



## Compensation for Oil Pollution Damage in Nigeria: Establishment of an Administrative Institution with Arbitrative Power to the Rescue?

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**Abstract.** The incessant restiveness in Nigeria's oil-producing communities over the lack of fair, adequate and prompt compensation for oil pollution damage puts a big question mark on the effectiveness of the country's current legal arrangement for compensation for oil pollution damage. Nigeria has no legal system for compensation for oil pollution damage, as there is no single law that is specifically enacted for it. No policy is formulated for its implementation, and no regulatory institution is established to enforce it. This study adopts a multi-method research design, incorporating both traditional legal analysis (doctrinal method) and socio-legal research techniques (non-doctrinal method) to investigate the effectiveness of compensation for oil pollution damage in Nigeria. For the doctrinal aspect, the study relies on relevant international laws, conventions and treaties, local legislation, past and extant Nigeria's Constitution, case law, textbooks, academic publications, law reports, encyclopedias, law dictionaries, and newspaper publications. For the non-doctrinal method of legal research, the study uses questionnaire survey as a versatile tool to gather useful and appropriate data/information on the effectiveness of energy industry compensation in some selected oil-producing communities of Bayelsa and Rivers States. The paper, therefore, suggests the development of a legal system of compensation for oil pollution damage that is based on the enactment of comprehensive law for compensation for oil pollution damage and the establishment of an independent regulatory institution with powers of arbitration, and its own rules of procedure, that will facilitate prompt, adequate and fair resolution of matters of compensation for oil pollution damage.

### 1. Introduction

Human activities are beginning to push the earth's systems beyond their limits (Baker, 2016). This is giving rise to some environmental concerns like climate change, biodiversity loss, ozone layer depletion and acid rain (Aidonojie et al., 2024; Adedoyin et al., 2024). These environmental concerns have constituted real threat to the very foundations of life on the planet, and the worry about them have assumed international prominence due to global awareness campaign spearheaded by the United Nations (UN), premising on the fact that adverse effects these environmental concerns produce have no respect for geographical delimitations or physical boundaries. The UN has, therefore, sought collective actions of all members of the global family to salvage and protect the earth from these environmental threats for the sustenance on earth of the present and future generations.

Active international efforts in this regard, spearheaded by the UN, really began with 1972 conference which was convened in Stockholm to discuss concern about the environment, and which was tagged "UN Conference on the Human Environment (UNCHE)". In 1992, another UN masterminded summit took place, this time, in Rio, Brazil. It was branded "The UN Conference on Environment and Development (UNCED)" (Umzurike, 1993). These two conferences were organized in response to the mounting alarm and anxiety over planetary health and the importance of collaborative efforts and actions against the growing environmental threats. The conferences produced two declarations (The

Stockholm Declaration and the Rio Declaration) that serve as the foundation for modern international environmental law; defining the rights and responsibilities of countries; and setting out a global action plan for all countries as regard sustainable exploitation of the environment. The declarations also produced some principles of international law which were established to underpin legal action in international jurisdiction in relation to liability of States for damage done to the natural world and its assets (Brisman, 2022).

These declarations tasked global community, including Nigeria, to exploit their resources with the obligation of protecting their domestic environment for both domestic and international environmental benefits (Dunoff, 1995). This is because the adverse environmental effects that planetary degradation will produce are of collective or universal concern of all mankind.

Nigeria, being a member of the UN and the global family, therefore, has the responsibility, like other members, to exploit her mineral resources, including oil and gas, in the manner that will guarantee the protection of her environment, not only for her benefit, but also for the benefit of the entire universe, in line with her obligations under the United Nations Declarations of 1972 and 1992. However, the country runs a monolithic economy with heavy reliance on energy extraction and processing (Ukhurebor et. al., 2024; Aidonjio et. Al., 2024). Oil and gas exploration is the country's major source of revenue. It accounts for 40% of her gross domestic product (GDP), 95% of her total exports and 80% of budgetary revenues (Okorodudu-Fubara, 2011). The country is currently ranked 11<sup>th</sup> in terms of having the largest proven oil reserves in the world with an estimated 37 billion barrels of proven oil reserves.

