land should be eliminated by amending the Interpretation Act in this regard. The Land Use Act, especially the clauses granting power to the Governor to designate land as urban areas, the power to revoke right of occupancy for overriding public interests, among other provisions should be removed. Because the Land Use Act is embedded in the Constitution, it must be eliminated through constitutional amendment.
2. The Courts –The courts should actively and favorably interpret statutory provisions that require public servants to operate in a certain way to benefit landowners or the environment. While recognizing the merits of the Federal High Court's decision in the *Ghemre* case, which was

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<sup>127</sup>Abila E. Sylvanus and Damfebo K. Derri. "Sustainable Development Issues in the Niger Delta", in Emiri & Deinduomo (eds). *Law and Petroleum Industry in Nigeria: Current Challenges*. (Lagos: Malthouse Press Ltd., 2008) chapter 13.

<sup>128</sup>Most of the projects were renovation works

brought before it in Benin City, Nigeria, all residues of the *locus standi* doctrine that prevent access to justice should be eliminated by the court.

3. The Government –The government needs to generate the political will to swiftly punish negligent employees of the public and contractors who forego projects after being paid or mobilized. Regular reports outlining all the monies the state governors have taken from the 13% derivation fund should be demanded from them.

4. Oil Companies –They should go beyond half measures and invest in life saving sustainable development projects in their host communities, and be well informed before giving names to their facilities.

5. Land Owners–Owners of land should be educated about the need for change and given orientation. Their request for compensation for land acquisition or pollution should be discouraged in favor of alternatives. They should be treated as co-owners of the oil and gas extracted from their land.

## **6. ACKNOWLEDGMENTS**

I owe so many people for their assistance during this phase of my academic and professional journey. Although it would be impractical to list them all and express my gratitude, I will try to mention a few of them.

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counsel.

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I will never forget my late parents, Elder Kieriseiye Josiah Damfebo and Mrs. Dau-erigha Kieriseiye (néeEkine), who made me but have since passed onto the great beyond. On this momentous occasion, late Chief Lionel Jonathan-Omo

(Lio), my brother and friend of more than 50 years, you are sorely missed. I am grateful for the contributions made by my late ebony-black wife, Mrs. Alatarighabofa Kieriseiye (Ala)(nee Baite), with a strong sense of recall.

My elegant, stylish and attractive wife, Anna Derri Esq (née Inoru), who has endured much hardship as a result of my desire, is my extremely special other half at this point. Like me, she is a lawyer. I appreciate you very much. Now you understand how this project deprived you of my comfort on numerous times. My children, led by Omuna, Dogiye, Emi, Monditere, Bomodanyo, Ayebaisogomote, Ayebanengibofa, Naebimo. I appreciate you everyone and hope you are pleased with me.

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I think of my former and current students at the Bola Ajibola College of Law (BACOLAW) of Crescent University in Abeokuta, Ogun State, as well as the Faculty of Law at Niger Delta University in Bayelsa State. Your assistance during my whole teaching career and subsequent rise to this position has been tremendously appreciated. Thank you for believing in me so much.

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My sincere gratitude is directed toward God, who has treated me so mercifully and kindly throughout this time.

Let me conclude with the telling words of my friend, William Shakespeare;

*“There is a tide in the affairs of men  
Which, taken at the flood, leads on to fortune,  
Omitted, all the voyage of their life,  
Is bound in shallows and in miseries,  
On such a full sea are we now afloat,  
And we must take the current when it serves,  
Or lose our ventures”*

*Veni, vidi, vici* (I came, I saw, I conquered).

*Grātiās tibi agō* (Thank you)

**NDU 56TH INAUGURAL LECTURER**



**DAMFEBO KIERISEIYE DERRI**

B.Sc; LL.B; BL; LL.M; Ph.D in Law

**Professor of Law (Oil & Gas),**

Dean, Faculty of Law

Niger Delta University, Wilberforce Island, Bayelsa State

## ABOUT THE INAUGURAL LECTURER

Professor Damfebo Kieriseiye Derri was born to Late Elder Kieriseiye Josiah Damfebo and Late Mrs Dauerigha Kieriseiye (Nee Ekine) of Atubo Community, Nembe-Bassambiri, Bayelsa State. He grew up and started his primary school education there, and finished at State School Bassambiri, Nembe, passing the First School Leaving Certificate with Distinction in 1970.

He attended Nembe National Grammer School, Nembe from 1971 to 1975 and passed the West African School Certificate Examination with Division One in 1975. He later attended the Federal School of Arts and Science Sokoto in 1976, but left to study Applied Chemistry at the University of Jos in 1977. He graduated at the University of Jos with First Class Honours in Applied Chemistry, winning the Vice-Chancellor's Award as the best graduating student in Chemistry.

He did his national assignment as a Youth Corper at the College of Preliminary Studies, Yola in the Old Gongola State in 1981/1982.

Upon the completion of the NYSC, he secured a job as Trainee Brewer in 1982 with Pabod Breweries Limited, Port Harcourt.

He attended several refresher courses, in Nigeria and Munich, Germany.

He was the Treasurer of the Ijaw National Congress (INC) in 1983.

