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EVALUATING ENVIRONMENTAL POLLUTION AND THE PROBLEMS OF COMPENSATION IN NIGERIA

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Abstract

Oil and Gas exploration and production activities have left serious environmental challenges for Nigerians in general and the Niger Delta people in particular. There are cases of environmental pollution arising from onshore and offshore exploration and production activities, marketing and terminal operations, petroleum refining and transportation operations. Specifically, pipeline explosions and leakages, gas flaring, massive oil spills, indiscriminate discharge of waste substances and toxic liquids into the water bodies and well blowouts from under-commissioned facilities by the Multinational Oil Companies (MNCs) operating in the petroleum industry have led to far-reaching environmental concerns, health implications and ultimately loss of lives. Affected communities in the oil producing regions have adopted measures targeted at correcting the evil of environmental pollution. One of such measures is the demand for payment of damages and compensations for the injury caused to their environment, destruction of the entire ecosystem and sources of livelihood. Regrettably, there are several challenges associated with awards of compensation by Nigerian courts. The author therefore, seeks to examine environmental pollution and the problems of compensation in Nigeria. The author found that the current legal regime for environmental protection in the oil and gas industry is inadequate, most especially because majority of the laws were enacted some decades ago when oil and gas activities were purely on-shore. The author further concluded that the institutional framework is ineffective because the Federal Government still operates as both a regulator and an operator in the industry. As an operator and regulator, it lacks the boldness to regulate itself. The author recommended that there must be a viable, visionary, and well-funded Commission and Authority to enforce and implement the recently enacted Petroleum Industry Act and to compel compliance by operators.

KEYWORDS: *Environment, Petroleum, Pollution, Compensation, Jurisdiction*

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1. Introduction

The environment is very crucial for human existence and settlement. Therefore, the State, through the instrumentality of government has the duty and objective to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.[1] Again, government shall be humane and the exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community shall be prevented and the State shall direct its policy towards ensuring that[2] the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused.[3] Therefore, the environment need not be polluted for oil production or any other purpose.

Nigeria, until very recent, was the largest oil-producing country in Africa and the seventh largest in the world.[4] Thus, the petroleum industry is the mainstay of Nigeria's economy.[5] About two million barrels of crude oil a day are known to be extracted in the Niger Delta region of Nigeria. The region has accounted for over 95 percent of Nigeria's earnings. In fact, in Nigeria, the oil and gas industry accounts for over 90 percent of the country's foreign earnings and contributes significantly to environmental degradation in the oil producing areas.[6] It is stated that the region equally accounted for 40 percent gross domestic products (GDP) and 80 precent of gross revenue for Nigeria's federation.[7]

Oil exploration and production projects have impacts on the natural environment even long before any oil is actually produced. These are complex, multifaceted projects with many different phases including land survey, land clearance for seismic lines, establishment of seismic and drilling camps, site preparations, infrastructure construction, drilling for oil and development for transportation infrastructure. Once the facility begins operation, other issues ensued. They are spills caused during oil production and the disposal of waste (often salty and known as produced water) and flaring from gas (produced gas) generated alongside the oil. All of these activities and their effects leave an environmental footprint. As the oil and gas industry continues to grow in relevance and revenue from on-shore to off-shore, its growth has equally occasioned a price and an implication; the pollution of waters of the oil-producing communities in Nigeria, the destruction of the entire ecosystem and other painful occurrences resulting into degradation and destruction of the environment. The problem of environmental degradation caused by industralisation which also permeates the oil and gas industry has become one of the greatest threats to humanity. In responding to this global challenge, governments all over the world have muscled up her consciousness and have woken up to the reality of the dangers of global environmental changes caused by oil and gas explorations. At the international level, starting with the Stockholm Declaration,[8] several legal regimes have been developed to regulate and control the oil and gas activities of Multinational Oil Companies towards ensuring the protection of the environment and ensuring a healthy living in the oil and gas-producing region.[9] The same position equally

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[1] Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 20

[2] (n 1), s. 17(2)(d).

[3] *Ibid*., s. 17(3)(c).

[4] S. E. Abila and D. K. Derri, *Sustainable Development Issues in the Niger Delta* in F. Emiri and G. Deinduomo(eds) *Law and Petroleum Industry in Nigeria:Current Challengesin Honour of Justice Kate Abiri* (Malthouse Press Ltd, 2009) 223.

[5] S. T. Ogbilikana, 'Occupational Health and Safety in the Oil and Gas Sector: The NigerianExperience' (2009)(1)(1)*The Journal of Property Law and Contemporary Issues, Rivers State University*, 163.

[6] F. Emiri and G. Deinduomo(eds), *Law and Petroleum Industry in Nigeria(Current Challenges): Essays in Honour of Justice Kate Abiri*(Lagos: Malthouse Press Limited, 2009) 115.

[7] A. I. Augustine, *The Impact of Oil in a Developing Country: The Case of Nigeria*(New York: Praeger Publishers, 1990) 10.

[8] United Nations Conference on Human Environment 1972.

