

OFF THE FRONT BURNER?: SPILLAGE AND COMPENSATION DILEMMAS IN OIL COMMUNITIES IN POST-AMNESTY NIGER DELTA

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Abstract

Is the Nigerian state suffering from sleep amnesia? If otherwise what explains the failure in not building on the peace she enthroned in the Niger Delta through the Presidential Amnesty Programme; a period the Niger Delta even had the presidency? Are the recent insurgent actions attributable to the actions and inactions of the state in Nigeria? The Niger Delta known for volatility had in the recent past experienced relative peace; often attributed first to the Presidential Amnesty Programme (PAP) for ex-agitators and second the Niger Delta had the presidency which naturally or expectedly assuaged the Niger Delta ethnic nationalities to give the presidency their support. Following these developments, crude petroleum production increased immensely. It is contended here that whereas critical stakeholders like the Nigerian state, oil Transnational Corporations (TNCs) and the ex-agitators basked in their new found friendship, oil communities had continued to suffer untold oil spillage catastrophes and frustrations arising from little or no compensations often stifled by unending litigations with oil Transnational Corporations (TNCs). This paper, relying on the Rentier State Theory (RST) as its theoretical framework, investigates the huge unreported oil spillages, the ensuing litigations and compensation struggles suffered by oil communities in Post-Amnesty Niger Delta. The paper relied on content analysis as method of data analysis while data were secured primarily from secondary sources. The paper discovered that cases of spillages and compensation frustrations arising from litigations are conflict triggers awaiting explosion with probable negative impacts on the nation's oil industry. It recommends that the Nigerian state should look beyond the euphoria of the Presidential Amnesty Programme (PAP) already waning fast in the oil rich region and genuinely address communities versus TNCs' litany of litigious engagements arising from oil spillages.

Keywords: Niger Delta, Oil Spillage, Communities, TNCs, Litigation, Compensation

1. Introduction

Damage to the environment resulting from man's survival instincts is widely noted but it remains a concern often placed in lesser value to profit calculations (Pfennigstorf, 1979, p.349). This is evident in environments where oil is discovered and exploited in commercial quantities like the Niger Delta (Appendix A); the immense impact of which is better imagined when it is considered that at every stage of oil production (from exploration to marketing) is detrimental to man and the

environment (Tolulope, 2004, p.387). In environmental discourse, damage to the environment is considered a violation (Cordato, 2001) and a more acute violation when “another person's health, property, or economic interests are injured” (Pfennigstorf, 1979, p.357).

Remediating injured parties resulting from oil exploration and exploitation ventures have necessitated conflicting positions among the stakeholders in the downstream petroleum industry-the Nigerian state, oil Transnational Corporations (TNCs) and the oil communities. In this enterprise, oil communities say they are the most adversely affected in this unequal level playing profit motivated game and had often made demands for compensation. However, oil TNCs vehement claim to sabotage to oil infrastructure as the cause of oil spills often times result in unending fierce litigation between oil TNCs and communities in the Niger Delta. The enormity of it is that the Niger Delta, South-South Nigeria had come to be alluded as the most litigious region of the country (Frynas, 2000).

The Presidential Amnesty Programme (PAP) introduced by the late Yar'Adua administration dimmed these vociferous concerns often expressed through youth protests to register community dissatisfactions with oil politics, had received the amnesty programme (Ukiwo, 2016). Therefore, post-amnesty Niger Delta became a peaceful oil exploitation environment with little or no encumbrances from oil communities. Not surprisingly, therefore, oil production increased tremendously with a widely acclaimed extra profit of \$39.3 billion in 2012 alone accruing to oil TNCs and their partner in business, the state in Nigeria (Sayne, 2013; Persson, 2014; www.indexmundi.com). The ensuing oil exploration and exploitation regime blinded the Nigerian state from building on the existing peace and worse still made the plight of oil communities' opaque within the Nigerian political landscape. So while the Nigerian state granted presidential amnesty to the ex-agitators, a sort of paying for peace (Davidheiser & Nyiayaana, 2011; Etekpe, 2012; Ikelegbe, & Onokerhoraye, 2016) and instead of building on the ensuing oil regime, she exhibited tremendous amnesia (Kuznick, 2014) made possible by petrodollar profits; a period the Niger Delta even had the presidency (Kew, & Philips, 2013). Thus, while the Nigerian state and oil TNCs basks in their safe haven in making oil profits especially at the peak of the presidential amnesty programme, a critical stakeholder in oil communities complain to be in perpetuity of negativities resulting from oil exploration ventures.

The paper focuses on three questions which are accordingly treated after the review of extant literature. First, what legal-environmental challenges had persisted into post-amnesty Niger Delta capable of stifling a sustainable resource energy extraction regime? Second, in what specific ways has the compensation-litigation debacle dislocated the social harmony of communities in post-amnesty Niger Delta? Third, explained within the framework of the first two questions, what explains the sleep amnesia exhibited by the authorities in Nigeria by not catching in on the post-amnesty peace regime in the Niger Delta?

2. Theoretical Framework and Extant Literature:

a. Rentier State Theory (RST)

This paper adopts the Rentier State Theory (RST) as popularised by Middle East and North African scholars such as Mahdavy (1970), Skocpol (1982), Beblawi (1987). In the words of Gary (2011, p.1) Rentier State Theory (RST) is a,

Political economy theory that seeks to explain state-society relations in states that generate a large proportion of their income from rents, or externally-derived, unproductively-earned payments, as its most basic assumption, RST holds that, since the state receives this external income and distributes it to society, it is relieved of having to impose taxation, which in turn means that it does not have to offer concessions to society such as a democratic bargain or a development strategy.

In Gary's (2011) characterisation rentier states eschew itself from taxation of the domestic population and instead generate income from sources other than tax. In this regard, scholars posit rentier states rely essentially from rents and royalties (i.e. unearned income) chiefly from fossil fuel (oil and gas). Yates (1996, p.18) characterise rentier states by the defects that such states become entangled with including (a) the rentier as a parasite that violates "*the most sacred doctrine of the liberal ethos: hard work*", (b) a rentier mentality (c) the proliferation of the service sector to the detriment of agriculture, and (d) the ascendancy of undemocratic tendencies in rentier states.

This paper took its point of departure from item (b) above; a mentality that states are known at adopting temporary palliatives with a placebo effect (being a sense of benefit felt by a patient that arises solely from the knowledge that treatment has been given but without a permanent effect) (Mazawi, 1999).

