Journal of Advanced Research and Multidisciplinary Studies
Volume 3, Issue 1, 2023 (pp. 1-20)
www.abjournals.org

MONETARY COMPENSATION IN POLLUTION LITIGATION IN NIGERIA: HOW ADEQUATE?

C.O. Okwelum (PhD)

Department of Public Administration, Delta State University of Science and Technology, Ozoro

Email: okwelumchukwudi@gmail.com; Tel: 08075684274

Cite this article:

Okwelum C.O. (2023), Monetary Compensation in Pollution Litigation in Nigeria: How Adequate?. Journal of Advanced Research and Multidisciplinary Studies 1(3), 1-20. DOI: 10.52589/JARMS-RZPC8IHJ

Manuscript History

Received: 12 Oct 2022

Accepted: 14 Nov 2022

Published: 23 Jan 2023

ABSTRACT: *Since the discovery of oil in the Niger Delta of Nigeria, there has been a steady increase in conflict between the communities hosting the multinational oil companies and the host communities. The conflicts have found expression in court disputes over the years. The dominant claims in these disputes are usually monetary compensation. The question has continued to arise as to whether there are consistent legal frameworks to guide the disputants in the process of getting compensated for oil spillages and other collateral damages that result from the exploratory activities of these multinational oil companies. Looking at the procedural laws, who and which is more favoured: the company or the victim? This paper which adopts the doctrinal method surveys the problem of monetary compensation in litigation involving victims of oil company operations and the companies. It was found that although there are skeletal procedural principles currently in force in the area, a well-developed statutory procedure governing the space has not been enacted leaving the victims largely short-changed and the companies given leeway to escape from the direct consequences of their actions on the socio-ecological structure of the Niger-Delta. A 'new' law in the area is therefore advocated.*

KEYWORDS: Compensation, Oil company, Litigation, Damages, Judiciary, Case law.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

INTRODUCTION

The legal regimes that govern the environment in Nigeria are broadly two, namely: Common law remedies particularly tort and environmental statutes. They supplement each other. There are situations when environmental pollution does not meet the threshold for violating a statute; yet, it may have caused personal or proprietary damages cognizable at common law. A claimant can recover in such instance common law damages, including those for pain and suffering, and even punitive awards. The action will be based on common law theories of nuisance, trespass, negligence, strict liability and the public trust doctrine. The limitation of tort (common law) remedies, however, is in the area of proof of causation. Injury to health or the environment may occur long after the release or discharge of pollution, making detection, causation and linkage difficult to prove. Environmental damages also often affect aesthetic or recreational interests which unlike direct economic loss may be quite difficult to evaluate.

The problem of compensation for oil pollution is very complex and cannot be fully addressed easily. For Fagbohun (2005)[1], although the provisions of the Oil Pipelines Act and the Petroleum Act are geared towards achieving fair and adequate compensation, the frustrations of prolonged litigation, problems of proof, ignorance and poor economic position of claimants have made it possible for oil companies to hijack the process of compensation. Cases are settled out of court based on 'ex gratia' payments or predicated on assessment of compensation as structured in Shell's Land Department Procedure Guide, or the Oil Product Trade Section of the Lagos Chamber of Commerce and Industry Compensation Rates. Some legal practitioners also lean on common law remedies in situations where it would have been better to stick to statutory remedies.

That the problem of jurisdiction has compounded the problem of compensation has equally been highlighted by Fagbohun (2005). The problem started with *Shell V Abel Isiah* where the Supreme Court of Nigeria held that by the provisions of Section 7(5) of

Decree No 60 of 1991 and Section 230(1) of Constitution (Suspension and Modification) Decree No 10, the Federal High Court has exclusive jurisdiction in relation to matters arising from or connected with or pertaining to mines and minerals including oil field and oil mining. The problem, however, is that the few Federal High Courts are inadequate and far in between as to be capable of coping with the volume of litigation. The issue is one of lack of easy and affordable access to justice, and what this breeds in any society is that it would encourage use of self-help and sabotage. Yet, while the judiciary may not have performed in comforting levels in protecting the environment, it must be remembered that the judiciary does not make laws. It only interprets, and where the statute is clear and unambiguous, the judiciary will be confined to the limited role of interpretation otherwise it becomes activism, which the system of separation of powers abhors.

[1] Fagbohun, Problem of Compensation for Oil Pollution is Complex, the Guardian, Tuesday, June 21, 2005 at 77.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

Environmental Protection and Citizenship Initiatives

Environmental protection initiatives in Nigeria can be traced back to the 1988 toxic chemical waste dumped at the Koko Port. The response of the Federal Government was the promulgation of the Harmful Waste (Special Criminal Provisions, etc) Decree No 42 of 1988. This was followed by the Federal Environmental Protection Agency Decree No 58 of 1988. The latter was the law that established the Federal Environmental Protection Agency FEPA. As part of the agency's function, it published the Guidelines and Standards for Environmental Pollution Control in Nigeria, and two other regulations, namely the National Environmental Protection (Effluent Limitation) Regulations 1991 and the National Environmental Protection (Pollution Abatement in Industries and Factories Generating Waste) Regulations, 1991. There is also the Environmental Impact Assessment Decree No 86 of 1992.

The fact that the government is not allowing for full participation of citizens in environmental protection gives the impression that commitment to environmental governance is more of lip service. The clear trend of environmental governance globally and as enshrined in Principle 1 of the Stockholm Declaration on the Human Environment, Principle 10 of the Rio Declaration and in Article 1 of the Aarthus Convention is that members of the public must be guaranteed the right of access to justice.

Freedom of information has a direct link with the protection of the environment. Information disclosure is a highly valued tool for protecting public health and the environment. 'Right to know' laws have a way of bolstering traditional regulatory approach and help achieve significant reductions in pollution levels. They also educate citizens and communities about public health and environmental issues and empower them to take more active roles in addressing threats to these citizens and communities. Information disclosure also supports democracy by increasing the transparency of government decision-making. This is not to say that critics of disclosure programmes have no basis as disclosure may compromise national security. Disclosure rules must thus be balanced.

Theoretical Framework

The general theme of this paper is to consider the prevailing dominant methodology of paying victims of oil pollution monetary compensation in Nigeria and to proffer and advance alternative remedies to the methodology in the light of the result that rather than ushering in sustainable development and cohesion in the p0, the method is perceived or believed to have engendered more crisis of development and cohesion in the oil bearing communities and in their relationships with the State and the oil companies. Because oil is mostly found in the Niger Delta region of Nigeria, the scope of this paper is invariably limited to the area which is regarded today as the flashpoint of the West African sub-region.