[9] Universal Declaration on Human Rights 1948; the United Nations Conference on Environment and Development(UNCED) 1992; African Charter on Human and Peoples' Right 1981.

applies to domestic laws starting with the Constitution of the Federal Republic of Nigeria[10] through the Petroleum Industry Act[11] and to the National Environmental Standards and Regulatios Enforcement Agency (Establishment) Act[12] and the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria[13] amongst others.

The presence of these laws and regulatory agencies nonetheless, there seems to be an increase in the continuous attack on the environment in Nigeria by the activities of the oil and gas Multinational Companies and other anthropocentric activities. This is owing to the weak and ineffective legal regime and the lack of independence on the part of the regulatory agencies to ensure compliance with the existing laws on the environment.

2.1 Sources of Environmental Pollution in Nigeria

The environment is so important that the State is directed to protect and improve the environment and safeguard the water, air and land, forest, and wildlife of Nigeria.[14] In the beginning, God created heaven and the earth. At the time of creation, no piles of trash disfigured it; no garbage dumps polluted it.[15] God never intended to ruin the earth. He specifically told man to take dominion, cultivate and take care of it.[16] However, contrary to God's intention, the earth has suffered degradation and pollution in all forms. Environmental pollution is the addition of any substance (solid, liquid, or gas) or any form of energy (such as heat, sound, or radioactivity) to the environment at a rate faster than it can be dispersed, diluted, decomposed, recycled, or stored in some harmless form. It is the alteration of the biological, chemical, and physical characteristics of natural phenomena which includes water, air and land by man-made or natural substances that impair them such that these phenomena cannot perform their natural roles.[17] It comprises of air pollution; land pollution; water pollution; and noise pollution. The major sources of environmental pollution are discussed below:

2.2 Onshore and Offshore Exploration and Production

Oil and gas exploration refers to the processes and methods involved in locating potential sites for oil and gas drilling and extraction. Early oil and gas explorers relied upon surface signs like natural oil seeps but developments in science and technology have made oil and gas exploration more efficient. Geological surveys are conducted using various means from testing subsoil for onshore exploration and using seismic imaging for offshore exploration. Once a company identifies where oil and gas are located, plans begin for drilling.[18] Oil and Gas have permeated all aspects of human society in the last century[19]. Globally, there is a growing concern about the impact of oil and gas exploitation on all aspects of the environment. This goes beyond pollution but extends to a terrorist attack on oil installations, tankers accidents, sabotage and other natural events that affect the marine offshore environment.

In Nigeria, oil exploration has primarily taken place in the Niger Delta region. The reckless operations of the oil industry have greatly altered the ecosystem in this region, the inhabitants

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[10] (n 1).
[11] Petroleum Act 1969Cap P10 LFN, 2004 repealed by the Petroleum Industry Act 2021.
[12] NESREA Act 2007.
[13] Environmental Guidlines and Standards in the Petroleum Industry in Nigeria (EGASPIN) 1991.
[14] (n 1), s. 20.
[15] Holy Bible, Genesis 1:1, 31.
[16] *Ibid.*, Genesis 2:15.
[17] S.C. Dike, *Environmental Law in Nigeria (Lecture Note of Faculty of Law, Rivers State University, Port-Harcourt 2021)*
[18] 'Oil and Gas Production and Exploration'<www. guides.loc.gov/upstream> Accessed 10 July 2022.
[19] S. Reyna and A. Behrends, 'The Crazy Curse and Crude Domination: Towards an Anthropology for Oil' in A. Behrends and others (eds), *Crude Domination: An Anthropology of Oil* (Berghahn Books 2011) 3.

of this region have suffered grave consequences of this carelessness ranging from the loss of lives and livestock, destruction of the natural flora and fauna, health challenges, climate change, poor harvests resulting from lands being rendered infertile and so on. Nigerians witnessed the slow poisoning of waters in this country and the destruction of vegetation and agricultural land by oil spills which occur during petroleum operations. Sadly, since the inception of the oil industry in Nigeria, there has been no effective and sufficient effort on the part of the government, let alone the oil operators, to control environmental problems associated with the industry. Oil spills in Nigeria occur very common, about 7,000 spills have been estimated to have occurred between 1970 and 2000.[20] Oil spills are usually caused by corrosion of pipelines and tankers, oil production operations and inadequate or non-functional production equipment. Also, bunkering activities whereby the perpetrators tap a pipeline, and in the process of extraction, the pipeline is sometimes damaged.