The state in Nigeria is known at adopting palliative measures when debilitating circumstances arise to threaten her economic security; but palliatives being essentially placebos are temporal and thus not giving lasting solution to problem the state in Nigeria intend to solve. In this context therefore, the Presidential Amnesty Programme for the Niger Delta ex-militants was a placebo in achieving calmness in the oil rich region to create a peaceful economic climate in ensuring an unfettered flow of rents/royalties from oil and gas.

It is therefore of no wonder that when economic security in rents/royalties was achieved in the Niger Delta through the Presidential Amnesty programme, the state in Nigeria was affected by a sleep amnesia, an attitude of forgetting the immediate past as a result of the boom in the present circumstances. It is in this context that the title of this paper, 'Off the Front Burner?: Spillage and Compensation Dilemmas in Oil Communities in Post-Amnesty Niger Delta', was chosen.

The theoretical framework in explaining the behaviour of the state in Nigeria point to the fact that palliatives rather than permanent solutions are oftentimes deployed in solving issues of economic security. This attitude of the Nigerian state

does subtly influence the attention of scholarly discourse to issue areas that the state is seen in giving priority. No wonder scholarly discussions on oil and gas exploration in Nigeria had recently been concentrated on issues of Post-Amnesty Niger Delta to the neglect of the pains communities go through as sufferers of pollution and pains from unending litany of litigations pitched against oil TNCs. This literature review is chiefly done to cover this gap in the literature with following sections as our guide.

b. Oil-Spills: How much of it is Sabotage?

Oil related legislations in Nigeria deny compensation payments for sabotage induced oil spills as contained in Section 15 (c) of the Pipelines Act (Cap 145 LFN 1990). The question then is, how much of environmental impairment, mostly oil pipeline spills, is sabotage? Are TNCs opportunists in identifying and using loopholes in Nigerian oil laws not to pay compensation? An immediate weakness arising thereof is that oil TNCs, especially Shell, consider almost all environmental impairments, especially oil spills, as sabotage, caused by third parties but oil and gas pipelines are engineering structures that prone to fail (Hopkins, 2008; Pettitt, & Morgan, 2009; Achebe, Nneke, & Anisiji, 2012) and to that end compensation claims by oil communities are unwarranted (EBHRP, 2012).

These questions have preoccupied the attention of Shell, oil communities, environmental organisations, academics and politicians as well. Shell stated that “unfortunately 70% of all oil spills over the last five years has been the result of sabotage to our facilities” (Shell, 2009). This position is in sharp contrast to Shell’s own admission that oil spills in the 1990s were the result of corrosion of equipment (Amnesty Int’l, 2009, p.17). As chair of the Senate Committee on Environment and Ecology, Bukola Saraki of the Seventh National Assembly observe that,

Oil companies make you believe that 70% of oil spills in the Niger Delta are as a result of sabotage. This messaging system is designed to exonerate them of any liabilities and adds frost to the fact that much of the oil infrastructure in Nigeria in terms of pipelines and platforms are old, poorly maintained and prone to leaks and blowouts. Available statistics support the fact that fifty percent (50%) of oil spills in Nigeria has been due to corrosion of oil infrastructure as some of the pipelines were over 40-50 years old and beyond their integrity value, twenty eight percent (28%) to sabotage and twenty one percent (21%) to oil production operations (Saraki, 2012).

However, a survey of pipeline failure rates among oil producing countries reveal that Nigeria recorded the highest percentage of oil spills in the 1990s (Table 2.1) globally. This revelation is so much more than mere claims of sabotage.

Table 2.1 Comparison of World-Wide Pipeline Failure Rates

Region	Product	Failure rate, per 1000 km-year	Year
United States	Gas	1.18	1984-92
United States	Oil	0.56-1.33	1984-92
Europe	Gas	1.85	1984-92
Europe	Oil	0.83	1984-92
Western Europe	Oil	0.43	1991-95
Western Europe	Gas	0.48	1971-97
Canada	Oil & Gas	0.35	N/A
Hungary	Oil & Gas	4.03	N/A
Nigeria	Oil	6.40	1976-95

Source: Steiner, 2008, p. 34

World Bank (1995) claims that corrosion of equipment and equipment failures are the key factors responsible for oil spills and not sabotage (Table 2.2). Mather, et al (2001) identified several causes of pipeline failure with sabotage or third party contributing to a fraction (Figure 1). As revealing as these reports could portray, Shell (2002) claimed it spent a whopping \$801.3 million on environment-related spending (Table 2.3); a manner of spending often described as ineffective (Amunwa, 2012) and even made caricature of her code of conduct (Shell, 2014), yet oil spillage is so rampant in the Niger Delta (Appendix C). It is in frustration resulting from such claims that compel Melford Okilo (in Aghalino, 2005, p.198) erstwhile governor of old Rivers State to argue that “rupture of petroleum pipelines due to deterioration is presented by oil companies as sabotage. What if pollution happens in America, it is not done by the people, but in Rivers State, local people are blamed”.

Scholarship indicates that a basic tenet of TNCs’ modus operandi in the Niger Delta is lying for the sake of profit; especially in the manner with which oil spill cases are handled and reported (Frynas, 1998, p.464). In this respect, the Steiner (2008, p.42) and Amnesty International (2009, p.46) independent reportage of Shell handling of spill cases were widely published; which in their entirety highlight the callous and unholy manner with which Shell handles spill cases in the Niger Delta.

Lying through sabotage had remained a major weapon of Shell operations (Frynas, 2000, p.161) in Nigeria for a reason, being that compensation payments are illegal on cases of proven sabotage. Moreover, Babawale (2013) identify loopholes or errors in the oil spillage valuation process in Nigeria, which further call to question the authenticity of claims by TNCs in attributing oil spillages to sabotage in their entirety and in determining the commensurate compensation rate. To this extent sabotage claims against communities is a measure to guarantee unfettered profit in their operations. Shell claim to have spent \$12.9 million for EIA and impacted areas remediation in the Niger Delta, yet, the Niger Delta *Natural Resource Damage Assessment and Restoration* project (Phase 1-Scoping Report) (NDES, 1997) revealed that Shell had negatively impacted on a total of 9 sites in Bayelsa State, 20

sites in Delta State, 24 sites in Rivers State and 1 site in Abia State (Appendix B).