The overriding methodology adopted in this paper is the doctrinal research methodology which involves the copious use and reliance on the library for primary and secondary source materials especially statutory laws and instruments, case laws and the opinion of legal text writers rendered in the area of oil and gas law in Nigeria, and current print media reports on oil and energy matters and the prevailing situation in the Niger Delta region of Nigeria. Concerted attempt or incursion was equally made, in the course of the research, into eliciting tangible material evidence from the victims. These include memorandum of understanding, compensation receipts agreements reached between some host communities, families and

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

individuals on the one hand and the oil companies, particularly the Mid-Western Oil and Gas Company Plc, the Nigerian Agip Oil Company Limited and Shell Petroleum Development Company Nigeria Limited on the other hand. Letters of demand and other written communications made by victims to the oil companies, most times through legal representatives, were also obtained. Attempts made at reaching the legal units of the major oil companies like Shell Petroleum Development Company Nigeria Limited, Warri and the Nigerian Agip Oil Company Limited, Okpai-Kwale for tangible material evidence met brick walls. Some of the oil companies operating in the marginal fields in the Kwale area like Platform Petroleum Limited, Umutu and Mid-Western Oil and Gas Company Plc, Kwale viewed the purport of the enquiries made through their Community Relations Department with askance.

In the light of the source materials used, a second approach and technique adopted in this paper is the analytical-deductive method as the state of the statutory laws, case laws, opinions of legal text writers, print media reports and tangible documentary evidence obtained are subjected to critical analysis and review. Given the nature of the subject matter of this paper, being a reconsideration of an alternative remedy to a problem, the comparative approach is equally adopted by way of attempting to juxtapose and weigh the one remedy against the other vis-à-vis the ultimate goal of sustainable development in the oil bearing communities.

LITERATURE REVIEW

An examination of the environment and the impact of oil exploration, particularly the pollution arising from there, on the environment, is key to the understanding of the remedy of monetary compensation. It chronicles particularly the historical incidences of oil pollution in Nigeria and examines the interface between the host communities, the militants, the polluters and the State. It highlights and critically reviews the various statutory and common law regimes and remedies which have been put in place to check and control the impact of pollution on the environment and for payment of monetary compensation to victims of oil exploration and exploitation in Nigeria. It also surveys the various development agencies, commissions and funds that have been set up by the State to address and remediate the perennial neglect of the oil bearing communities which have been suffering from the adverse effects of pollution arising from the operations of the oil industry in Nigeria.

Examination was also made on the political and economic dynamics of oil pollution compensation with a critical review of the role of the judiciary in oil pollution compensation litigation in Nigeria vis-à-vis the concerns of the stakeholders in the industry. Also highlighted were the negative accretions, so-called pseudo-alternative remedies to monetary compensation that have risen from and have become the ugly outcrops of the insensitive disposition of the State and the industry to the sustainable development of the oil bearing communities of the Niger Delta region. The need for the development and application of alternative remedies to the payment of monetary compensation approach in oil pollution matters was surveyed. The pros and the cons of the alternatives were analyzed in the light of the perceived shortcomings of the monetary compensation alternative.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

Current Concern of Legal writers

The concern of legal writers until recently appears to have been consumed by the desire to appraise the legal regimes governing the operations of oil mineral prospecting companies in Nigeria with a special focus on the question whether the said regimes are adequate for the prevention of pollution and the protection of the Nigerian environment particularly oil installations. This concern has been articulated by Nwosu[2] in the following words:

The tendency has been to review petroleum legislation and other enactments which impinge directly or indirectly on the activities of the petroleum industry with the aim of determining the adequacy of the statutory provisions and the effectiveness of enforcement machinery in preventing, reducing and responding to the adverse ecological impact of petroleum operations.

In other words, the concern has not been well focused on the question of monetary compensation and its adequacy in the resolution of matters arising from pollution in mineral oil prospecting. For instance, what is the measure of damage in a compensation dispute and what are the facts a claimant is expected to lay before the court to succeed in a claim for compensation? Has monetary compensation adequately tackled and addressed or redressed the multifaceted problems of oil communities in Nigeria in search of sustainable development? Are there no better alternatives to monetary compensation in disputes arising from mineral oil pollution? What are the strengths and the weaknesses of these alternatives?

In the 2004 Proceedings of the SPDC Integrated Environment and Community Development Stakeholders' Workshop[3], it was observed that the payment of compensation should be prompt because compensation is one of the pivots on which the smooth operation of oil and gas activities stand. Most community violent reactions are traced to it. While compensation payment in cash is generously acceptable to claimants, delay in getting it across to them was a clog in the wheel of progress. On the part of the oil companies, bureaucracy is fingered as a major cause of the delay. Thus, monetary compensation has become synonymous with claims for compensation arising from mineral oil pollution so much so that it is largely believed and alleged that oil mineral pollution damage is induced by the victims through sabotage and vandalisation in order that huge financial, cash claims can be made against the oil companies.

Yet, according to Allswell Osini Muzan[4], an inventory of the injuries which may be occasioned by the multifaceted industry is realistically unquantifiable, and for this reason, the problem of remedies in both financial and other terms has become highly complex. This complexity has been noted by experts in the field as one of the most intractable problems which has caused and is likely to continue to cause incremental concerns for conflict resolution and national security in Nigeria.

So, are there legal regimes and remedies for payment of compensation for pollution damage? If there are none, why? If there are, are they adequate and can meet the needs of the victims and international standards? How have victims and claimants faired in the process of getting

[2] E.O. Nwosu, Petroleum Legislation and Enforcement laws and Standards in Nigeria, The Nigerian Juridical Review, Vol. 7 (1998-1999) at 80.
[3] Held at the Petroleum Training Institute, Effurun, 24th – 26th February, 2004, at 34.
[4] A. S. Muzan, Jurisdictional Competence and Remedies in Environmental Causes Relating to Petroleum Operations in Nigeria, Environmental and Planning Law Review, Vol. 2. No 4 October- December, 2005, at 23.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

compensated for pollution claims? Are there more legal hurdles and impediments to them than there are lee-ways and legal facilities for the establishment and appropriation of the claims and then there are lee-ways and legal defenses for the oil companies to go scot-free? In fact, does it not seem to be that there are more cogent, extant and consistent criminal legal regimes for offences against the vandalisation and sabotage of oil installations and facilities than there are any articulated regime for compensation claims for victims of pollution?

Above all, the question as to whether monetary compensation has proved, from hindsight, to be the most adequate remedy for mineral oil pollution matters in Nigeria appears to elicit a dis-affirmative response. There is therefore the need to develop alternative remedies to monetary compensation in pollution matters in Nigeria. This is because despite the legal difficulties which exist in establishing pollution claims, ways should be found and developed to ameliorate the losses of pollution victims as an ideal environment is that in which no pollution exists. If it is possible or practicable to operate in the industry without pollution ensuing from there, the vexed issue of compensation for damages resulting would pale into insignificance[5].