Oil spills have a major impact on the ecosystem. Large areas of mangrove forests have been destroyed continuously, an estimated 5-10 percent of Nigerian mangrove ecosystems have been wiped out either by settlement or by oil. Spills also destroy crops and aquacultures through the contamination of groundwater and soils. Drinking water is frequently contaminated, and a sheen of oil is visible in many localized bodies of water. Even where contaminated drinking water leaves no immediate health effects, the numerous hydrocarbons and other chemicals present in oil spills represent a carcinogenic risk. Offshore spills which are usually much greater in scale contaminate coastal environments and cause a reduction in local fishing production. Nigerian regulations are weak and rarely enforced allowing oil companies in essence, to self-regulate. The marine environment of the Niger Delta is, unfortunately, one of the most polluted regions in the world, this fact is being highlighted by various reports. The first is a 2006 joint study of the Niger Delta region undertaken by the Nigerian Conservation Foundation, the World Wide Fund for Nature, and the International Union for Conservation of Nature.[21]

The second report is by the United Nations that estimates that about 6,817 spills were recorded by the Nigerian Department of Petroleum Resources between 1976-2001 with a loss of approximately 3 million barrels of oil.[22] Two notorious oil spills that have adversely impacted the marine environment in the Niger Delta region are worthy of note. The blowout of the Funiwa-5 oil well of Texaco Limited in 1980 resulted in over 400,000 barrels of crude oil being spilled into the marine environment in Nigeria.[23] The spill commenced on the 17th of January 1980 and continued until the 30th of January 1980 when the well caught fire. This spill is said to have destroyed 836 acres of swamp mangrove trees and to have killed most of the crabs and molluscs in the surrounding rivers and swamps.[24] The second is the Mobil Qua-Iboe oil spillage of January 1998 in which 40,000 barrels of crude oil were spilled into the marine environment.[25] The immediate impact of the spill showed that 96.5 percent of mangrove seedlings died within 14 days of exposure to the oil film from the spill. The destruction of the mangrove is tragic because it provides breeding grounds for maritime creatures such as shellfish, fishes, molluscs and so on. It has been suggested that several factors such as corruption, inadequate understanding of the technical aspects of the oil industry, the inability of the agency to enforce international best practices of the oil and gas

[20] J. Bairds, *Oil`s Shame in Africa* (Johnmill Press, 2010) 45.

[21] Nigerian Conservation Foundation, the World-Wide Fund for Nature, and the International Union for Conservation of Nature Report 2006.

[22] United Nations Development Program Niger Delta Human Development Report (United Nations Development Program Publication, 2006) 76.

[23] S.O. Aghalino and B.Eyidia., 'Oil Pollution and Marine Environment: Evidence from the Niger Delta, Nigeria' (2009) (28)(93) *J Hum Ecol* 177.

[24] J. F. Fekumo, 'Civil Liability for Damage Caused by Pollution' in J.A.Omotola (ed.),*Environmental Laws in Nigeria Including Compensation* (University of Lagos Press,1990) 268.

[25] (n 22).

industry, the lack of political will on the part of the Nigerian government to enact and enforce effective environmental regulations and Nigeria`s heavy reliance on crude oil sales may have been responsible for the massive volume of oil spills in the Niger Delta region.[26]

Additionally, although the Nigerian government is supposed to supervise and regulate the industry, it directly participates in the exploration and production of crude oil in Nigeria through joint ventures with Multinational Oil Companies.[27] The UNEP report was the outcome of a study that involved the examination of the soil and groundwater condition sites in Ogoni. In addition, 4,000 samples of community drinking water, sediments from creeks, surface water, rainwater, fish, and air were collected throughout Ogoni and in several neighbouring groundwater monitoring wells drilled specifically for the study. It is noted *inter alia* that crude oil has extensively contaminated the soil and groundwater; cleanups were not really successful; and in one, the community`s soil was still heavily contaminated 40 years after the spill despite repeated cleanups; oil pollution had significantly impacted fishing as the mangrove forest which was being destroyed was the spawning area of the fishes. Furthermore, surface waters in creeks were often covered with floating layers of oil of varying thickness, rendering them useless as fishes moved away from these contaminated water bodies.[28] Although this report is based on studies only in the Ogoni land, in Rivers State of the Niger Delta, it mirrors the image of the entire Niger Delta.

Nigeria flares more natural gas associated with oil extraction than any other country. Companies operating in Nigeria harvest natural gas for commercial purposes, however, most prefer to extract gas from deposits where it is found in isolation as non-associated. It is costly to separate commercially viable gas from oil hence gas is flared to increase crude production.[29] In Nigeria, gas flaring releases large amounts of methane which has a very high global warming potential. Gas flares release a variety of potentially poisonous chemicals such as nitrogen oxides, sulfur dioxide, volatile organic compounds like benzene, toluene, xylene, and hydrogen sulfide, as well as carcinogens like benzopyrene and dioxins. Gas flares are often close to local communities and lack adequate fencing or protection for villagers who may risk nearing the heat of the flares in their daily activities. These chemicals released into the atmosphere are usually referred greenhouse gases which have negative effects on the environment. Asides from climate change from ozone layer depletion and global warming, it is also responsible for acid rain. Its secondary impact includes health hazards like cancers, respiratory diseases and subsequently death.

