The Deepwater Horizon Spillage and Lessons in Liability Claims for Nigeria

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The recent catastrophic Deepwater Horizon rig explosion and resultant spill, offshore Louisiana, USA awakened the world once again to the environmental hazards of oil explorations. Although the causal factor for the Deepwater Horizon spill is speculated, human error appears the consensus of experts who have tried reconstructing the events of that fateful day. The possible cause of the explosion will certainly be a controversial issue in a long time but the effects of the spillage on human, aquatics and environmental costs are very evident.

There are several lingering questions from developments of the deepwater tragedy that set the tone for this write-up. Who takes responsibility of the spillage? How can the risk of pollution reduced to a minimum and that the highest standards of safety are employed in oil explorations? Is the Nigeria’s growing offshore oil frontiers properly equipped to handle mishaps of this scale? Are there national policies on liabilities, response actions and compensations for damages caused by activities to the environment?

The responses to these questions are very germane for the Nigerian society. Deepwater offshore explorations have had significant growth in the last decade but Nigeria’s exploration-related risk management policies and practices have not enjoyed same exponential growth. This article examines the existing Nigeria’s liability regime and draws lessons from the episode of the Gulf of Mexico spillage yet engulfed in buck-passing of blames and liabilities.

Nigeria’s Oil Liability Regime

Oil pollution is an ancillary risk associated with exploration activities and has gained prominence in the Nigerian oil industry. Oil spills in Nigeria are estimated to have let out over a net volume of 3 million barrels to the environment in recent times and the worst hit areas are the Niger Delta region. The environmental protectionist regime in Nigeria are tackled mainly through the National Environmental Standards and Regulations Enforcement Agency Act (NESREA) which repealed the Federal Environmental Protection Agency Act (upgraded to the Federal Ministry of Environment), Environmental Impact Assessment Act, the National Oil Spill Detection and Response Agency Act 2005 (NOSDRA Act), the Harmful Wastes (Special Criminal Provisions) Act of 1988 (Harmful Wastes Act) and the Environmental
Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) published by the Department of Petroleum Resources (DPR).

These legislations created a strict regime setting out regulations and standards that prohibits the discharge in harmful quantities of any hazardous substances to the environment, except where permitted or authorised by law. The Nigerian Laws adopted the polluter pay principle in which case the party responsible for the pollution is imposed the obligation of managing the process of remediation of any acts of contamination of the environment as well as compensate those who suffer as a result of the consequences of pollution.

The environmental protection policies of Nigeria are principally guided by the various international treatises that it has become signatory and adopted as part of our national law. The National Oil Spill Contingency Plan holds out as the comprehensive action plan for liabilities and response action in spill situations and it is an outcome of Nigeria’s adoption of the International Convention on Oil Pollution Preparedness, Response and Co-operation. The Convention prescribes that each party shall establish a national system for responding promptly and effectively to oil pollution incidents which would include a competent national authority and a national contingency plan designed to respond to oil disasters. The Agency co-ordinating the national programme on oil spills response mechanism was created in 2006 and the National Plan has been under review since 2000.

However, the liability regime is shaped more by the requirements of the common law remedies of the torts of nuisance, trespass, negligence or the Rule in *Rylands V Fletcher* than by the statutory remedies provided under the relevant statutes. Although these laws exist, yet they have failed to adequately protect the environment and the victims from the adverse consequences of oil pollution. Some of their shortcomings include the out-dated penalty sections, the attitude of enforcement officials and the attitude of the courts.

**Lessons of the Deepwater Horizon Spillage**

The deepwater horizon spillage threatens to be the largest US environmental disaster after the iconic *Exxon Valdez* spill of 1989 and has opened new vista of lessons in the area of pollution. It highlights the gross disregard of safety issues by the oil giants and the need for tighter regulation of offshore drilling. There will also be greater requirements on the industry for contingency planning like keeping spill-
response vessels and equipment in readiness. The BP clean-up plan was described as inadequate even though it was approved by the US authorities.

In addition to the stricter environmental standard regulation, the multi-party nature of activities in such offshore platforms are lessons for determining claims for which polluter is liable for damages to the environment and the people that suffers from the consequences of the pollution. In the Gulf of Mexico disaster, the rig is contracted by BP and operated by Transocean while it was Cameron that supplied the blow-out preventer that failed on the Deepwater Horizon. This matrix of multi-party joint operations have resulted in blame-shifting of whose actually responsible for what acts and the extent of each party’s exposure to the liabilities of anticipated actions for damages.

However, such operations of this nature are not uncommon in Nigeria’s deepwater offshore explorations and these kinds of disasters are potential risks. The Nigerian jurisdiction has not properly developed to handle claims arising from oil spills of this nature. The polluter pay principle is marred with exceptions of which the polluter latches on to avoid their liability. Whatever the situation may be, the Nigerian oil industry must learn from this accident in the same way NASA learnt from the 1986 Challenger Space Shuttle explosion.

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