There is therefore the continuing need and effort required to protect the victims against personal or collective losses resulting from oil spills. The traditional remedies of liability and monetary compensation are available but they do not seem to cover much of the field and the risks involved. New laws are very much sought after in these areas. Moreover, the technological and ecological aspects of oil pollution invite further research and the fact that oil related research is largely funded by the industry itself is evidence of under-emphasis on these problems in the public sector of the State. Yet, the results of these researches and studies are controversial and their objectivity is suspect bordering on sensibilities, sentiments and hysteria. But the State should not only be involved but should incorporate their results in its decision making on future oil policies[6]. The purpose of this paper, therefore, is to critically review the concept of monetary compensation and advance plausible alternatives to the remedy.

Remedy of Monetary Compensation

A remedy is a legal redress or a means of recovering a right or of obtaining a redress for a wrong. It is a means of counteracting or removing an outward evil of any kind. Sometimes, it is argued that remedies refer only to positive legal steps which may be taken to assert and enforce a claim and does not include a mere defense to a claim. In other words, a remedy is in the nature of a spear which can be used to attack and is not in the nature of a shield which can be used to repel an attack[7]. But as held by Pearson, J in Goulandris Bros ltd V Goldman B & Sons Ltd[8], remedies should be construed widely enough to cover defenses as well as cross claims, shields as well as spears, pleas as well as counts. And as held by Sugerman, J in Batson V de Carvalho[9], to remedy a breach is not to perform the impossible task of wiping it out – of producing the same condition of affairs as if the breach had never occurred. It is to set things right for the future and that may be done even though they have for some period not been right.

Compensation is that which is given or received as an equivalent for services rendered or debt owed or loss incurred or suffered. It is to pay; to recompense; and to give equal value for what

[5] G. Etikerentse, Nigerian Petroleum Law, (London: Macmillan Pub. Ltd., 1985) at 81.
[6] D.F. Boesch, et al, Oil Spills and the Marine Environment, (Cambridge: Ballinger Pub. Coy., 1974) at XIV.
[7] C. C. Banwell, Words and Phrases Legally defined, Vol. 4, 0-R, (London: Butterworths, 1960) at 294-295.
[8](1957) 3 All ER 100.
[9] (1948) 47 NSWSR 417 at 487.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

has been damaged or lost[10]. Compensation is a broad legal term that denotes the balancing of one thing against another. It implies making whole or giving an equivalent or substitute of equal value. It is the remuneration required by court order to be paid by one person to another who has sustained loss or injury through the act or omission of the first person. The areas in which compensation becomes payable continue to be broadened by statute and judicial precedence[11]. Thus, the seizure of property through the condemnation process of making room for a pipeline, a flow station or indeed any oil installations, facilities or operations must be accompanied by compensation paid by the seizing authority equivalent in value to the appropriate property[12].

Compensation, therefore, is essentially damages because damages in tort are compensatory in nature and are designed to put the claimant in the position in which he would have been but for the tort committed. An injured claimant will receive a sum deemed to be sufficient to compensate him for the type of injury he has suffered in terms of loss of quality of life, pain and suffering. He will also receive a sum for financial loss flowing from the injury[13].

The whole region of inquiry into damages is extremely difficult and there cannot be any fixed principles for a court as to the amount of compensation which it ought to award in a given situation[14]. However, the assessment and award of damages is the primary function of the court[15]. The test by which the amount of damages is ascertained is called the measure of damages and damages from the same cause must be recovered once and for all[16]. In assessing what is fair and reasonable in the award of damages, it is appropriate to bear in mind previous awards made by the courts in comparable cases in the same or neighbouring jurisdiction where similar social, economic and industrial conditions exist; and also the economic strength or weakness of the national currency[17].

Assessment of Compensation under the Minerals and Mining Act

Under Section 96, the amount of the compensation payable is determined by the Minister after consultation with the appropriate authority or officials. The person liable to pay the compensation shall pay within 14 days from the date on which notice of the amount of the compensation is given, otherwise the Minister may suspend the prospecting right or licence of the holder until the amount awarded is paid together with such other sums as may be adjudged and demanded by the Minister as security for any future payment. But in further default, the Minister may revoke the licence[18]. Under Section 62 of the Minerals and Mining Act where, by reason of the grant or existence of a mining lease, the State revokes a right of occupancy over land, the subject matter of a certificate of occupancy, or resumes possession, the mining lessee shall pay to the State, the amount of compensation paid by the State to the holder of the

[10] Webster Dictionary of the 21st Century, at 370.
[11] Id.
[12] The Encyclopedia Americana, International Edition, Vol. 7, (Danbury: Crolier, 2000) at 457.
[13] Id., at 458.
[14] Craig Osborne, Civil Litigation, London: Blackstone Press Ltd, 1993) at 3.
[15] Badmus V Abegunde (1999) 71 LRCN 2912 at 2930.
[16] Ogu V Ihejirika (1991) 4 NWLR (Pt 185) 388 at 393.
[17] See P. G. Osborn, A Concise Law Dictionary, (London: Sweet and Maxwell, 1954) at 107. See generally, J. G. O. Aneke, Law for Everyman (Vol. 11), Onitsha: Africana-Fep. Pub. Ltd, 1993) at 28-23. See also Allied Bank of Nigeria V Akubeze (1997) 51 LRCN 1648 and Nka V Onwu (1996) 40/41 LRCN 1303.
[18] See Section 97 of the Minerals and Mining Act.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

certificate of occupancy by reason of the revocation or repossession. Where, after the grant of a mining lease to a lessee, a State lease or certificate of occupancy is granted in respect of any land within the area of the mining lease, which was unoccupied prior to the grant of the mining lease, the State lessee or holder of the certificate of occupancy shall not be entitled to compensation under Section 95 of the Act.

Section 95 provides that a holder of a mining title shall, on the direction of the Minister, in addition to any other amounts payable under the provisions of the Act, pay to the owner or the occupier of land held under a State lease or the subject of a right of occupancy, reasonable compensation for any disturbance of the surface rights of the owner or occupier and for any damage done to the surface of the land which the prospecting or mining is being or has been carried on; and in addition, pay to the owner of any crop, economic tree, buildings for work damaged, removed or destroyed by the holder of the mining title or by any of its agents or servants compensations for the damage, removal or destruction of the crop, economic tree, building or work.

However, the holder of a mining title who is paying surface rent in respect of any land within the area of the mining title shall not pay compensation in respect of the building erected, economic tree or crops planted or work constructed on the land after the date on which the holder began to pay surface rent.

Mode of Channeling Compensation

In broad terms, those entitled to compensation in oil claims arising from pollution and related activities are the individuals, the families, the communities, and the State. As it appears, beyond pollution, what is due to a claimant for compensation are surface rights. Surface rights are classified into compensation for land per se which may take the form of annual rentals depending on the terrain of the land; fructus naturales which are items that naturally belong to or grow on the land such as productive and economic trees like palm trees and mahogany; and fructus industriales which are items that come to be on the land as a result of man-made improvements such as food and cash crops like yams and rubber trees.

On compensation for land per se, the annual rental rates are subjected to the negotiations and agreements between the claimant and the oil company. However, according to Etikerentse[19], the table below may be a guide:

Table II: Guide to Compensation for Land

(a)	Land within 12.8 kilometer radius of urban or industrial area:
(i)	Dry land N100.00 per hec. per. annum.
(ii)	Seasonal swamp N25.00 per hec. per annum.
(iii)	Freshwater swamp N25.00 per hec. per annum.