Petroleum exploration activities also involve the clearing off or killing of the various species of trees and plants in the forests thereby causing the displacement of forest creatures, making them migrate further inwards in search of alternative habitats, and some of them go into extinction in the process. Trees in the forest replenish the atmosphere with oxygen which they exhale, and which constitutes the fresh air that all mankind breathes in to stay alive. Also, the forests produce various species of trees that are of nutritious and medicinal value to man. Plants such as cocoa, coffee, palm trees etc. are found in the forest. Medicinal plants such as those used in the production of quinine for the treatment of malaria, curare that is used as a muscle relaxant in surgery and rosy periwinkle used in treating leukaemia patients are all found in the forests. Moreover, scientists are still experimenting with other plants to discover their medicinal and nutritional values. Where these plants are made extinct through

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[26] C. Ochieze, 'Corporate Complicity in the Extractive Industry: Where does Legal Liability Stand?' (2007) (5)(2) *Oil Gas Energy Law Intelligence*, 1 at 5.

[27] P. S. Tamuno, 'The Tort of Negligence and Environmental Justice in the Niger Delta" (2017) (1) *OGEL* 1 at 3.

[28] S.C Dike, P.G Gininwa, 'The Impact of Oil and Gas Pollution on Maritime Waters: The Case of Nigeria, United Kingdom and the United States Of America'*(2019)(6)(1), Port-Harcourt Journal of Business Law, 55.*

[29] 'Associated Gas in Western Europe' <https://en.wikipedia.org/wiki/Petroleum_industry_in_Nigeria> accessed 14 July 2022.

deforestation for oil exploration activities, then mankind would have lost all these nutritional and medicinal values.[30]

2.3 Transportation Operations

One of the numerous benefits of science and technology is the ease with which goods and persons are now being moved from one place to the other. Before the advent of science and technology, persons and goods were transported either on foot or using animals like horses, donkeys and so on. But with the advent of science and technology, easier, faster, and more reliable means of transportation were introduced. First bicycles were invented, motorcycles, subsequently cars, trains, buses and so on, were invented thus making movement on land faster and easier. Similarly, faster means of sea transportation were invented as well, speed boats and ships replaced canoes and wooden boats which needed serious manual labour. An even faster and safer means of transportation was introduced with the invention of airplanes by the Wright brothers. Transportation by air has further developed, as better models of airplanes are being invented, jets, and helicopters were also introduced. One could now travel long distances with the speed of light and the risk of being robbed on long night journeys or even that of accidents courtesy of our very beautiful roads has been reduced.

Besides their socioeconomic benefits, transportation systems have environmental consequences. Through the emissions from the combustion of fossil-derived fuels, transportation systems contribute to degraded air quality, as well as climate change. Ecologists believe that the rapid increase in the number of vehicles on our roads which has taken place without any restrictions is fast developing into an environmental crisis. Exhaust fumes from motor vehicles are the major sources of atmospheric pollution. Carbon monoxide, unburnt hydrocarbons, nitrogen oxides, tetraethyl lead and carbon dust particles, and aldehydes are examples of substances through which transport systems (motor vehicles) pollute the atmosphere. These emissions are also responsible for the increase in global warming. The water bodies are not excluded as these emissions from speed boats, ships and so on also pollute them thus altering their ecology. Reference could also be made to ecological destruction associated with catastrophic, and internationally reported oil leaks from stricken tanks or the contamination of coastal ecosystems.

Another negative impact of transport operations on the environment is noise pollution. It is estimated that some 135 million people in Organization for Economic Co-operation and Development (OECD) countries suffer transport noise levels above 65db. The sources of noise from road vehicles are many and varied, including horns, brake squeals, over-amplified music systems, loose loads, door slams and so on. Rail noise depends on the form of propulsion, the nature and load, the speed of the train and the type of track.

The degradation of terrestrial and aquatic ecosystems, as measured by indicators such as reduced habitat/species diversity, primary productivity or the aerial extent of ecologically valuable plant and animal communities, provides one of the most emotive aspects of the negative impact of transport operations on the quality of the environment. The physical division of natural or semi-natural ecosystems may inhibit the movement of animal and plant species across transport lines, and the associated reduction in size can threaten the viability and/or biodiversity of the smaller remnants. Also, the death of animals through collision with vehicles is another way through which animal species are gradually sent into extinction [31]

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[30] C.T. Emejuru, *Environmental Law in Nigeria* (Lecture notes on Environmental Law, Faculty of Law, Rivers State University, Port-Harcourt, 2021).

[31] 'Environmental Impact of Transport Development' <https://www.geographynotes.com/articles/5-major-environmental-impact-of-transport-development/249> accessed 14 July 2022.