Table 2.2 Oil Spillage: Causes and Volumes for Shell in Delta State, 1991-1994

Item	1994		1993		1992		1991	
	No	Vol. of Spills	No	Vol. of Spills	No	Vol. of Spills	No.	Vol. of Spills
Corrosion of equipment	25	124	26	131	24	183	17	266
Failure with equipment	15	89	17	275	20	126	22	178
Sabotage	13	235	13	161	9	642	7	26
Other	20	65	16	50	19	269	23	233
Total	73	515	72	617	72	1220	69	705

Source: World Bank, 2005 (Annex M)

Table 2.3 Environmental-related Spending Profile (\$ millions)

Flow-line Replacement	25.0
Flow-station Upgrades/Bundwall Remediation	11.4
Jetty, Shoreline Protection/Drainage Improvement Projects	3.5
Spill Response Equipment, Waste Management	
EIA, and Past Impacted Areas Remediation	12.9
Terminal Upgrades	25.2
Pipelines	59.0
Associated Gas Gathering	615.3
Environmental Management Activities	49.0
Total	801.3

Source: Shell Nigeria, 2002

Bopp van Dessel, (in Amnesty Int'l, 2009, p.59) state emphatically on a TV programme, World in Action, that Shell was not being fair to the Niger Delta as "they were meeting their own standards; they were not meeting international standards. Any Shell site I saw was polluted. Any terminal that I saw was polluted. It was clear to me that Shell was devastating the area".

It is no coincidence that all of these authorities alluded to Shell's callous handling of oil spill cases. It is an indication that Shell is lying with her environmental standards only to turn around to accuse oil communities of sabotage. But a contrary indicting report would ordinarily be unexpected as spill site inspections with relevant supervisory agencies depends entirely on logistics provided by Shell (Rim-Rukeh, 2015). The NNPC corroborated Shell's position by arguing that communities were responsible for sabotaging Shell equipment for reasons of gain, thereby discrediting Amnesty International (2009) report on the Niger Delta (CNN, 2009).

The frequency of Shell's attributing of oil spill cases to sabotage had caused scores of scholars to examine if at all there is sabotage in the oil industry. Ikporukpo

(1986:307) opine that there is indeed sabotage in the oil industry but he was quick to add that, it is a general expression by the oil communities' dissatisfaction with the oil TNCs for the dismal level of development in the communities.

Steiner (2008) presents detailed account of Shell oil spill figures from 1998-2007 (Table 2.4). There is a noticeable progression in the percentage of oil spill caused by sabotage as the years' progresses. This, no doubt, is a statement of sort, reacting to the lack of development in oil bearing communities and an utmost desire for an unalloyed attention from government and oil TNCs. In such a scenario, would the interests of company and community ever meet? According to Khan (2009) it is indeed doubtful as,

...there is enough evidence in the historical literature that multinationals thrive on the idea of maximization of wealth at minimal cost. The exploitative tactics of multinationals are indeed well documented. Multinationals often adopt strategies and means devoid of human values because human input is measured in economic terms rather than by moral and ethical standards.

Table 2.4 Amount of Oil Spills, Shell Nigeria (Numbers)

Year	Total	Sabotage	% sabotage	Controllable
1998	242	68	28%	174
1999	319	160	50%	159
2000	340	137	40%	203
2001	302	147	49%	155
2002	262	160	61%	101
2003	221	141	64%	80
2004	236	157	67%	79
2005	224	138	62%	86
2006	241	165	68%	50
2007	330	221	67%	109

Source: Steiner, 2008, p.57

c. Compensation Issues Arising from Oil Spills

The Polluter Pays Principle (PPP) posits that there must be a polluter, an identifiable pollution, a damage to be compensated through the imposition of charges and taxes, etc. These properties or identities are not contested. However, it is the application of the principle that is theoretical and not applied or if applied at all, it is lukewarm and haphazard in the Nigerian oil industry. This attitude is not only detrimental to the environment and discomfoting to the people of such an environment but also in contravention to set guidelines with an unequal condemnation from scholarship (Olaniyan, 2015).

According to Plato (in Okenabirhie, 2008/2009, p.4) "if anyone intentionally spoils the water of another...let him not only pay damages, but purify the stream or

cistern which contains the water...”. Similarly, Okenabirhie (2008/2009, p.1) declare that,

The main effect of the Polluter Pays Principle (PPP) in the Nigerian Oil and Gas Sector is in the musical rhymes the words make and that a polluter fulfils his obligations by paying some of the administrative expenses of the agencies who regulate pollution activities. With the staggering revelation that the Niger Delta region of Nigeria is one of the top most polluted spots on earth with 2.5 BCF of gas flared daily, and over 2,000,000 tons of oil spilled to date and over 70% of the oil spilled still unrecovered, it is hard to dispute the saying. Records indicate that although the PPP was accepted into Nigeria’s national environmental laws and regulations more than two decades ago, Nigeria cannot boast of any thoroughly cleaned up pollution or adequately compensated victim carried out by any polluter in the country.

For oil communities, compensation is one measure employed to redress injuries arising from an oil spillage. In legal parlance, compensation is referred to as “*restitutio in integrum*”, which means to restore to where it was before the injury was incurred. Compensation claims could be in diverse forms such as monetary evaluations, rehabilitation, restitution, etc. These forms of compensation are acquired through either of litigation, arbitration or negotiation. In this context, Adewale (1989, p.93) contend that “irrespective of the mode of settlement, a cardinal principle governing compensation claims is that it must be fair and adequate. This principle seems to be recognized by the oil industry. From a survey carried out on oil companies, it was the general consensus that compensation must be fair and adequate. However, what is fair is subjective and may differ from one company to another”.

Nigeria has a plethora of oil related legislations but instead abrogate all lands and minerals within such lands to the Federal Government (Omorogbe, 2001). The 1999 constitution is no exception as it stated in Section 4.4(3) that “...the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly”.

In abrogating all mineral rights to the Nigerian state through legislative fiats, there is, however, a conspicuous silence on compensation among oil legislations in Nigeria except the Minerals Act (in Ojo & Gaskiya, 2003, p.237) which note that “sums as may be fair and reasonable compensation for any disturbance of the surface rights of such owner or occupier or for any damage done to the surface of the land upon which his prospecting or mining is being or has been carried on and shall in addition pay to the owner of any crops, economic trees, buildings or works damaged, removed or destroyed by him or by any agent or servant of his compensation for such damage, or removal or destruction”. The Minerals Act was repealed and replaced by the Petroleum Act with a deliberate silence on compensation as well. However,

section 11(5) (a) to (c) of the Pipelines Act (in Ojo &Gaskiya, 2003, p.43) provides for compensation in the following areas:

- a. “Any person whose land or interest in land (whether or not it is land in respect which the license has been granted) is injuriously affected by the exercise of the rights conferred by the license, for any such injurious affection not otherwise made good;
- b. Any person suffering damage by reason of any neglect on the part of the holder or his agents, servants, or workmen to protect, maintain or repair any work, structure or thing executed under the license for any such damage not otherwise made good;
- c. Any person suffering damage (other than on account of his own default or the malicious act of a third parson) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good”.