[19] G. Etikerentse, Nigerian Petroleum Law, (London: Macmillan Pub. Ltd. 1985) at 45-55. See also Section 20 of Oil Pipelines Act.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

(b)	Land outside 12.8 kilometer radius of urban or industrial area:
(i)	Dry land N50.00 per hec. per annum.
(ii)	Seasonal swamp N25.00 per hec. per annum
(iii)	Freshwater swamp N12.50 per hec per annum
(c)	Mangrove Swamp N100.00 per hec per annum
(d)	Borrow pit (dry land) N1240.00 per hec as one-time payment.

On compensation for fructus naturales and industriales, the rate is equally based on negotiation or on the farm-gate price and one of the factors usually reckoned with when negotiating the rate is the age of the crops with the older crops attracting higher rates. In some States, according to Yinka Omorogbe [20], there are edicts dealing with the procedure and quantum of compensation [21]. The learned author also opined that in the process of arriving at a compensation rate or figure, the parties would necessarily negotiate but the ratio of the compensation normally demanded by claimants and that which is usually paid by the oil companies varies between 20:1 and 200:1 This disparity has been attributed to the superior bargaining power of the industry. It might also be due to the fact that communities make exorbitant demands which the companies would subject to stringent scrutiny and negotiation.

Restating this disparity in his work, Civil Litigation, Craig Osborne[22] has submitted that a feature often experienced in oil matters is that there is a great disparity of bargaining power between the parties where the outcome may matter hardly at all to the defendant oil company. The claimant's sense of frustration is measurably increased where the polluter can chase the litigation to the highest court in the land such that the outcome of the claim may mean everything to the claimant but will be a mere pinprick to the multinational[23] which ultimately derogates from the concept of equal footing of litigants before the court of law. Esavwede[24] has also raised the problem that claims arising from oil exploration and seismograph operations are usually complex requiring high technical skills and expert evidence which cannot be afforded by the poor claimant victims whereas, it is relatively easier for the defendant oil companies to secure and pay for the services of such experts many times over[25].

The mode of channeling compensation to the victims of oil pollution in Nigeria is murky. By virtue of Section 20 of the Oil Pipelines Act, where the interests injuriously affected are those of a native community, the court may order that the compensation be paid to any chief, headman or member of the community on behalf of such a community or that it be paid in accordance with a scheme of distribution approved by the court or that it be paid into a fund to be administered by a person approved by the court on trust for application to the general, social

[20]Yinka Omorogbe op. cit, at 153.
[21]An example in the Rivers State Minimum Crops Compensation Rates, Edict, 1973.
[22] Craig Osborne, Civil Litigation, (London: Blackstone Press Ltd, 1993) at 146.
[23] See also Appendix A – G.
[24] J. P. Esavwede, A Critical Appraisal of the Impact of Common Law Torts on Environmental Protection In Niger Delta, Delsu Law Review Vol. 2 No. 1 & 2 (2004) at 344.
[25]See also Seismograph (Nig.) Ltd V Ogbeni (1976) NWLR (Pt 328) 148 at 290.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

or educational benefit and advancement of the community or any section thereof. In most cases however, compensation may be diverted into the pockets of an individual and may not reach the victim, the family or the community. This leaves the victim shortchanged while the company on the other hand may be basking in the euphoria that it has compensated the victim.

In another dimension, the question of apportioning compensation money may result in further litigation, crises, communal hostilities and promotion of native wars. These can induce marginalization of a cross-section of the members of the community and unfairly empower the other. The compensation may be invested in ephemeral conspicuous consumption rather than durable infrastructural facilities that can sustain the development of the community. Thus, in cases of large oil spills, the appropriate local or state government ought to be paid on behalf of the victims[26].

The circumstances culminating in the death of 12 Kula Chiefs were simple and common scenarios but it dovetailed and backfired on the oil company workers and expatriates. The oil rich Kula community had long been enmeshed in crisis over oil revenue accruing to the area. Sharing formula had polarized the community. There were those labeled favourites of the oil companies and another group that wanted a reversal of the disposition of the oil companies and those who were just indifferent to the oil politics of the area which boasts of 4 flow stations: Robert Kiri, Belema, Ekulama 1 and Ekulama 2; 2 gas booster plants, Ekulama 1 and Ekulama 2; and one gas injection plant with a total of 70,650 mmsef generated per day[27].

With the huge investments of multinational oil companies in Kula and presence of a large population of oil workers in the area, the oil politics of Kula became fierce and impacted the industrial and community relations between the oil companies, oil workers and the natives. A youth leader who had been on exile banished from the community about 2 years earlier in 2005 made a bid to stage a comeback which generated serious disagreement between the various polarized groups which later snowballed into an orgy of violence leading to the assassination of 12 Kula Chiefs while on a voyage to a meeting around Kula from Abonema along the creek where Shell Petroleum Development Company pipeline facility was located. Moves were being made to address and remediate the violence in the Kula community when gunmen attacked a boat belonging to Hyundai Company killing on board, 2 Dutch, Gideon Lapre and Kumpas; a Korean, C.W. Moon; and a Naval Seaman, S.M. Gambo. Two Nigerians, A.A Datak and Obiana Anyawa, were fatally wounded and one of them later died in the hospital[28].

Responding to the two related events, the Commissioner for Chieftaincy and Local Government Affairs, Clapton Ogolo, in a bid to curb the restiveness and further mayhem in the communities in the State banned all elections and nominations into community leadership and chieftaincy portfolios in all parts of the State as well as Community Development committees[29]. According to Idise[30], one of the problems in pollution litigation in Nigeria is what may be termed, for lack of a better expression, gold-digging actions which are commenced with the sole aim of making money from the oil company through false claims

[26] U. V. Awhefeada, Op. cit, at 426.
[27] 27. See Jimitota Onoyume, Oil War: How 12 Niger Delta Chiefs were Assassinated, Vanguard, Sunday January 21, 2007 at 15.
[28] Id.
[29] Id., at 16.
[30] S. A. Idise, Judicial Precedents as a Source of Environmental Law in Nigeria, (Unpublished) LL. M. Seminar Paper, Delta State University, Oleh, 2006) at 18.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

rather than on grounds of reality and merit. As canvassed by Abuza[31], a victim claimant for compensation must prove damage to succeed. Even where he can establish the damage, compensation may be refused on grounds that the pollution was due to the act of sabotage or vandalization. Indeed, oil companies frequently cite these acts as excuses for non-settlement of compensation claims. Indeed, the recent trend according to Abuza, is that persons usually unknown deliberately tamper with the installations in order to cause damages and lay claims for compensation. Addressing the same issue, Etikerentse[32] has canvassed that with the advent of vandalization and sabotage, it is doubtful whether oil companies would continue to settle compensation claims without contesting same in the face of increasing frequency of proven instances of sabotage of facilities done usually for the purpose of laying claims for compensation.