In 1985, he registered as a Part-Time student to study Law at the Rivers State University of Science and Technology, Port Harcourt, and graduated in 1990 with

Second Class Honours (Upper Division), winning all the academic prizes, namely: Dean's Prize as Best Graduating Student in Law; Prof. Osanakpo's Prize as the Best Graduating Student in Public International Law; Chief Nabo Graham Douglas Prize as the Best Graduating Student in Company Law.

He attended the Nigerian Law School in 1991 and was called to the Nigerian Bar as a Barrister and Solicitor of the Supreme Court of Nigeria.

He went to the University of Lagos for his Master of Laws (LL.M) degree and completed the programme in 1992. Thereafter, he left the Pabod Breweries and practiced law at the law firm of I. W. Bob-Mannuel & Associates in Port Harcourt. When Bayelsa State was created out of the old Rivers State in 1996, he was appointed a Special Adviser to the Military Administrator of Bayelsa State, Lt. Col. Edo Obi on Local Government, Community Development and Chieftaincy Affairs. He later became the Bayelsa State Chairman of the National Centre Party of Nigeria (NCPN) in 1997.

When civilian government was restored, he was, again, appointed as Special Adviser to Chief D. S. P. Alamieyeseigha, the Executive Governor of Bayelsa State, on Labour and Youth Empowerment in 2001.

In 2003, he was employed by the Niger Delta University as a Lecturer II. In course of his lecturing job, he registered as a Doctor of Philosophy (Ph.D) student to study law at the Ambrose Alli University, Ekpoma, Edo State, in 2006 and obtained the Ph.D in Law in 2010.

He was Acting Head of Department of Jurisprudence and Public Law and, thereafter, Acting Dean of the Faculty of

Law, Niger Delta University, before proceeding on Sabbatical leave at Crescent University, Abeokuta, Ogun State in 2016. He was appointed as a Board member of National Institute for Fresh Water Fisheries Research, New Bussa, Niger State in 2017.

The Crescent University, Abeokuta appointed him a Professor of Law in February, 2018 and in October that same year, the Niger Delta University promoted him to the rank of Professor of Oil and Gas Law.

Profesor Damfebo Kieriseiye Derri is currently the sitting Dean of the Faculty of Law, Niger Delta University, Bayelsa State, and was a member of the Technical Advisory Group (TAG) of the Tertiary Education Trust Fund (TETFund).

He is the author of the following books: “Alternative Dispute Resolution (ADR) in Nigeria: A Functional Approach” and “Laws on Compensation for Victims of Oil and Gas Operations” and over forty (40) articles published in both local and international journals.

Professor Damfebo Kieriseiye Derri is a Fellow of the Chartered Institute of Arbitrators (Nigeria), and was the Chairman of the Yenagoa District of the Institute from 2016 to 2021.

He is member of the Chemical Society of Nigeria, Science Association of Nigeria, Nigeria Bar Association, International Bar Association and Commonwealth Lawyers Association.

He is married with children.

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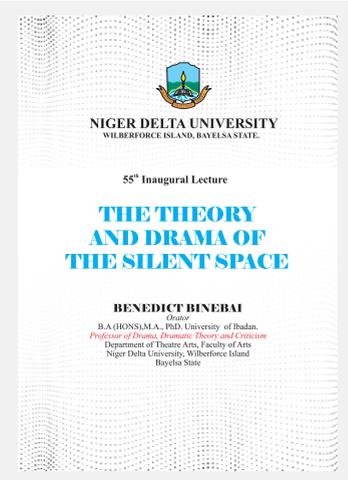
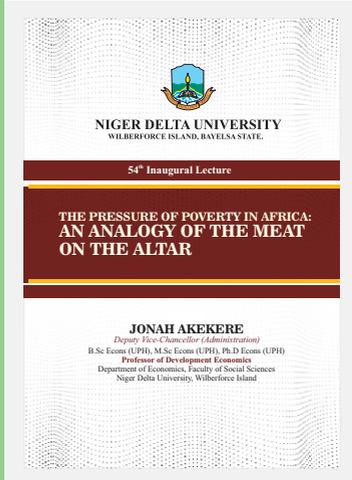
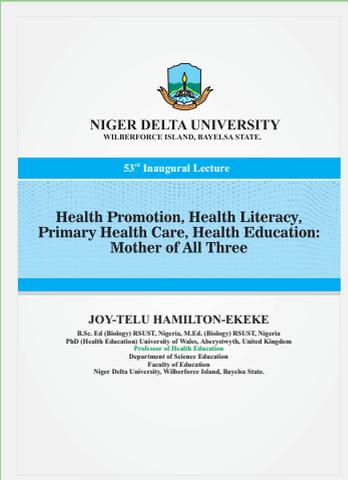
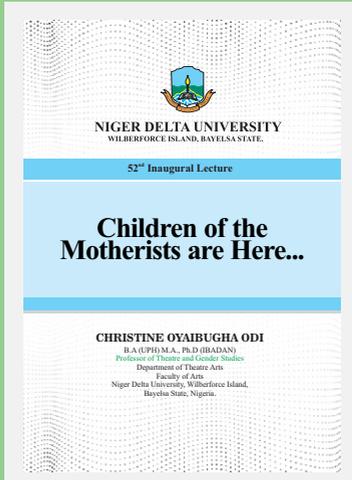
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