2.5 Compensation in Perspective

Compensation is derived from the verb 'compensate' which is defined to mean 'to pay another for services rendered.'[32] The term is defined also to mean 'to make an amendatory payment to; recompense for an injury.[33]Therefore, compensation is rendered as remuneration or other benefits received in return for services rendered.[34] It is the payment of damages, or any act ordered by the court to be done by a person who has caused injury to another.[35] Compensation is a pecuniary remedy that is awarded to an individual or group of individuals who have sustained an injury to replace the loss caused by said injury. It can be referred to as payment or remuneration for work or services performed or for harm suffered. Generally, compensation refers to indemnification. it is the act of making amends in injury or loss caused to another.[36] It represents damages paid to a party injured by an act of another.[37] In *Railroad v Deninan, [38]* compensation was defined to mean the equivalent in money which is paid to the owners and occupiers of land compulsorily acquired or injuriously affected by the operations of companies exercising the powers of an eminent domain. Compensation is a fair payment made by the government for property compulsorily acquired usually assessed at the property's fair market value, so that the owner is not worse-off after the acquisition.[39] It aims at providing succor to affected property owners and serves to right what would otherwise count as wrong or injury to the property owner.[40]

Compensation is a constitutional right of every Nigerian citizen whose property is compulsorily acquired, and a breach of it will amount to an infringement on the individual's fundamental rights to own and enjoy the immovable property in Nigeria.[41] Similarly, the holders of Minerals title are obliged under the Act[42] to pay compensation to occupiers and land owners for land acquired for petroleum operations upon the presentation and consideration of a valuable report from a government licensed valuer. Compensation in this context is thus the right of landowners or occupiers whose property is affected by the operations or activities of Oil Mining Lease and pipelines construction and so on. whether employing acquisition of property or with regards to damages suffered by such mining activities.[43] However, it is imperative to note that under our jurisprudence, the consent of the owner or occupier of a building, enclosed court or garden attached to any building must be sought and notice duly given before such acquisition is compulsorily taken.

Two rights are established by the above provisions. The right against compulsory acquisition of property except in accordance with the conditions of payment of adequate compensation and the right to challenge the amount of compensation so paid.[44] The right to compensation is not only a Constitutional right but it is also supported by other statutes. In particular, the Land Use Act,[45] the Petroleum Act[46] and the Oil Pipeline Act[47] guarantee the right of surface land

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[32] B.A. Garner (ed), *Blacks Law Dictionary (8th edn, Thompson West 2004) 301.*
[33] *Ibid.*
[34] *Ibid.*
[35] Garner (n 32).
[36] 'The Law Dictionary' <https://thelawdictionary.org/compensation/> Accessed 26 July 2022.
[37] *Ibid.*
[38] 10 Min 280 (Gd 2008).
[39] A. Otubu, 'The Land Use Act and Compulsory Acquisition without Compensation' [2016] (7)(4) *The Grivitas Review of Business and Property Law*, 13-21, 14.
[40] *Ibid.*
[41] CFRN 1999 (n 1), Ss. 43 and 44.
[42] *Ibid.*; Nigerian Mineral and Mining Act 2007, now NMMA 1999 Cap M12 LFN 2004.s. 107.
[43] Oil Pipeline Act, Cap. 07 LFN 2004. s. 6(3).
[44] *Obikoya & Sons Ltd v Governor of Lagos State* (1987) 1 NWLR (Pt. 50) 385; *LSPDC v Finance Corporation* (1987) 1 NWLR (Pt. 50) 413 at 467.
[45] Land Use And 1978 Cap L1 LFN 2004, s. 29(2).

users to compensation on the revocation of a right of occupancy for mining, oil pipeline and purposes connected therewith. Holders of oil pipeline license are obligated to pay compensation to any one whose land or interest in land is injuriously affected, any person suffering damage by reason of any neglect on the part of any holder or his agents or any person suffering damage due to breakage or leakage from oil pipelines or ancillary installations.[48]Specifically, such compensation could cover buildings, crops, or profitable tress, disturbance, injurous affection and loss in value of the land or interest in land.[49]

In the case of *Shell Petroleum Development Company Nigeria Limted v F.B. Farrah*,[50]the court enumerated the following heads of compensation to be payable by licensees or leasees. They are fair and adequate compensation, disturbance, reinstatement, injurious affected general inconvinience, time of valuation and method (s) of valuation.

In the case of *ELF Nigeria Limited v Opere Sillo*,[51] the court held that the common right of fishing in tidal waters is recognised and it is not affected by the Mineral Act. Hence, genral damages were awarded in favour of the Plaintiffs for loss of fishing rights in the creeks and swamps among other items in the sum of Fourteen Million, Five Hundred and Forty Five Thousand Naira (₦14,545,000). In *Elf Petroleum v Umah,*[52] the trial court gave judgment in favour of the respondents and awarded ₦25,000,000.00 (Twenty-Five Million Naira) as damages for the acquisition of the respondents` land by the appellant company for the establishment of a gas plant at Obite. The Court of Appeal dismissed the appellant company`s case reiterating the fact that where a property of any Nigerian is compulsorily acquired, such a person is entitled to prompt payment of compensation and where there is a default in that regard, the person is also entitled to approach the courts for redress. It follows therefore that compensation in this perspective is payable to persons, groups of persons or communities whose lands are compulsorily acquired for public interest and mining purposes and persons, groups of persons or communities who have suffered damages as a result of the mining activities carried out on their land.