SPDC V Farah and the Compensation Receipt

Most often, the polluter and the victim may decide to reach an amicable compromise and eschew judicial intervention in which case, a compensation receipt agreement is drawn up between the parties. In the course of research in this dissertation, specimen compensation receipts were obtained from victims covering the periods 1978, 1984 and 2002 from two oil companies – the Shell Petroleum Development Company of Nigeria Limited and Nigerian Agip Oil Company Limited. Appendix A was a compensation receipt dated 25th February, 1978 covering compensation in the sum of N550.00 for galloping swamp with fishing lakes measuring 45m X 18m for Okpai K Access Road, in Okpai Oluchi Village in Ndokwa Local Government Area of Bendel (now Delta) State paid by Nigerian Agip Oil Company Limited to Joseph Ogbulie and Hitler Okwugwuni as full compensation for damages to their properties. It is of importance that the rate of N550.00 was based on 'agreement reached on the basis of temporary loss of fishing right' and in view of the payment, the victims had no further claims whatsoever to make against the company and the victims equally agreed to indemnify the company against any cost it may incur as a result of a third-party establishing title to all or any part of the item.

Appendix B is Field Book No 56A/73 for claims for crops, trees under the Mineral Oil and Pipelines Act dated 25th February, 1984 covering compensation in the sum of N975.75 for cleared bush measuring 5420.82m2 for Umutu SPGU-1 location paid by the Shell Petroleum Development Company of Nigeria Limited to Chief Obiaruku Udili for Umu-Igbede family of Adonishaka in Ukwuani Local Government Area of Bendel (now Delta) State. In Appendix B, government approved rate was nil; rate offered by the company was 18 kobo per/m2; rate demanded by claimant was 40 kobo per/m2. Appendix B lacks the caveats in Appendix A.

Appendix C, D, E, F and G are compensation receipts for Okpai 3 Location Extra Acquisition all dated 20th December, 2002 for N49,200.00 (for 123 matured mango trees), N56,780.00 (for 160 young growing tree plantation, 5m X 6m fish pound and 20 cocoa trees) N769,000.00 (for 1.538 hectares for permanent loss of use of fishing and farming rights) and N177,680.00 (for 164 agbono trees, 204 raffia palms, 944 cashew seedlings). All received by Chief Paul Ofulu for himself and on behalf of the Umueze Okpai family of Okpai Village in Ndokwa East Local Government Area of Delta State. All the rates were negotiated for full and final payment with

[31] A. E. Abuza, Op. cit, at 264-265.
[32] G. Etikerentse Op. cit., at 72.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

caveats as in Appendix A.

What then is the rate of compensation for pollution? What mode and rates are adopted for award of compensation in oil pollution matters, the cardinal principle as stated in SPDC V Farah[33] is that compensation must be fair and adequate. The Court of Appeal stated that adequate compensation means the value of property taken under the power of eminent domain payable in money. It may include interest and the cost or the value of the property in the owner for the purposes for which he designed it.

To follow Frynas[34] closely, there has been a significant rise in litigation between oil companies and victims affected by their operations. In a very well researched article, the learned author made a factual and chronological analysis of over 86 cases arising from oil operations involving Shell and Chevron and found that in the ever increasing tempo and number, 80 – 90% of the cases involved oil spills or pollution and damages resulting from operations. He attributed the development not mainly to expanding operations but to legal changes and transformations arising from three premises: a different approach to law by judicial officers, increased professional ability of legal counsel working for victims on contingency fees and most significantly, the influence of changing social attitudes on judges. Drawing authoritatively from Kermit Hall in his work, The Magic Mirror: Law in American History, Frynas argues that the business of the court mirrors the social changes brought by economic development and that the role of the judge in this milieu is to allocate the costs, the risks and the benefits of this development[35].

It is in the light of this role that the case of SPDC V Farah became for Frynas, the turning point in oil compensation litigation in Nigeria in that it departed from the traditional retrograde basis of compensation awards broadening the items to include non-pecuniary losses[36]. In other words, compensation must also be paid for subsequent consequential and prospective losses including suffering resulting from damages to land. Short of celebrating the case, Frynas opines that the new principles established in SPDC V Farah work against the strategy of paying paltry sums for destruction of crops in order to avoid other forms of compensation particularly by compelling claimants to endorse compensation receipts of acknowledgement with caveats. It was thus postulated that mere payment of compensation by a polluter with respect to a particular item did not obviate further liability even if an undertaking is built into the receipt to stop the claimant from reneging. In other words, the court in SPDC V Farah is perceived to be prepared to compel a polluter to pay compensation more than once in respect of the same injury and the same item of assessment thereby stultifying the strategy of relying on caveats endorsed by local victims in exercise in tokenism and also detracting from the oldest, earliest principle that damages from the same cause and transaction must be recovered once and for all[37].

Yet, the greatest drawback of monetary compensation and, to a large extent, litigation as an alternative remedy in oil pollution matters is that it is rather unsuitable for the ultimate goal of sustainable development. It naturally does not breed cohesion and harmony. Even if a victim is able to win a lawsuit, litigation can only address the damages suffered by a specific litigant

[33] 33. (1995) 3 NWLR PT 328, 148.
[34] J. G. Frynas, Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria, Journal of African Law, Vol. 43, (1999) at 121.
[35] Id., at 148.
[36] Id., at 141.
[37] See P. G. Osborn, loc. Cit.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

victim but not the impact of oil operations on the oil producing areas as a whole[38]. The litigation option is a crisis driven one. It does not go far and it does not go down well with the stakeholders. It is isolationist and the courts are also insulated acting only in rare, chancy individual cases that they have had the misfortune or privilege of being invited to adjudicate in an adversarial system where facts are unique and distinguishable, judicial temperament unpredictable and procedural rules infinitely technical and mechanical making legal outcomes ambiguous and uncertain predisposing victims and polluters to extra-legal measure and violent option.

Judiciary and Oil Compensation Litigation

Pollution as an environmental problem is of paramount importance in the oil industry[39]. Yet, it is an externality creating activity which occurs outside the marketplace and therefore, there is no appropriate compensation exchanged for it. Yet, it results in damages to private property and when this occurs, it is expected that the victims should be entitled to compensation to make amends for the loss or the injury or as a recompense for the deprivation[40]. For the polluter, incurring liability for pollution is just one of the risks attached to the running of the business. But liability under common law is generally fault based. More particularly, the present state of the law is that there is no strict liability in pollution litigation. Therefore, if the polluter is not at fault, he will not be held liable and according to Emiri[41], when a matter turns on fault, potential litigants are more likely to be unsure of success and so much litigation will be on speculation and anyone familiar with compensation claims for oil pollution knows that such litigations are socially expensive; and any rule which makes it more likely for a polluting oil company to escape liability will increase the social cost of litigation.