Yet, there is silence as to what a just and fair compensation should be. Akpan (2005, p.134) reveal that “a key informant in Shell Nigeria disclosed to me that in the face of a lack of clarity on what was legally fair or just, the oil companies traditionally adopt three major payment criteria for land acquired for petroleum operations. They paid for land value, economic trees/crops, and physical structures”. This revelation indicate that compensation payments are not legally binding but rather are cost incurred in order to foster community relations. It is obvious that oil spill affected communities are at the vagaries of oil TNCs with little or no input from relevant supervising agencies. No wonder, the dismal rates approved by the Oil Products Section (OPTS) as compensation in lieu of injury sustained (Table 2.5). It is revealing that the Nigerian oil industry is not oil-community friendly. The frequency of such rapacious, vicious and predatory experiences, communities say, compels them to seek alternative measures of remediation, not excluding peaceful protests.

Table 2.5 Oil Industry Compensation Rates (for selected crops)

Crop	Maximum Amount Per Hectare of Crop (US\$)	Alternative Criterion (Maximum Amount Per Crop/Stand-US\$)
Maize	58.84	-
Beans	82	0.02
Yam	369.23	0.31
Cocoyam	123.08	-
Cassava	136	-
Pepper	76	-
Sweet Potato	50	0.02
Pumpkins	-	0.08
Okra	-	0.04

Bitter Leaf	-	0.10
Tomatoes	100	0.10
Melon	90	0.06
Pineapple	-	0.15
Waterleaf	-	0.004
Mango	-	7.69
Coconut	-	4.62
Guava	-	1.54
Pawpaw	-	1.54
Banana	-	2.36
Plantain	-	2.46
Orange	-	4.62
Raffia Palm	-	2.46
Rubber	-	3.08
African Pear	-	2.46
Cocoa	-	7.69
Oil Palm (hybrid)	-	4.62
Oil Palm (indigenous)	-	7.69

Source: Akpan, 2005, p.6

3. Legal-Environmental Elements Precipitating Restiveness in oil Communities in Post Amnesty Niger Delta

The restiveness in oil communities is not new but still not abating, even in post amnesty Niger Delta. This unending trend is precipitated by a number of reasons. Firstly, the legal regime regulating the oil and gas industry is not community friendly. In this respect, the NESRA Act (2007) is a case often accused (Ladan, 2012). The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007 (NESRA ACT, 2007) which replaced the erstwhile Federal Environmental Protection Agency (FEPA), stated in Part I (Section 2) of the NESRA Act that,

The Agency, shall, subject to the provisions of this Act, have responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.

It is the worrisome view of oil bearing communities that the NESRA Act (2007) in its totality is an extension of the already prevailing injustice meted out to them by the state in Nigeria (Ladan, 2012). This view is sustained because the NESRA Act unlike FEPA which was empowered to protect the environment

throughout Nigeria, NESRA is barred from carrying out environmental laws and regulations in oil bearing communities, because the law specifically exempts their operation in the oil and gas sector (Okenabirhie, 2008/2009). Sections 7(g-K) and 8 (g, k, i, m, n, o) of the Act provides that the Agency shall,

- a) “Enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use of handling and disposal of hazardous chemicals and waste other than in the oil and gas sector.
- b) Enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector.
- c) Enforce environmental control measures through registration, licensing and permitting system other than in the oil and gas sector.
- d) Conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector.
- e) Conduct public investigations on pollution and the degradation of natural resources, except investigations on oil spillage;
- f) Submit for the approval of the Minister, proposals for the evolution and review of existing guidelines, regulations and standards on environment other than in the oil and gas sector including: atmospheric protection, air quality, ozone depleting substances, noise control, effluent limitations, water quality, waste management and environmental sanitation, erosion and flood control, coastal zone management, dams and reservoirs, watershed, deforestation and bush burning, other forms of pollution and sanitation, and control hazardous substances and removal control methods
- g) Develop environmental monitoring networks, compile and synthesize environmental data from all sectors other than in the oil and gas sector at national and international levels;
- h) Undertake, coordinate, utilize and promote the expansion of research experiments, surveys and studies by public or private agencies, institutions and organizations concerning causes, effects, extent, prevention, reduction and elimination of pollution and such other matters related to environmental protection and natural resources conservation other than in the oil and gas sector as the Agency may, from time to time, determine;
- i) Enter into agreement and contracts with public or private organizations and individuals to develop, utilize, coordinate and share environmental monitoring programmes, research effects, and basic data on chemical, physical and biological effects of various activities on the environment and other environmental related activities other than in the oil and gas sector”.

The behaviour of the Nigerian state as shown in the NESRA Act, 2007, communities contend is discomfoting to them but a beneficial legal oil regime to oil TNCs whose footprints are widely noticed in shaping the legal framework of oil economic activities (Gaughran, 2009, p.2).

Second, the legal time constraints in the ‘Statutes of Limitation’ where environmental law suits are confined to a given time period beyond which they are declared statute barred (Frynas 1999, p.128) precipitates violence in post amnesty Niger Delta. The NNPC Act of 1977 is the best example of Nigerian statute of limitation. The NNPC Act stipulated that no law suit will be entertained against the NNPC, an employee or its board “unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damage or injury, within twelve months next after the ceasing thereof”. This implies that compensation payments would be denied to claimants if such claims are not presented within twelve months of the occurrence of the injury.

Third, TNCs like Shell are greatly averse to compensation payments resulting from spillages, a trend which compel community protests and had continually kept oil company-community relations frosty (Okoko, 2011; Imosemi, & Abangwu, 2013). Shell is notorious for appealing cases to superior courts, even to the Supreme Court, Nigeria, when judgments are not favourable to her. Aside prolonging compensation-relating court cases, Shell specifically is notorious for not paying compensations (Frynas, 2000).

