



# Compensation for Oil Pollution under Nigerian Law and the Problems of the Victims in Assessing the Damage

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## ABSTRAK

Since the discovery of oil in Nigeria, it has been woes due to the pollution of the environment caused by the exploration and exploitation of the products. This pollution has caused a lot of untold hardship on the people and the environment of the oil producing area of the country. This ranges from, sickness, such as common cold to very devastating and chronic diseases to the pollution of the farmlands, fish ponds, and general environmental degradation caused by the activities in the oil industry. Unfortunately, not much has been done by both the government and the oil companies to alleviate the sufferings of the people. Although there are laws put in place to address this ugly situation by way of compensation such as the Oil Pipelines Act, the Oil in Navigable Waters Act, Petroleum (Drilling and Production) Regulation among others. Also, there are common law principles such as, Nuisance, Trespass, Negligence etc. which are put in place as spring board for the redress of victims of oil pollution. The snag here is, how effective are these statutory and common laws principles in tackling this problem? Are the victims of oil pollution well compensated? Unfortunately, these laws have not done much hence, the victims are left either not compensated or not adequately compensated because of one technicality or other, which throws a burden on the plaintiff to prove his case. This work therefore, examined the various laws in place providing compensation to the victims of oil pollution and suggested that a strong enforcement of the laws will be a panacea for victims' redress.



## INTRODUCTION

One redress that the victims of oil pollution Nigeria seek is that of compensation for the damage caused by the oil producing companies in the area (Archibong et al., 2016; Nabiebu et al., 2019; Adoga-Ikong 2019). This compensation comes either in monetary form or a remediation of the polluted environment or even any other order that the court may deem it fit to give or award. The Nigerian law has made provisions in some legislations as well as the common law principles for the victims of oil pollution to be compensated. Among these legislations are Oil Pipelines Act, the Petroleum (Drilling and production) Regulation etc (Mbum et al., 2014; Onyi-Ogelle & Jared 2021). and the Common Law Principles of Trespass to land, Nuisance, Negligence and the Rule in *Rylands v. Fletcher* (Murphy 2004).

Despite the provisions of our laws, the victims of the pollution are crying fowl. This is because they are either not compensated at all or are not adequately or properly compensated. The question is that, what is the reason for the above? Are the laws not effective enough? Are they vague? On the other hand, one discovers that the main issue is the attitude of Nigerian courts in awarding this compensation. Oftentimes, the victims finds it difficult to get damages simply because of the way our courts handles the cases. Victims are usually knocked off because of one technicality or the other. This work therefore seeks to examine the various laws in place for compensation and uproot their pitfalls and make a suggestion for an adequate or proper compensation of the victims of oil pollution in Nigeria. This will be done by comparing Nigeria with other climes where the best practice rule is entrenched such as India.

## THE LAWS ON COMPENSATION OF OIL POLLUTION VICTIMS IN NIGERIA

### (a) Oil Pipelines Act

The Act provides in Section 11(5) that the holder of a licence shall pay compensation to any person whose land or interest in the land is injuriously affected by the exercise of the right conferred by the licence for any such injurious affection; to any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen, structure or thing executed under the licence and to any person suffering damage as a consequence of the breakage (Onyi-Ogelle 2020).

### (b) The Petroleum Act

The Act provides that the minister shall have the power to grant licences to oil operators as regards the exploring, prospecting or mining of oil in Nigeria (Otuturu 2019). The provision of the Act on compensation is to the effect that: the holder of an oil exploration licence, oil prospecting licence or oil mining lease shall in addition to any liability for compensation to which he may be subject under any other provision of the Act be liable to pay fair and adequate compensation for the disturbance of surface or other right to any person who owns or is in lawful occupation of the licenced or leased lands (Nyekwere & Ambrose 2017). The Act provides further that compensation must be fair and adequate. The question is, how fair and adequate is it?

### (c) The Petroleum (Drilling and Production) Regulation:

There are two important regulations of the above legal document on controlling pollution and paying compensation to victims of oil spillage (Kadafa et al., 2012). Regulation 25 provides:

“The licensee... shall adopt all practicable precautions including the provision of up-to-date equipment approved by the director of Petroleum Resources, to prevent the pollution of inland water, rivers, water courses, the territorial waters of Nigeria or the high seas by oil, mud, or other fluids... which might contaminate the waters, tanks or shoreline or which might cause harm or destruction to fresh water or marine life and where any such pollution occurs or has occurred, shall take prompts step to control and if possible, end it” (Nwatu & Wingate 2020, p. 65).