In SPDC V Tiebo[42], the plaintiffs sued for themselves and on behalf of the Peremabiri Community of Yelga in 1988 at the Yenagoa High Court of the present Baleysa State for the sum of 64 million naira being special damages for the negligence of the defendant and for allowing crude oil which the defendant was mining to spill into the lands, swamps, creeks, ponds, lake and shrines of the plaintiffs. At the trial court, the plaintiff was awarded 6 million naira general damages and 1 million naira for costs. An appeal to the Court of Appeal was unsuccessful. On a further appeal to the Supreme Court, the appeal was partially allowed. Akintan, JSC held that it is not open to a court to award general damages in place of special damages claimed but not strictly proved. The rule that special damages, unlike general damages, must be strictly proved is well founded in law. What this rule requires is that anyone making a claim in special damages must prove strictly that he did suffer such special damages claimed. All that the rule requires is that the person making the claim should establish his entitlement by credible evidence of such character as would induce belief and satisfy the court that he is indeed entitled to an award under that head. What amounts to strict proof depends on the facts and circumstances of each case. No general rule can therefore be laid down as to what amounts to strict proof. However, items of special damages need not be proved with

[38] Frynas, Op. cit, at 150.

[39] See Yinka Omorogbe, Op. cit, at 127.
[40] See U. V. Awhefeada, The Rules Governing Compensation for Degradation in Nigeria; An Analysis, Delsu Law Review, Vol. 2 No. 2 (2006) at 415
[41]O. F. Emiri, An Economic Analysis of the Right to Compensation for Oil Pollution, Delsu Law Review, Id, at 410-412
[42](2005) Vol. 127 LRCN 1274

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

mathematical exactitude nor must a receipt be tendered in every case in order to induce belief and satisfy the court on the strict proof requirement[43].

Applying the general position of the law to the facts in the cited case of SPDC V Tiebo, the Supreme Court held that it was clear that the evidence in support of the plaintiffs' claim for special damages in respect of loss of raffia palm was very scanty. The number of the raffia palms was not disclosed and the value of each or the income that was expected from each raffia palm based on similar income made from other similar raffia palms were not given in evidence. Similarly, the award of 6 million naira as damages for loss of drinking water was not supported with credible evidence. No evidence was led regarding how much it cost the plaintiffs to secure alternative drinking water supply as a result of the pollution of their sources of drinking water. The requirement of strict proof of special damages definitely excludes a situation where the court would start to guess what the losses of the plaintiff should be. It was therefore wrong of the trial Judge and also the Justices of the Court of Appeal to have granted the award and described it as general damages. Above all, this was a matter commenced on 6th June, 1988 and got disposed of in the Supreme Court on 8th April, 2005, after a period of 17 years[44].

It has been canvassed by Kaniye Ebeku[45] that oil companies prefer litigation to negotiation on issues of compensation because of the obvious advantages this gives to them and that given the attitude and preference of oil companies on the issue of compensation, it would seem that the only hope of justice for the victims is the court. To the learned author, there is nothing wrong with this as it is consistent with the rule of law and the court as the last hope of the common man but for the high cost of litigation. Most claims are settled out of court not necessarily because the victims are satisfied, but often because of poverty, ignorance and the expenses and uncertainty of litigation. For instance, about 26th September, 2001, the law firm of C.O. Nwabuokei & Co, wrote to the General Manager, Nigeria Agip Oil Company ltd, Port-Harcourt regarding a claim for compensation in respect of the oil spillage of 16th September, 1999 which affected Abalagada community in Ndokwa East Local Government Area of Delta State culminating in Suit No Hck/21/2000 Francis Egwuatu & 2 Ors V Nigerian Agip Oil Company Limited & Anor as follows:

You will recall that we wrote to you late in 2000 and the letter was followed up by a suit mentioned above in which your company was the first defendant. Later, however, your company engaged the services of Messrs T.O. Okpoko SAN & Co. of 7 Decco Road, Warri who represented you in the suit. After a few court attendances however, the Plaintiffs' Counsel and that of the second defendant felt that it will serve the interests of the parties better if they negotiated a settlement rather than going the full length of litigation which certainly would be wasteful as it is painful. We are pleased to let you know that the plaintiffs and the second defendant wisely took the advice and by themselves, they set up an Arbitration Panel from their community and we are informed almost a week ago that both parties have by consent agreed….

[43]Id., at 1308-1309.

[44] Id., at 1309-1310.

[45] Kaniye Ebeku, Op. cit, at 14-15. See also Kaniye Ebeku, Legal Remedies for Victims of Environmental Pollution in Nigeria, Nigerian Law and Practice Journal, Vol. 2 No. 2 (1998) at 6.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

It is however important to remark that as at the time of writing this paper, seven years after, the negotiated settlement of 2000 did not hold as third party tenants of the victims joined the fray of the litigation which is presently running at the Federal High Court, Benin and in which court, negotiated settlement is still being considered by the parties in a spill in which the Nigerian Agip Oil Company Limited had earlier admitted to pay about 15 million naira to the Abalagada community before litigation ensued. It did not only ensue because of the differences between members of the community and their tenants whose crops and homesteads were affected but between the community and the Ministry of Environment or the State which registered its interest or "eminent domain" because of the amount of monetary compensation involved and even incited the tenants to dispute to whittle down the resolve of the community, and fractionalize it when it rejected a proposed sharing percentage or formula of the compensation that was manifestly skewed in favour of the Ministry[46].

However, the problem of the civil litigation approach lies in the fact that most often, the quantum of compensation recoverable is not fair and adequate. According to Yinka Omorogbe[47], damages are paltry and not worth the trouble. The victim may even find to its dismay and chagrin that the court awards are the exact amount of compensation which had earlier been offered by the polluter company during negotiation and before approaching the court and which was rejected such that the final award received by the victim is attenuated and depreciated by the cost of litigation. Thus, according to Enemo[48], the application of the existing legal remedies to the activities of the oil companies is inadequate. While the victims may be paid a paltry compensation as provided under the existing regimes and remedies, they believe that they can no longer litigate for fair and adequate compensation and probably when they do, the outcome may not be worth the trouble.

Jurisdictional questions have also been raised in the quest for compensation arising from pollution and oil operation matters. By virtue of Section 251(1)(n) of the Constitution of the Federal Republic of Nigeria, 1999 the Federal High Court has been conferred with jurisdiction in mines and minerals including oil fields, oil mining, geological surveys and natural gas. To institute actions, victim claimants have a long list of hurdles and problems of jurisdiction to contend with bordering on ouster clauses, condition precedent, juristic personality, limitation of actions, composition and competence of court and qualification of members, territorial venue, locus standi and abuse of process[49].