Fourth, the proclivity of oil TNCs to use the state security forces in settling contending issues with their host communities has still not abated even in post amnesty Niger Delta (Zimmer, 2010; Rieper, 2013). Whereas communities essentially stage protests to register their grievances such as unmet demands, the attitude and consideration of such community protests by oil TNCs and the Nigerian state as a threat to their profit and rents respectively (Omeje, 2006a&b) is not only worrisome but still persist in post amnesty Niger Delta. The Umuechem compensation saga is a case in point. It would be recalled that Umuechem Community, Etchie, Rivers State, Nigeria, was the first ever oil community that tasted the bitter side of Shell in the Niger Delta. A peaceful protest demanding for life-sustaining amenities was staged in Umuechem, 1990. In a peaceful protest never demanding of brutal force, Shell invited in the mobile police to brutally quell the demonstration. The then Rivers State Government instituted a commission of inquiry, the Justice Opubo Nko-Tariah led Judicial commission of Inquiry into the Umuechem Disturbances (1990) to look into the matter. The panel’s verdict then was that,

There is no evidence of a threat by the demonstrators and that the mobile anti-riot police dispatched to the area acted in a reckless disregard for lives and properties...panel indicted SPDC and the Federal Government and recommended compensation in favour of the community. An agreement was reportedly reached between SPDC and the government whereby the company would provide compensation funds and the state government would disburse them. It has been alleged that Shell failed to provide the money. Cheques issued by the state government bounced at the bank (Rivers State of Nigeria, 1991)

While state security attacks on Umuechem, Obagi, Odi, and several Ogoni communities in the 1990s (Wiwa & Wiwa, 1995) are chronicled in the annals of Nigeria's oil industry, several communities in post amnesty Niger Delta (Gbaramatu Kingdom, 2009; Ayakoromo, 2010, etc) have since fallen victims to regular, frequent and sustained state terror attacks with no end in sight (Emuedo, 2015).

Fifth, gas flaring with all the widely acknowledged health effects still persists in post amnesty Niger Delta on an account that a relaxed economic atmosphere of regulatory legislations and agencies exist in the Nigerian oil regime which communities often say translate into grave human and environmental hardship. Nigeria's petroleum laws are deliberately made liberal to suit oil TNCs at the expense of host communities. As the major onshore operator, Shell is a key beneficiary of Nigeria's lax environmental regulations (Aigbokhaevbo, & Aniekwu, 2013).

A fundamental aspect to this is that, the activities of Shell and the Nigerian state are in violation of a couple of international treaties and conventions including the Ottawa Charter for Health Promotion (1986, p.1) which stated that aside poverty, "the fundamental conditions and resources for health are peace, shelter, education, food, income, a stable ecosystem, sustainable resources, social justice and equity". Gas flaring in Nigeria is a gross violation of the Ottawa Charter, perpetuated against oil bearing communities. A worrisome aspect to the prevailing loose gas flaring posture is that the practice is in sharp contrast to the nation's Strategic Gas Plan (2004, p.15-16) which stated that,

The basis for this master plan is that it primarily seeks to: eliminate the wasteful practice of gas flaring in the short term, allow the rapid development and refurbishment of the crippled power sector, make gas available at commercial and affordable prices to local markets, widen the availability of gas to more of Nigeria's underserved regions, formulate a strategy that adds value for all parties and encourages beneficial gas usage both domestically and/or through capture and, where relevant, savings of foreign exchange...

None of these lofty goals has ever been pursued. Today oil host communities suffer from gas flares that precipitate acid rain which adversely impact on roofing sheets, the eco-system, human health, etc, (Welsch, 2003; Cooper, Boyko, & Codinhoto, 2009). It is, therefore not surprising that Nigeria rank highest in gas flaring among a select group of oil producing states (Table 3.1). This is in spite of the plethora of legislations and regulations existing in the Nigerian oil industry. The Nigerian state has premised her languid attitude towards pollution and its effects on oil communities that pays the supreme sacrifice for the greater good of the country.

Table 3.1 “Best Estimate” of Gas Flaring Trends in Selected Countries (2000)

Country	Flared Gas	Share of World Total (%)	Ratio Gas Flared To Oil Produced (m/toe)	
			1990	2000
Algeria	6.8	6	79	101
Angola	4.3	4	n/a	118
China	3.2	3	n/a	74
Egypt	0.9	1	37	23
Indonesia	4.5	4	66	66
Iran	10.5	10	70	56
Nigeria	17.2	16	250	166
Mexico	5.6	5	n/a	33
North Sea	2.7	3	18	9
Russia	11.5	11	n/a	77
Venezuela	4.5	4	30	27
United States	2.8	3	10	22
Other Countries	33	30	-	-
World	107.5	100		

Source: ERA/FoEN, 2005, p. 12

Sixth, following series of futile attempts at pacifying oil communities either through monetary inducements, juicy contract awards to chiefs and few elites, through the regime of Memorandum of Understandings (MoUs), etc, oil giant Shell, Nigeria, finally introduced a sustainable community development strategy christened the Global Memorandum of Understanding; a community development interface designed to put the community in the driving seat with guidance from community based development NGOs (Shell GMoU, 2006).

As a package the GMoU model is superb, but as usual, the implementation component has been discomfoting to communities (Aaron, 2012; Egbe, 2014). Communities cry aloud to complain about a number of issues in the GMoU interface. Firstly, that Shell is too much in a hurry to implement the model to ensure a peaceful oil exploitation environment. Secondly, that the coordinating NGOs are distant from the communities and instead are in close comfort with Shell, the principal donor (Hulme, & Edwards, 1997). Thirdly, that Shell is notorious in flouting her obligations to the communities as duly agreed by both parties in the GMoU, which often result in community protests.

Recently, Obunagha and Ogboloma autonomous communities of the Gbarain Kingdom staged separate protests to press home their demands. On March 2, 2015, youths of Obunagha Community in protesting the failure of Shell to meet her obligations to the community in the provision of basic life supporting services, employment, scholarship, etc, blocked the entrance to the multi-billion dollar Gbarain-Ubie Gas Gathering Facilities belong to Shell, Nigeria (Sahara Reporters, 2015). In similar circumstances, on 16 August, 2016, youths of Ogboloma

Community in Bayelsa state protested against among other demands the refusal of Shell to link them to the electricity she provided to neighbouring communities within the Gbarain Kingdom (Metta-Angoye, 2016).

The implications of the persistence and continuity of these protest precipitating experiences of oil communities are not oblivious to all stakeholders (e.g. interruptions in resource supplies) but these developments are unabated on account placing profit over people and the environment (Kollmuss, &Agyeman, 2002; Margolis, 2012; ICG, 2015).

4. Achieving Compensation: the Litigation Option and Its Dislocating Effect on the Social Harmony of the Niger Delta

Arising from the presence of oil TNCs and the attendant adverse exploration endeavours, the Niger Delta is today the most litigious part of Nigeria (Frynas, 2000). This notoriety is acquired by the numerous law suits that are either concluded, pending in courts or fresh suits that are initiated almost on daily basis against oil TNCs for environmental genocide (Stel, 2014) and a genuine willingness to achieve commensurate compensation (Frynas, 1999, p.121, 2004, p.371; Bassey, 2013).