## THE COMMON LAW PRINCIPLES FOR THE CONTROL/COMPENSATION OF OIL POLLUTION VICTIMS

### a. Trespass to land

Trespass to land or trespass *quare clausum* is the name given to that form of trespass which is committed by unjustifiable interference with possession of land (Adoga-Ikong 2019). It is an unjustifiable intrusion by one person upon the land in possession of another. This can be committed by the person personally or where he causes an object to introduce upon the land. It is committed when the defendant without justification enters upon land in possession of the plaintiff, remains upon such land or directly places or projects material object upon such land (Udungeri & Aloamaka 2017).

If sewage, crude oil, harmful waste or refuse (or any other object) generally is dumped on a private individual's land without lawful justification, the owner of the land can successfully bring an action in trespass against the perpetrators of such act. What the plaintiff requires to do is to prove special damaged (if any). Even though he is unable to prove any special damages, he will still be awarded damages, nominal or general damages. The tort of trespass to land though appear not to have directly pleaded in any oil pollution litigation, it is submitted that where a plaintiff alleges that a particular pollutant spread oil over the respondent's place and into their ponds and lakes, destroyed crops and killed fish in ponds it is clear case of trespass to land, especially with respect to farm lands (Inyang & Adoga-Ikong 2017; Ibekwe et al., 2020). Therefore the polluter is to pay compensation to the victim of oil pollution.

### b. Nuisance

This principle could be regarded as the most potent of oil torts relating to pollution in general and oil pollution in particular. Nuisance is actionable where the disturbance has affected the plaintiff in the enjoyment of a right belonging to him as a member of the public which is public nuisance, or his ownership or occupation of land "... The tort of nuisance especially, (private nuisance) is an interference with the use of the land" (Freedman 1990, p. 113). In determining the question whether the defendant is liable, the attitude of the courts has been how to strike a balance whether the defendant has the right to use the property as he wishes and if the plaintiff has the right of protection of the property from interference with its use and enjoyment thereof. Where the court is satisfied that the defendant has caused damage to the plaintiff by virtue of nuisance, damages is awarded and the plaintiff is compensated.

## CHALLENGES OF THE VICTIMS IN ASSESSING DAMAGE

Under the Oil Pipelines Act, the inherent problem or challenge associated with the legal arrangement is that the representative of the community may embezzle the money secured for the entire community (Ikonomwan & Aloamaka 2018). Therefore, there is a need for the law to be reviewed in order to make room for proper utilization of the monetary compensation paid to the community. Under the Petroleum Act, and its regulation for instance, the Act provides that compensation must be fair and adequate. Thus, the fairness and adequacy principle of compensation is remote and unclear because the Act failed to define the meaning of fair and adequate (Nabiebu et al., 2019). As a result of this, gap created, the courts are left to come to the conclusion of what is fair adequate according to different cases. This has occasioned injustice on the victims thereby depriving them of the compensation. It is therefore suggested that the meaning attached to "fair" and "adequate" should be made clearer in order to protect the victim of oil pollution to assess compensation.

Disagreement over quantum of compensation: In the case of *Joel Odim and Ors v. Shell Bp Petroleum Dev. Co. (Nigeria) Limited*, there was settlement of compensation of agreement, after which the claimants went back to the court to claim a higher rate of compensation (Murgana & Ijaiyab 2020). In this case, the plaintiffs having been paid compensation by the defendants in respect of damage done to their crops under the Oil Pipelines Act, brought an action against defendants claiming an amount as unpaid balance. The bone of contention was that the amount already paid to them was inadequate having regards to the Rivers State Minimum Crops Compensation Rate Edict No. 7 of 1973. The defendants contended that adequate compensation had been paid to the plaintiffs in accordance with the provision of Oil Pipelines Act. The court held that adequate compensation has been paid to the plaintiffs and no further payment is required.