In CGG Ltd V Ogu[50], it took over 8 years to determine a preliminary objection to a question of law and jurisdiction. The respondent was the plaintiff in the High Court. The appellant was the defendant. In an action filed at the Omoku High Court, Rivers State, the respondent claimed certain sum as special and general damages as a result of alleged wrongful and reckless acts of the appellant in breaking and entering into the farmlands of the respondent by cutting several seismic lines resulting in wanton destruction of the respondents' cash crops, fish ponds, juju shrines and farm houses. The appellant raised objection to the effect that the court lacked jurisdiction in that the claim as disclosed in the writ, statement of claim and reply to the

[46] The Commissioner for Environment, Delta State, was an indigene of the community.
[47] Yinka Omorogbe, Op. cit, at 153.
[48] I. P. Enemo, Torts of Nuisance and the Nigerian Oil Industry. The Nigerian Juridical Review Vol. 6 (1994 – 1997) at 205.
[49] See I. D. Uzo, Preliminary Objection to Jurisdiction, (Ijeshatedo: Law Digest Publishing Co., 2004) at 5-251.
[50]

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

statement of defence arose from shooting of explosives and other geological survey activities in the course of oil exploration activities. The trial court did not uphold the objection. But the Court of Appeal in upholding it, remitted the case back to the High Court for the determination of the issue of jurisdiction instead of dealing with it under Section 16 of its rules. The appellant's further appeal to the Supreme Court was upheld and the court acting under its counterpart provisions under Section 22 of its rules, which makes it necessary to determine the real question in controversy, struck out the suit leaving the respondents with the option to recommence the same suit afresh before a Federal High Court after 8 long years.

Scholars have also raised the issue of the litigant's access to court. By virtue of Section 251(n)&(p) of the Constitution of the Federal Republic of Nigeria, the Federal High Court is the court that is conferred with the exclusive jurisdiction to adjudicate in cases affecting the Federal Government, its agencies and litigation in oil and gas matters. It has been submitted that the citing of the Federal High Courts has not been advantageous to the litigants against the corporation and oil companies and that in the core of the Niger Delta States where majority of the cases are likely to arise, the States do not have sufficient Federal High Courts. In fact, only one Federal High Court exists in the Niger Delta. This makes litigants to travel long distances and across several States before an action can be instituted with its attendant logistic and financial burden. Moreover, the filing fees in the Federal High Courts have risen to astronomical levels. As held in Fawehinmi V Aminu, NNPC & Ors[51], the right to access to court should not be impeded by a process giving special advantage to the defendant for no other reason than that it is an organ or semi-organ of the State. It can be opined that the same status is equally being accorded oil and gas companies when jurisdiction is lifted from the State Courts to the Federal Courts in matters against them for damages and claims that occurred within the purview of the State High Courts. Thus, according to Aniko[52] and Okene[53], all courts should be empowered or should have their jurisdiction enlarged to adjudicate on all cases arising from oil and gas as they exist at the grassroots and will find it convenient to visit the locus of a spillage and environmental degradation.

Although it may not hold ground to canvass that sometimes 'people who have no idea or special knowledge about oil, the environment where it is produced, its effects on the environment and life generally' try and decide oil and gas cases, 'injustice' may become 'more pronounced when judges in far away courts decide cases on documentary evidence in matters that affect the environment and lives which require practical visit to the locus in quo.' Yet, it has been canvassed elsewhere, that evidence, trials and decision in oil and gas matters are largely done on uncommon expert evidence and in the region of the exclusive. Even when a claim succeeds against the corporation, its properties cannot be attached but the judgment is subjected to the general reserve fund of the corporation.

Above all, the judicial attitude appears to be weighted in favour of the oil company. Even when a litigant victim is successful, the remedies applied by the court are usually insufficient. Damages are the only and the most likely remedy that the court may apply. The court, as a matter of judicial policy, will not allow an injunction to lie to restrain an oil company. In Allar

[51] Unreported Suit No. FHC/L/CS/54/92 Federal High Court, Lagos Division.
[52] A.T.Aniko, Op. Cit., at 27.
[53] E.K.A. Okene, State Participation in Mineral Exploitation, LL.M Degree Seminar Paper, Delta State University, Oleh Campus, 2006 at 36.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

V Shell-BP Development Company (Nig.) Ltd[54], the trial judge refused injunction because to grant the same would amount to asking the defendant oil company to stop operations in the area and the interest of third parties would be affected such as throwing a large number of workers out of work. It was held more significantly that injunction may render the oil exploration license nugatory and the economic interest of the nation may sometimes defeat the private rights and interest of a citizen. Evidence that courts are reluctant to grant injunctions against polluters debilitates the litigation monetary compensation alternative and dehorns the court's capability in compelling polluters to reduce the adverse effects of their operations on the environment. In Chinda V Shell BP[55], an order of injunction to restrain gas flaring within 5 miles of a village was characterized by a judge as 'an absurd and needlessly wide demand'. The polluters on the other hand have not helped matters from their immodest utterances to the effect that the law is on their side because in the case of disputes, operations continue and not a single injunction has been in place against them in Nigeria. And none will be in the light of the present judicial policy and disposition for a long time to come. The justification of this position is still debatable.

However, it may be that financial compensation is not enough for the claimant and some other remedy of an equitable nature is required. Specific performance is a discretionary one requiring a party to honour its contract to perform obligations the effect of which order is to put the parties literally in the position in which they would have been had the contract been performed[56], particularly when the relationship between the parties is one likely to continue for a long time.

The attitude of the courts, the time-consuming adjudicatory procedure and the unfriendly tort regimes have not encouraged litigation. As noted by Emole[57] and Mc Laren[58], the remedies offered by the common law and statutes are ill suited for the purpose of contending with pollution and impotent as a source of a viable response to an environmentally sensitive lawyer. The regimes and remedies do not offer much hope to the victims who are far more interested in compensation than punishment of polluters nor do they enable the victims to enforce non-compliance with statutory regulations by the oil companies as against the position in the United States of America[59]. Some form of judicial activism is thus demanded from the courts as they move away from the common law limitations to awarding punitive damages in order to cushion the effects of pollution on victims[60]

[54]Id., 1086.
[55] 65. Suit No. W/89/71 (Unreported) High Court, Warri, November 26, 1973.
[56] See the Views of J. A. Odeleye, Legal Manager, Shell, in J. G. Frynas, Legal Change in Africa: Evidence from Oil-related Litigation in Nigeria, Journal of African Law, 43 (1999) at 123.
[57] C. E. Emole, Regulation of Oil and Gas Pollution, Environmental Policy and Law, Vol. 28 No. 2, May (1998) at 105.
[58] J. P. S. Mclaren, The Common Law Nuisance Actions and the Environmental Battle: Well-Tempered Swords or Broken Reeds? Osgoode Hall Law Journal, (1972) 505 at 507.
[59]See Yinka Omorogbe, Op. cit, at 152.
[60] See the cases of Farah & Ors V Shell Pet Dev. Co. Ltd (1995) 3 NWLR (Pt 382) at 148 and SPDC Ltd V Tiebo & Ors (1996) 4 NWLR (Pt 445) 657 where N 4, 621, 307 and N 6,000,000 were awarded respectively.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

CONCLUSION AND RECOMMENDATION

There are no doubts about the availability of legal regimes and remedies for payment of monetary compensation for pollution damages, but they appear not to be consistent, well-articulated and adequate to meet the needs of the victims and international standards. The situation is even more precarious for the alternative option of non-monetary compensation which appears to be regulated entirely by the contractual understanding between the stakeholders and the emerging doctrine of corporate social responsibility.