2.6 Problems of Compensation in Nigeria

The problems of compensation arising from oil pollution in Nigeria include the basis of liability, assessment of compensation, sabotage, and jurisdiction of courts.[53]

2.6.1 Basis of Liability

The Constitution[54] provides that prompt payment of compensation be paid to both owners of moveable and immovable properties and interest holders of such properties when compulsorily acquired. This section also guarantees the right of these persons to approach the court with jurisdiction or body having jurisdiction to determine the amount of compensation. However, the same Constitution[55] ousts the jurisdiction of the court to entertain and determine questions concerning or about the amount or adequacy of compensation for compulsory acquisition of land. Section 29(1) of the Land Use Act provides for unexhausted improvements. It appears that the LUA is irrelevant to any consideration of compensation

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[46] Petroleum Act Cap P10 LFN 2004, para 36, 1st sch.
[47] OPA (n 43), s. 11(5).
[48] *Ibid.*
[49] *Ibid.*, s. 20(2).
[50] (1995) 3 NWLR (PT. 382) 148.
[51] *ELF Nigeria Limited v Opere Sillo And Anor* (1994) 6 NWLR (Pt. 350) 258.
[52] LER [2018] SC. 344/2008.
[53] J. F. Fekumo, *Oil Pollution and the Problems of Compensation in Nigeria* (Port-Harcourt: F and F Publishers, 2001) 8.
[54] (n 1).
[55] *Ibid.*, s. 47(2).

under the petroleum legislation. The Oil Pipelines Act[56] provides for damages for building, crops, profitable trees, and in addition, the elements of disturbance and injurious affection. This Act has also not cured the problems, as it has its defects. It did not provide for prompt payment of compensation and the procedure to settle all such issues before the holder of the permit can enter the land to work. The concept of fair and adequate compensation could not be properly utilized by the victims because of the unwholesome compensation rates relied upon by the Oil Companies, the resort to *ex gratia payments* and the unnecessary leaning on common law remedies by counsel and the judiciary.

2.6.2 Assessment of Compensation

The universal basis of assessment for compensation is obtaining cash payment that would reasonably restore the claimant to the status quo; that is, put the claimant virtually in the same position as before the incident. The attorney must prepare a holistic and all-encompassing report, putting into consideration all pertinent issues, engagement of relevant specialists, and ensuring none of the essential steps in the valuation process was omitted or compromised. Three models have been used over time in assessing compensation for environmental damage especially as it pertains to oil spills. They include the comparative method, the cost method, and the income capitalization method. The comparative approach derives retrospective market values by analyzing the market transactional evidence of similar properties and comparing them to the subject property. This method is ideal for items presently in the market like hooks, nets and so on. The cost method is the process by which the replacement cost or reproduction cost of an asset is obtained. This method is used for specialized items that have no close substitutes and that are rarely brought to the market for sale like fishing ponds, fishing traps or buildings and so on, the income capitalization method converts the future benefits of ownership into an expression of present worth. To produce a reliable assessment through this method, an accurate estimate of gross income, the outgoings and the required yield should be put into consideration. These methods, however, suffer certain fundamental shortcomings, one of which is the peculiarity of every environment and the damage done to it. A reliable value estimate of environmentally impaired properties would therefore require the application of specialized methods, procedures and formulas that go beyond the limits of conventional valuation methods and that permit each case to be separately and competently analyzed.

2.6.3 Sabotage

Sabotage means malicious or deliberate destruction or damage of machinery by discontented workers or rebels,[57] and by extension, discounted inhabitants of oil producing communities. In this context, sabotage means a willful attempt to disrupt or interrupt the production and the distribution of oil. Therefore, from the provisions of the OPA, it thus appear that the oil company is exempted from paying compensation where oil pollution is caused by leakage or breakage of pipeline unless negligence is proved on the part of the owner of the pipeline or his servant.[58] In *Shell v SPDC (Nig) Ltd.,*[59] the defence of malicious act of third party succeeded though the court found the rule in Ryland v Fletcher established. However, in the case of *Gilbert Okoroma and Ors v Nigerian Agip Oil Co. Ltd.,*[60] the defendants were held liable to pay compensation despite an allegation of sabotage. The defence of malicious act of third party appears intrinsically tied up with negligence, and as such displacing section 11(5)(c) of the OPA. With this position, liability for oil spill becomes absolute, irrespective

[56] (n 43), ss. 11(5) and 20(2).
[57]The Chambers Dictionary, 1449.
[58] (n 43), s. 10(15)(c)
[59] (1990) 6 NWLR (pt 159) 693 at 724-725.
[60] Unreported) Suit No. PHC/320/74 of 22/3/76-High Court Port-Harcourt.

of whether the spill was caused by sabotage or not. In fact, sabotage should be wholly a criminal offence.