Attributing the cause of environmental incidents to Sabotage: It is a trite fact that the basis of any compensation is the acceptance of liability by the erring party (Okonkwo 2018). Thus, compensation cannot be paid for any act of sabotage. Repairs of damages property issue hardly carried out speedily due to the claim that their operation is being sabotaged by the local community themselves. In *Atubie & Ors v. Shell Bp*, a claim for compensation for damage to fish ponds, stream, farmlands and economic tries arising from oil spillage was brought and the court held that the oil company was not liable since the damage was caused by the mischievous act of a 3<sup>rd</sup> party. This indeed is an obstacle to payment of compensation to the victims (Okonkwo 2018).

Consideration of economic factors and undue protection of the polluter: In the case of *Allar Iron v. Shell Bp*, the judge refused to grant an injunction in favour of the plaintiff whose land and fish pond had been polluted by the defendant's operations (Okonkwo 2018). The judge's refusal was from both social and economic reasons. The court held that granting the injunction could stop the defendant's trade and render many unemployed and even affect the country's revenue.

Problems of technicalities: Two of these legal technicalities that serve as a problem to pollution victims in compensation for environmental damage are that of *locus standi* and the use of expert opinion (Udungeri & Aloamaka 2017). The *locus standi* which concerns with the capacity of a person to institute legal action in a court of law, states that such a person must have an interest, which is sufficiently affected by the action. Thus, in *Oroto Douglas v. Shell Bp and Others* the court held that the plaintiff has no *locus standi* to institute the action since he had shown no prima facie evidence that his right was affected or any direct injury caused more than the generality of the people.

Another technicality is that of expert opinion. Environmental pollution victims are required to place their claims in concrete scientific proofs within the doorsteps of the defendant, if he is to succeed. In this regard, the plaintiff is required to procure the services of a professional in such scientific analysis (Okpara 2012). This is not easy to come by considering their high charges. Where he cannot produce one, the court is left with no option than to rely on the expert evidence procured by the violator, whose enormous resources can enable him get him the services of a sophisticated experts. In *Seismograph Service Ltd. v. Benedict Onokpasa*, the respondent/plaintiff brought an action for damage to his buildings allegedly caused by the negligent of the appellant/defendant. The appellant company in the cause of its shooting operations carried out while prospecting for oil caused the damage to the plaintiff's buildings. To succeed in court, the plaintiff has to prove that the defendant's negligence act caused the damage, this he was unable to prove to the satisfaction of the court.

## CONCLUSION AND RECOMMENDATIONS

In view of the inadequacies of the various common law principles as well as the loopholes in the existing statutory framework in ensuing compensation due to the victims of oil pollution in Nigeria, the following suggestions are pertinent. One, Section 11 (5) (b) and the defence of malicious act of the 3<sup>rd</sup> party under Section 11(5) (c) of the Nigerian Oil Pipelines Act should be looked into through an amendment. This will pave the way for statutory strict liability under the Act. Two, special and concrete development projects should be made part of the compensation to the oil producing communities that are the victims of the pollution. This should be in addition to the already existing statutes so as to enable more victims benefit from the compensation, unlike the situation where the compensation paid is being diverted by the community leaders at the detriment of the victims themselves.

Finally, it is suggested that the practice in other jurisdictions be applied in Nigeria in the area of liability of the polluter. One of such practices is 'absolute liability'. The rule of absolute liability posits that a corporate body engaged in a hazardous or inherently dangerous industry, which poses threat to the health and safety of persons owes an absolute and non-negotiable duty to ensure that harm of any sort does not result from the operations. Where it does, it is absolutely liable to compensate the injured and cannot escape liability by



claiming not to be negligent. This was what happened in the popular Indian case of *India Council of Environment Legal Action v. Union of India* (Shamim 2015). The Supreme Court of India held that:

When certain industries by the discharge of acid producing plants cause environmental pollution, that amount to violation of right to life enshrined in Article 21 of the Indian constitution... The respondents are absolutely liable to compensate for harm caused to the villager in the affected areas; including harm to the soil and underground water (Sijapati 2010, p. 206).

If Nigeria has to follow the above theory, there must be a positive statutory provisions to back up the judicial interpretations. In the case of India, the decision was based not only on the constitution but also on the Indian Gas Act of 1965. If the above suggestions are adhered to in Nigeria, the issues of non or inadequate compensation to the victims of oil pollution will be a thing of the past especially if Nigerian court should drop the idea of technicalities in handling oil pollution cases.

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