Litigation is one option explored by communities to seek compensation. It is an avenue resorted to as an alternative to arbitration and negotiation measures (Adewale, 1989). Section 11(5) of the Oil Pipelines Act made provision for guidelines for courts to award compensation to any (a) “damage done to any buildings, crops or profitable trees by the licensee; (b) disturbance caused by the holder in the exercise of his rights; (c) damage suffered by any person by reason of any neglect on the part of the holder or his agents; (d) damage suffered by any person other than as stated in such subsection 20(5) as a consequence of any breakage of or leakage from the pipelines or an ancillary installation; and (e) loss in value of the land or interests in land by reason of the exercise of the rights as aforesaid”.

Interesting as these provisions appear, their application is limited as issues of remediation involve matters not covered by the above provisions. For example, environmental degradation has psychological (Ferrer-i-Carbonell &Gowdy, 2007; Reser, 2007) and mental health (Speldewinde, Cook, Davies &Weinstein, 2009) underpinnings that are unanticipated and treated in the provisions as stated above. Amidst such deliberate legal blindness, aggrieved parties often opt for justice in the courts. Litigation matters are brought before the courts under the tort of nuisance, negligence, or the rule in *Rylands v. Fletcher* (Winfield, 1931; Frynas, 2000; Burrows, 2004).

The modus operandi of these legal requirements for ensuring compensation is onerous task for oil communities; as communities are required to prove that the defendant (the company) was negligent, even by scientific and technological means. More so, monetary compensations accruing from litigation are abysmally poor vis-à-vis the amount originally claimed (Table 4.1). Worse still, oil TNCs are easily accessible to scientific and technological information to counter community claims and also financially stronger to prolong an oil suit for years, which the communities cannot withstand. Essentially, therefore, litigation represents a form of communities’

grievance for oil TNCs and had remained one basic element that has caused sundry protests in oil communities.

Table 4.1 Compensation Claims and Payments Arising from Litigation

Case	Amount Claimed	Amount Paid	Percentage	Remarks
Chief Tuaghaye and others vs.SPDC-1977	₦61,126,500	₦30,000,00	49.0	Case in favour of the company
Shell vs. Farah and others-1995	₦26,490,000	₦4,621,307	17.5	Same
SPDC vs.Tiebo VII and others-1996	₦64,146,000	₦6,000,000	9.4	Same
SPDC vs. Joel Amaro and others-2000	₦15,392,889	₦30288,861	196.8	Same
SPDC &NDDC vs. Stephanie Sele and others-2004	₦20,000,000	₦18,329,350	91.6	Same
ELF(Nig) Ltd. vs. Sillo and others-1994	₦1,348,000	₦ 288,000	21.4	Same

Source: Wosu, 2013, p.20

Oil communities may not contend with oil TNCs penny for penny but litigations could serve several purposes such as risk to reputation, making TNCs accountable for their actions, for deterrence purposes where there are weak regulatory agencies, etc, in subtly making oil TNCs to adopt healthy environmental policies (Frynas, 2004; Crowley, 2009).

In spite of these advantages oil communities may derive from litigation against oil TNCs, litigation is perceived as a threat to the social harmony in oil communities in particular and indeed the African society at large. This is principally because western justice system runs parallel to African perspectives of justice. For example, while the former emphasise individual rights, the latter advocates for communal spirit and endeavours, community rights, reconciliation and social harmony (Ake, 1987; Oko, 2007).

The emergence of oil TNCs in the Niger Delta and indeed Africa to exploit natural resources has dislocated social harmony once revered and enjoyed. All of such is in the past, as hitherto sleepy communities are constantly seen in the courtroom seeking either compensation from one TNC or the other for damages or bitterly engaged in a land-related lawsuit with a neighbouring community over oil location rights (Rieper, 2013). The gravity of this is observed at different levels.

First, select oil communities in the Niger Delta has since lost sense of decency in appreciating green environments in their localities; for a number of communities would choose rather not to report an oil spill incident on time but allow the spill to make an extensive impact in coverage area essentially to gain more compensation claims in form of damages from oil TNCs. Thus, prompt clean-up of spill sights have become secondary to the accruable compensation calculations (Baumuller, Donnelly, Vines & Weimer, 2011).

Secondly, there has been intra and inter communities clashes in the past over land ownership especially in locations where oil and gas resource deposits are discovered in commercial quantities. For example, the bloody clashes involving the Ogoni, Andoni, Eleme, Okrika in Rivers state (Watts, Okonta & Von Kemedi, 2004); the Ijaw, Itsekiri and Urhobo in Delta state (Imobighe, Bassey & Asuni, 2002), Epebu/Emadike in Bayelsa state and communities within Eket, Akwa Ibom state (Etekpe, 2007) etc, are unsavoury experiences of the past.

Thirdly, social disharmony has risen even at the level of state governments in the Niger Delta region. It would be recalled that aside unpalatable press releases, the governments of Bayelsa and Rivers States are on a regular frequency in court to establish the actual owner of oil locations in Soku/Oluasari oil fields (Agande, 2012; Aluko, 2014; Onoyume, 2014). It is even widely alleged that the Rivers/Bayelsa oil location ownership imbroglio lies at the heart of the unsavoury relations between Rotimi Amaechi, erstwhile governor of Rivers state and former president Goodluck Jonathan (Premium Times, 2013, Thurston, 2015).

Arising thereof, litigation and compensation are not the remedies for oil communities (Emeseh, 2010); for compensation and litigation are not without their respective discomforts in form of parties overstating their positions to distort the substantive issues which extend the frontiers of disagreement, promotes enmity and sever whatever thread of relations or friendship that had hitherto remained (Pfennigstorf, 1979, p.356; Oko, 2007, p.378). The totality of such courtroom manoeuvres aggravates tensions and extends beyond the courtroom. It is a major source of disharmony among oil communities of the Niger Delta and a precipitator for violence. This is because injuries that require compensation in most cases encroach unto the psychological domains of the aggrieved. It is un-African in traditional African settings to walk away knowing that a neighbour known and associated with for years is aggrieved while he is compensated for injuries both suffered. This is what Western notions of justice/litigation portend.

5. Conclusion

Findings from the paper so far indicate that huge rents/royalties from oil and gas blinds the state in Nigeria from continuing in whatever peace she had enthroned through a programme as the Presidential Amnesty Programme. In this context the paper conclude that while the rents/royalties and oil profits continue to accrue to the Nigerian state being a first party), and oil TNCs as second party, a third party in oil communities do suffer the effects resulting from oil exploration in form of oil spillages and the attendant frustrations in seeking compensation, one issue which has continued to defy friendly community-company relations (Okoko, 2011). This paper further posit that following the acceptance of the federal government's unconditional offer of presidential amnesty to ex-militant youths of the Niger Delta, the ensuing Niger Delta regime enthrone a number of developments. First, the region became peaceful for oil exploration and exploitation activities which the Nigerian state and the oil TNCs maximally exploited. Secondly, that the Nigerian state and oil TNCs went into a deep sleep amnesia in the euphoria of massive oil rents/royalties.