2.6.4 Jurisdiction/Attitude of Courts with respect to Compensation

There are jurisdictional challenges in oil pollution and compensation cases in Nigeria. The power of superior courts to enquire into environmental claims is generally vested in the High Courts which consist of State High Courts and Federal High Courts both exercising coordinate jurisdiction but with separate powers.[61] Environmental claims on the subject of oil and gas and that involve the Federal Government agencies are properly suited for the Federal High Courts as provided by Section 251 of the 1999 Constitution. As such, it is safe to say that State High Courts can exercise jurisdiction on environmental claims so long as it does not concern oil and gas or any of the subjects listed thereunder. Litigants are thus advised to be vigilant when filing actions for environmental claims to avoid jurisdiction becoming a hindrance to environmental justice like the case of *SPDC v Abel Isaiah.*[62] As earlier stated, the judicial attitude to environmental matters in Nigeria has been more of adhering strictly to the provisions of the Constitution and other technical issues that can defeat a genuine claim to environmental right rather than in the spirit of *ubi jus ubi remedium.* However, in recent times, Nigerian courts have been liberal and revolutionary in their interpretation of Constitutional provisions for the protection of environmental rights as in the case of *SPDC v Chief Joel Anaro & Ors.*[63]

Furthermore, the judicial attitude to environmental matters in Nigeria has been more of adhering strictly to the Constitution and other technical issues that can defeat a genuine claim to environmental rights rather than in the spirit of *ubi jus ubi remedium*. In fact, it has also been more passive than active. Nigerians have experienced several hiccups in a bid to enforce their environmental rights. The delay associated with litigation generally in Nigeria also affects environmental litigation such that they last for years and the cases that are eventually heard proceed with no sense of real urgency. This factor discourages a lot of persons with genuine concerns who could have resorted to the court to assert their rights. With delays comes the increased cost of litigation. This includes the cost of the services of lawyers and filing of processes. This cost prevents most victims from approaching the court to seek redress over a breach of their rights. The burden of proof lies on the claimant to prove his claim and most times, the claimant may not have the means to hire experts to testify on their behalf as well as to conduct all the scientific tests and investigations that may be required. In *Seismograph Service Ltd v Benedict E. Onokpasa,*[64] Sowemimo AG JSC reiterated the need for an expert witness in proving the claimant`s case.

Over the years, the concept of jurisdiction has been used as an obstacle to environmental litigation. The High court is the court with jurisdiction to entertain environmental litigations as such matters instituted in lower courts will fail for lack of jurisdiction. Similarly, environmental suits and claims are usually objected to by the defendants for lack of capacity of the claimants to sue, and the defendant must show that he has suffered damage far and above that suffered by the other members where it is a private action.[65] These are the major problems associated with environmental litigation in Nigeria.[66]

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[61] Federal High Court is established by section 149 of the Constitution (n 7) while State High Court is established by section 270 of the same Constitution.
[62] (2001)5 S.C (Pt. 11)1.
[63] (2015) LPELR- 24760 (SC).
[64] [2018] LPELR-46185 (CA).
[65] *Oronto Douglas v Shell* (1999) 2 NWLR (PT.591) 456.
[66] F. Akpanke, 'Environmental Litigation in Nigeria, The Role of The Judiciary'(2019)(10(2) *NAUJILJ*.

2.7 Lessons from Other Jurisdictions

It is trite that there is nothing wrong with borrowing laws, as it is the basis on which law grows. It is on this premise that this article considers the issue of compensation for environmental pollution from selected legal systems across the world.

2.7.1 United Kingdom

In the United Kingdom, there is a specific law on compensation for environmental damage alongside a plethora of laws on the protection of the environment. This is the Environmental Damage (Prevention and Remediation) Regulations.[67] This Regulation implements the provisions of the Environmental Liability Directive. The regulations aim to prevent and remedy damage to land, water and biodiversity in England and Wales. They reinforce the `polluter pays` principle by making businesses financially liable for threats of damage or actual damage caused. These regulations are enforced by the Environment Agency, the Marine Management Organization, Local Councils, and the Secretary of State, which body administers and enforces the regulations depends on the scale of the damage involved. To this effect, companies that are caught breaking environmental laws through acts such as polluting rivers, not recycling wastes, breaking the conditions of their permits or any other activity that could harm the environment would be made to pay fines which are directly used to affect the environment positively rather than drag the companies through long and expensive court cases that do not benefit the environment at all. They are also required to show that they have taken steps to avoid the offences happening again in the future.

In recent years, there have been many cases where companies have been given fines for breaking environmental laws some of which are: Northumbrian Water was fined £375, 000 for dumping raw sewage into the River Tyne; Filippo Berio UK was fined £253,906 for not recycling their packaging waste; Anglian Water Services was fined £200,000 for two separate incidents that were responsible for the death of fish due to pollution; and Sandoz was fined £120,932 for not recycling packaging waste. This new approach is highly commendable to ensure that those responsible for breaking the law will give something back to the environment to help restore it.[68]

2.7.2 United States of America

The United State of America legislative framework is based on a "command and control" approach to environmental regulation. The United State Congress has enacted or amended many environmental statutes since 1969 which seek to minimize pollution and environmental impacts through the imposition of emission standards, operating and reporting requirements, environmental management practices and environmental impact assessment requirements. The United States has also adopted the polluter pays principle. Although there is no specific legislation to this effect, certain provisions of the Clean Air Act[69] and the Clean Water Act[70] require polluters to satisfy environmental standards at their own expense. The Comprehensive Environmental Response and Liability Act[71] assigns liability for costs associated with cleaning up sites contaminated by hazardous wastes. It was patterned in an attempt to fulfill the polluter pays principle by imposing liability for clean-up costs on those parties that are

[67] Environmental Damage (Prevention and Remediation) Regulation 2009 as amended 2015.