There is, therefore, the need and requirement for "new" laws in the area of monetary compensation to firm up the traditionally available legal regimes and remedies which do not seem to cover the field in terms of the commitments, the risks, the human and non-human capital involved in the long-term goal of sustainable development of the oil bearing communities.

This paper buttresses the view that monetary compensation bodes well with the litigation alternative to compensation in pollution matters while the non-monetary compensation approach accords with the alternative dispute resolution strategy. In comparative terms, the litigation option appears to address given isolatable individual cases while the development option appears to address the impact of oil operations on the community as a whole by integrating the stakeholders, harmonizing their goals and aspirations with a longer range of view to their mutual needs and prospects.

The legislature should therefore rise to confront this situation and its loopholes. A "new" law entirely premised on the issue of monetary compensation in oil mineral pollution matters in Nigeria is long overdue. It may, perhaps, stave and redirect the energies of that tiny but significant cross-section of the stakeholders in the industry and the community involved in sabotage, vandalization, hostage taking and armed struggle due to the absence of such an enabling law and legal environment. The judiciary is no less needed in the creation of this desired "new" law. It has already been noted that the areas in which compensation becomes payable has continued to be broadened by statute and judicial precedent. Frynas has succinctly highlighted this development with the decision in SPDC V Farah. For Niki Tobi JSC, where the intention of the legislature is unclear, a judge cannot adjourn a situation before him for the legislature to make a law to place the situation on his hands, he could make the law. And as Elegido has rightly opined, while the legislature is unable to update the law quickly enough, judicial law making allows constant refinement of legal rules.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

REFERENCE

Allied Bank of Nigeria V Akubeze (1997) 51 LRCN 1648
Aneke, J. G. O., Law for Everyman (Vol. 11), Onitsha: Africana-Fep. Pub. Ltd, 1993) at 28-23.
Awhefeada, U. V., The Rules Governing Compensation for Degradation in Nigeria; An Analysis, Delsu Law Review, Vol. 2 No. 2 (2006) at 415.
Badmus v. Abegunde (1999) 71 LRCN 2912 at 2930.
Banwell, C. C., Words and Phrases Legally defined, Vol. 4, 0-R, (London: Butterworths, 1960) at 294-295.
Batson v. de Carvalho (1948) 47 NSWSR 417 at 487.
Boesch, D. F., et al, Oil Spills and the Marine Environment, (Cambridge: Ballinger Pub. Coy., 1974) at XIV.
Chinda v. Shell BP Suit No. W/89/71 (Unreported) High Court, Warri, November 26, 1973.
Craig Osborne, Civil Litigation, (London: Blackstone Press Ltd, 1993) at 146.
Emiri, O. F., An Economic Analysis of the Right to Compensation for Oil Pollution, Delsu Law Review, Id, at 410-412.
Emole, C.E., Regulation of Oil and Gas Pollution, Environmental Policy and Law, Vol. 28 No. 2, May (1998) at 105.
Encyclopedia Americana, International Edition, Vol. 7, (Danbury: Crolier, 2000) at 457.
Enemo, I. P., Torts of Nuisance and the Nigerian Oil Industry. The Nigerian Juridical Review Vol. 6 (1994 – 1997) at 205.
Etikerentse, G., Nigerian Petroleum Law, (London: Macmillan Pub. Ltd., 1985) at 81.
Esavwede, J. P., A Critical Appraisal of the Impact of Common Law Torts on Environmental Protection In Niger Delta, Delsu Law Review Vol. 2 No. 1 & 2 (2004) at 344.
Fagbohun, Problem of Compensation for Oil Pollution is Complex, the Guardian, Tuesday June 21, 2005 at 77
Farah & Ors V Shell Pet Dev. Co. Ltd (1995) 3 NWLR (Pt 382) at 148
Fawehinmi V Aminu, NNPC & Ors Unreported Suit No. FHC/L/CS/54/92 Federal High Court, Lagos Division.
Frynas, J. G., Legal Change in Africa: Evidence from Oil-related Litigation in Nigeria, Journal of African Law, 43 (1999) at 123.
Goulandris Bros Ltd v. Goldman B & Sons Ltd (1957) 3 All ER 100.
Idise, S. A., Judicial Precedents as a Source of Environmental Law in Nigeria, (Unpublished) LL. M. Seminar Paper, Delta State University, Oleh, 2006) at 18.
Jimitota Onoyume, Oil War: How 12 Niger Delta Chiefs were Assassinated, Vanguard, Sunday January 21, 2007 at 15.
Kaniye Ebeku, Op. cit, at 14-15. See also Kaniye Ebeku, Legal Remedies for Victims of Environmental Pollution in Nigeria, Nigerian Law and Practice Journal, Vol. 2 No. 2 (1998) at 6.
Nwosu, E.O., Petroleum Legislation and Enforcement laws and Standards in Nigeria, The Nigerian Juridical Review, Vol. 7 (1998-1999) at 80.
Mclaren, J. P. S., The Common Law Nuisance Actions and the Environmental Battle: Well-Tempered Swords or Broken Reeds? Osgoode Hall Law Journal, (1972) 505 at 507.
Muzan, A.S., Jurisdictional Competence and Remedies in Environmental Causes Relating to Petroleum Operations in Nigeria, Environmental and Planning Law Review, Vol. 2. No 4 October- December, 2005, at 23.
Nka V Onwu (1996) 40/41 LRCN 1303.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ

Ogu V Ihejirika (1991) 4 NWLR (Pt 185) 388 at 393.
Okene, E. K. A., State Participation in Mineral Exploitation, LL.M Degree Seminar Paper, Delta Sate University, Oleh Campus, 2006 at 36.
Osborn, P. G., A Concise Law Dictionary, (London: Sweet and Maxwell, 1954) at 107.
Proceedings of the SPDC Integrated Environment and Community Development Stakeholders' Workshop Held at the Petroleum Training Institute, Effurun, 24th – 26th February, 2004, at 34.
Seismograph (Nig.) Ltd V Ogbeni (1976) NWLR (Pt 328) 148 at 290.
SPDC Ltd V Tiebo & Ors (1996) 4 NWLR (Pt 445) 657
SPDC v. Tiebo (2005) Vol. 127 LRCN 1274
Uzo, I. D., Preliminary Objection to Jurisdiction, (Ijeshatedo: Law Digest Publishing Co., 2004) at 5-251.
Webster Dictionary of the 21st Century, at 370.

Article DOI: 10.52589/JARMS-RZPC8IHJ
DOI URL: https://doi.org/10.52589/JARMS-RZPC8IHJ