The paper in the light of the above proffers the following recommendations:

1. A “*Reciprocated Compensation Cost Approach*” as advocated by Emelie (2012, p.7) be adopted. It is a sort of mutual tolerance where there is willingness of victims of oil spill to accept compensation from TNCs, and an equally reciprocal measure from oil TNCs to pay compensation to the victims in lieu of the loss incurred in a privately bargained friendly regime in order to avoid unnecessary litigation that often times throws open bitterness and wastage in economy of time and money,
2. Adopt international standard oil spillage preventive measures from the backdrop of the fact that compensation never totally give restitution to all injured parties; more-so as monetary compensation never heal spill affected communities of the unfriendly views, odours, etc,
3. The new NOSDRA Amendment Bill 2012, initiated by the seventh National Assembly, with profound innovations on oil spill management, remediation and compensation (e.g. the contingency fund component to achieve full mitigation and compensation resulting spill damages) for spill victims be revisited and passed into law.
4. Oil industry regulatory agencies as presently constituted are too numerous with overlapping roles (e.g. DPR, NIMASA, NOSDRA, MoPR, MoE, etc); this is not healthy and therefore their respective roles be clearly defined.
5. If the recent agitations from the Niger Delta Avengers (NDAs), Adaka Boro Avengers (ADAs), etc, are any lessons to be learnt, the deployment of military measures to ensure a forceful oil exploration regime be discouraged as an involuntary peace is only but temporal (Kuznick, 2014).
6. Images resulting from oil spill sites do make permanent mindsets in communities which precipitate restiveness. Peace is only obtainable through efforts in making the environment of oil communities liveable.

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**Appendix A:
Effects of Oil Recovery by Stage**

Stage	Effect	Subcategory
Exploration	Deforestation	<ul style="list-style-type: none"> • Emerging infectious diseases
Drilling & Extraction	Chronic Environmental Degradation	<ul style="list-style-type: none"> • Discharges of hydrocarbons, water and mud, increased concentrations of naturally occurring radioactive materials
	Physical Fouling	<ul style="list-style-type: none"> • Reduction of fisheries • Reduced air quality resulting from flaring and evaporation • Soils contamination • Morbidity and mortality of sea birds, marine mammals and sea turtles
	Habitat Disruption	<ul style="list-style-type: none"> • Noise effects on mammals • Pipeline channelling through estuaries • Artificial islands
	Occupational Hazards	<ul style="list-style-type: none"> • Injury, dermatitis, lung disease, mental health impacts, cancer
	Livestock Destruction	
Transport	Spills	<ul style="list-style-type: none"> • Destruction of farmland, terrestrial and coastal marine communities • Contamination of groundwater • Death of vegetation • Disruption of food chain
Refining	Environmental Damage	<ul style="list-style-type: none"> • Hydrocarbons • Thermal pollution • Noise pollution, ecosystem disruption
	Hazardous Material	<ul style="list-style-type: none"> • Chronic lung disease
	Exposure	<ul style="list-style-type: none"> • Mental Disturbance • Neoplasm
	Accidents	<ul style="list-style-type: none"> • Direct damage from fires, explosions, chemical leaks & spills
Combustion	Air Pollution	<ul style="list-style-type: none"> • Particulates • Ground level ozone
	Acid Rain	<ul style="list-style-type: none"> • NO_x, SO_x • Acidification of soil • Eutrophication; aquatic and coastal marine
	Climate change	<ul style="list-style-type: none"> • Global warming and extreme weather events, with associated impacts on agriculture, infrastructure, and human health

Appendix B
Some Severely Oil Polluted Sites in the Niger Delta

Location	Environment	Impacted Area (ha)	Nature of Incidence
Bayelsa State			
Biseni	Freshwater Swamp Forest	20	Oil spillage
Etiama/Nembe	Freshwater Swamp Forest	20	Oil spillage & fire outbreak
Etelebu	Freshwater Swamp Forest	30	Oil spill incidence
Peremabiri	Freshwater Swamp Forest	30	Oil spill incidence
Adebawa	Freshwater Swamp Forest	10	Oil spill incidence
Diebu	Freshwater Swamp Forest	20	Oil spill incidence
Tebidaba	Freshwater Swamp Forest Mangrove	30	Oil spill incidence
Nembe Creek	Mangrove Forest	10	Oil spill incidence
Azuzuama	Mangrove	50	Oil Spill Incidence
9 sites			
Delta State			
Opuekeba	Barrier Forest Island	50	Salt water intrusion
Jones Creek	Mangrove Forest	35	Spillage & burning
Ugbeji	Mangrove	2	Refinery wastes
Ughelli	Freshwater Swamp forest	10	Oil spillage – Well head leak
Jesse	Freshwater Swamp Forest	8	Product leak/burning
Ajato	Mangrove		Oil Spill Incidence
Ajala	Freshwater Swamp Forest		Oil Spill Incidence
Uzere	Freshwater Swamp Forest		Oil Spill Incidence
Afiesere	Freshwater Swamp Forest		Oil Spill Incidence
Kwale	Freshwater Swamp Forest		Oil Spill Incidence
Olomoro	Freshwater Swamp Forest		Oil Spill Incidence
Ughelli	Freshwater Swamp Forest		QC
Ekakpare	Freshwater Swamp Forest		Oil Spill Incidence
Ughuvwughe	Freshwater Swamp Forest		Oil Spill Incidence
Ekerejegbe	Freshwater Swamp Forest		Oil Spill Incidence
Ozoro	Freshwater Swamp Forest		Oil Spill Incidence
Odimodi	Mangrove Forest		Oil Spill Incidence
Ogulagha	Mangrove Forest		Oil Spill Incidence
Otorogu	Mangrove Forest		Oil Spill Incidence
Macraba	Mangrove Forest		Oil Spill Incidence
20 sites			
Rivers State			
Rumuokwurusi	Freshwater Swamp	20	Oil Spillage