[68] 'Penalties for Environmental Laws' <http://www.field.org.uk/compensation-penalties-for-environmental-law/> Assessed 22 July 2022.

[69] Clean Air Act 1970.

[70] Clean Water Act 1977.

[71] The Comprehensive Environmental Response and Liability Act of 1980.

likely responsible for the underlying contamination and pollution. These laws are implemented and enforced through regulation by Federal Agencies.[72]

2.7.3 South Africa

South Africa has one of the toughest environmental legislations in the world. The National Environmental Management Act,[73] National Water Act[74] among others are drawn from international best practices and founded on their constitutional right to a healthy environment. Environmental legislation in South Africa codifies the polluter pays principle, the preventive principle, the precautionary principle, the principle of cradle-to-grave responsibility for producers and criminal liability. The National Environmental Management Act,[75] provides that every person who causes, has caused, or may cause significant pollution or degradation must take reasonable measures to prevent the pollution or degradation from occurring or, if the harm to the environment is authorized by law or cannot be avoided or stopped, to reduce and rectify the pollution or damage. As such, persons, including companies, are liable for damages for pollution of the environment which includes compensation to third parties. There is also a provision for criminal liability to which polluters are held to either a fine or prison term.[76]

3. Conclusion

This article examined environmental pollution and the problem of compensation in Nigeria. It is concluded that the extant laws on environmental protection and compensation in Nigeria are inadequate to guarantee protection against pollution and the award of fair and adequate compensation. In contra-distinction to the situation in Nigeria where the extant laws on compensation are scattered in various statute books, in the United Kingdom, there is a specific law on compensation for environmental damage alongside other plethora of Laws on the protection of the environment. Equally, it is concluded that Oil and gas exploration and production is the major anthropogenic activity responsible for environmental pollution in Nigeria. Others are transportation operations, marketing and agricultural activities. It is a further conclusion of this paper that some of the challenges of compensation for environmental pollution in Nigeria are the judicial attitudes of the courts in awarding claims in environmental litigation, the issue of *locus standi*, the delay in traditional court litigations and the need for experts witness are some of the challenges affecting compensation in environmental litigations. There is equally the challenge of the courts awarding paltry sums against the Multinational Oil Companies that have polluted the environment either through oil spills into the oceans and lakes or through gas flaring into the air. It is further concluded that the various heads of compensation which can be awarded against licensees or leases are fair and adequate compensation, disturbance, reinstatement, injurious affection, and loss in value of the land or interest in land.

4. Recommendations

In the light of the foregoing, an attempt has been made to provide some useful recommendations which, it is suggested, will help to mitigate environmental pollution and the problems of compensation in Nigeria. They include.

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[72] 'Enforcement of Environmental Laws'<https://uk.practicallaw.thomsonreuters.com/0-503-4622?transitionType=Default &content Data= (sc. Default) #co_anchor_a274362> Accessed 22 July 2022.

[73] The National Environmental Management Act 107 of 1988.

[74] National Water Act 36 of 1988.

[75] (n 74), s. 28(1).

[76] 'Criminal Liabilities for Environmental Pollution' <https://itoo.co.za/wp-content/uploads/2021/02/Beginners-Guide-to-Environmental-Liability.pdf> Accessed 22 July 2022.

1. The provisions of Section 47 of the Land Use Act which ousted the jurisdiction of the court from enquiring into the adequacy or not should be expunged from the Act as it runs contrary to Section 44(1)(b) of the Constitution which gives everyone claiming compensation the right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal.
2. The regulatory agencies, and institutions for the enforcement and implementation of environmental standards in Nigeria need to be restructured to enjoy full independence, financial prowess, and transparency to enforce the extant laws on environmental protection.
3. Since oil and gas explorations and productions have been identified as a major source of environmental pollution, in order to prevent gas flaring and oil spillages in the oil and gas exploration and production in Nigeria, there must be a viable, visionary and well-funded Commission and Authority to enforce and implement the recently enacted Petroleum Industry Act and to compel compliance by operators.
4. Nigerian judges must be ready to rise above reliance on technicality in favour of Multinational Oil Companies and award substantial damages against those who pollute the environment. This way, the judgments will serve as a deterrent to operators while also serving the purpose of remediation of the environment to its pristine stage.
5. For the purpose of uniformity in the regime of compensation, Nigeria should adopt the position in the United Kingdom and enact a single legislation on compensation regime wherein various heads of compensation for all purposes will be provided.
6. In the interim, the extant laws on compensation and environmental protection in Nigeria need to be amended so as to make direct provisions on what constitutes a fair and adequate compensation.
7. A Special Environmental Court or Tribunal should be established and judges who are experts in environmental and compensation matters appointed to administer all environmental matters including the awards of compensations for environmental pollution. This way, the delay associated with the traditional court litigation would have been defeated in environmental litigation.