Rukpoku	Freshwater Swamp	10	Oil Spillage
Ebubu-Ochani Eleme	Freshwater Swamp	25	Oil Spillage
Bomu	Freshwater Swamp	12	Oil Spillage
Obigbo	Freshwater Swamp		Oil Spillage
Umuechem	Farm Bush Mosaic		Oil Spill Incidence
Obrikom	Freshwater Swamp		Oil Spill Incidence
Okpomakiri	Mangrove Forest		Oil Spill Incidence
Ke-Dere	Mangrove Forest		Oil Spill Incidence
Krakrama	Mangrove Forest		Oil Spill Incidence
Orubiri	Mangrove Forest		Oil Spill Incidence
Ekrikene	Mangrove Forest		Oil Spill Incidence
Ekulama	Mangrove Forest		Oil Spill Incidence
Oshie Ahoada	Freshwater Swamp	15	Oil Spillage
Oshika	Freshwater Swamp		Oil Spill Incidence
Oyakama	Freshwater Swamp		Oil Spill Incidence
Ebocha	Freshwater Swamp	10	Oil Spillage
Rumuekpe	Freshwater Swamp	25	Oil Spillage
Nonwa	Mangrove Forest	25	Oil Spillage
Ekuleama	Mangrove Forest	20	Oil Spillage
Bodo West	Mangrove Forest	10	Oil Spillage
Bonny	Mangrove Forest	20	Oil Spillage
Okrika	Mangrove Forest	10	Discharge of refinery wastes
24 sites			
Abia State			
Owaza	Freshwater Swamp Forest	50	
1 site			

Source: NDES, 1997 Niger Delta *Natural Resource Damage Assessment and Restoration* Project Phase 1-Scoping Report

Appendix C
Select Oil Spillage Incidents in Post-Amnesty Niger Delta

Location/Date Visited	Oil TNC	Highlight	Impact
1. Olugboboro Community Environment, SILGA, B/S-02/04/2016	NAOC	The lives of Nelson Ineigibo, Christian Emmanuel and Meshack Ogunuku were lost to the incident.	Fishing, farming, logging and hunting
2. Ondewari/Okpotuwari Community Environment, SILGA, B/S-09/04/2016	NAOC	Agip tried to deny being culpable but later admitted culpability.	Fishing, farming, logging and hunting
3. Okpotuwari Community Environment, SILGA, B/S-16/06/2015	NAOC	Fresh oil spill/fire along Agip's Ossiama/Ogboinbiri pipeline.	Fishing, farming.
4. Ondewari/Okpotuwari Community Environment, SILGA, B/S-18/04/2015	NAOC	Equipment failure spill from Agip facility	Fishing, farming, logging and hunting
5. Azuzuama, SILGA, B/S-16/07/2015	SPDC	14 lives lost in the incident; in a hostile environment.	Fishing, farming
6. Okoroba, Nembe Local Government Area, B/S-18/02/2014	NAOC	Agip's Ogodu-Brass pipeline	Fishing, farming,
7. Ikarama, Okordia Clan, YELGA, B/S-12/07/2014	NAOC	Spill-Trans-Niger Pipeline (Okordia-Rumuekpe) in Ikarama	Farmers and fisher folks
8. Ikebiri Kingdom, 19/11/2014	Shell	Agip Wellhead Spewing crude oil into the environment for almost a week	Fishing, farming, logging and hunting
9. Odiama and environs (Brass Terminal), 01/12/2013		Impacted immediate communities and those of the environs	Fishing and farming
10. Ikarama community, in Okordia Clan, YELGA, B/S, 01/03/2009		Shell's Wrong Attempt To Clean Oil Spill Sites	

Source: Field Reports by Mr. Alagoa Morris, ERA/FoEN

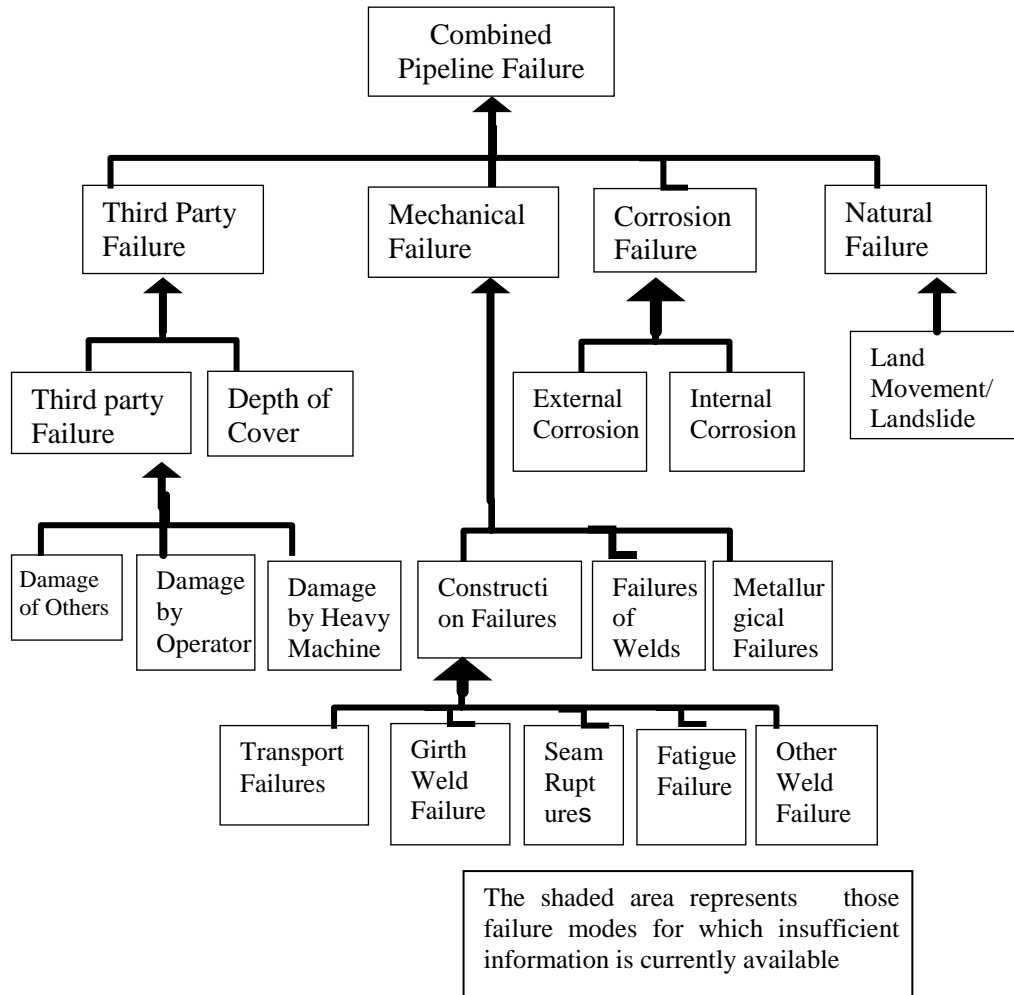


Figure 1-Existing Pipeline Failure Model
 Source: Mather, et al, p.51