Toxic releases from hydrocarbon extraction are huge sources of deadly pollutants like Sulphur dioxide (SO<sub>2</sub>), Nitrous oxide (NO<sub>x</sub>), Chlorine, Fluorine, Carbons and others that birth the dreaded environmental concerns like climate change, biodiversity loss, ozone layer depletion and acid rain. Nigeria is, obviously, foot-dragging in ensuring elimination or prevention of pollution in her oil companies' operations. Spillage of petrochemical has, therefore, continued steadily since the country commenced energy mining business through direct spillage of oil in the process of oil production, human error during extraction process, failure of equipment, crude carrying vessels spills, spills from installations, facilities or storage vessels of the oil companies, oil ships and tankers accidents within the Nigeria's

waters, tanks failure in any of the seven oil terminals in Nigeria, oil products leakages through rupture of major oil-bearing pipelines of the oil companies, intentional and illegal oil dumping by oil companies, oil let-out in the process of oil drilling and refining (PEC, 2018), failure of oil drilling equipment, disposal of used oil by oil companies and other oil using companies in the country, routine cleanups of oil storage facilities, vandalism of oil companies' facilities, and natural disasters such as hurricanes, storm surge or high winds (Ikoni, 2010), and oil-well blow-outs such as the one that occurred at the off-shore station of Texaco in the Gulf of Guinea in 1980, and the blow-out at the Shell's Forcados oil terminal in Rivers State in 1981 (Eboe, 1985), resulting to a spill of an estimated four hundred thousand (400,000) barrels of crude oil.

When any of the above stated occurrences takes place, the Nigeria's environment becomes unfortunate and worse off. For instance, large track of communities' lands used for farming are frequently polluted by oil, thereby, rendering such lands unproductive and unsuitable for agriculture (Kadafa, Zakaria, & Othman, 2012). Flowing springs, surface and ground waters are also frequently compromised by oil, thereby becoming not good enough for drinking. Frequent disruption of daily life and economic pursuits are also triggered by incidents of petroleum spill into human environment. It also, raises great threat to the Nigeria's sustainable physical surroundings and ecological stability.

Nigeria has a long, persistent, traumatic and devastating oil pollution history, and it is still on-going at different times and places; varying forms and scales. There is hardly one month passing that information will not be disseminated on the web site of the National Oil Spill Detection and Response Agency (NOSDRA) (which is an agency of the Federal Government) in respect of incidents of oil pollution in Nigeria.

Nigeria's system of compensation for oil pollution damage is grossly ineffective, as it rarely resolves matters of compensation to anyone's satisfaction, if at all it offers anything. The frequent restiveness in the oil-producing communities over failure to compensated for oil pollution damage attests to the ineffectiveness of the system. A system can only be deemed effective when it is succeeding in respect of the purpose for which it was created.

There is no formulation of policy in Nigeria for compensation for oil pollution damage; there is no establishment of any regulatory institution or administrative authority to either implement policy or enforce any law on compensation; and, although, there

are laws that are usually adapted for that purpose; unlike the United States of America's Oil Pollution Act, which was specifically enacted for compensation for oil pollution damage; there is not any statute that is specifically enacted for compensation for oil pollution damage in Nigeria.

Some of the statutes that are adopted for such compensation include the Oil Pipelines Act (OPA). Sections 11, 19 and 20 of the Act are, usually, adapted for oil spill losses' indemnification. There is the Minerals and Mining Act (MMA), 2007. Its section 125 (a) is, usually adapted to make a case for relief to oil spill victims. There is, also, the adaptation of the provisions of Land Use Act (LUA) for the same purpose. None of these Acts was originally or primarily enacted to deal with compensation for oil pollution damage. They are merely, adapted to suit that purpose. Compensation is just a matter incidental to their respective original and primary purposes or objectives.

Nigeria's compensation system is hinged on the provisions of OPA's sections 11 (5) (c), 19, 20; MMA's section 125 (a); LUA 's sections 29 and 30. Court, due to its constitutionally endowed powers of adjudication under section 6 and chapter VII of the Constitution, also plays a very important role as regards compensation for oil contamination injury. To this extent, when there is an incident of oil spill, the affected victim(s) or villager(s) usually raise an alarm. Such alarm may be reported or escalated to the officials of NOSDRA who will, then, conduct a Joint Investigation Visit (JIV), involving the victims of the oil spill, representatives of the oil company involved, and some NOSDRA officials (Amokaye, 2004). This Joint Investigation Visit is in line with Regulation 5 of NOSDRA's Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation.

It is essential to clarify that the JIV is not intended to serve as a compensation payment mechanism. Rather, the objective is to identify the source of the spill, the company responsible for the spill, and the severity of the spill's impact, for the purpose of making appropriate response activities/arrangements in the form of clean-up or remediation in line with the agency's implementation of the National Oil Spill Contingency Plan, and in line with section 5 of NOSDRA Act. Its statutory mandate includes not subject of compensation or the undertaking of any activity for the purpose of compensation.

After conducting necessary joint visitation to the spill site led by NOSDRA officials, it is for the spill's

victim(s) to approach the culpable company for compensation. Although, there are some created guidelines used at one time or the other to serve as a guide for the assessment of the payable damages or recompense (Aidonjio et. al., 2024; Anani et. al., 2023), Oil Pipelines Act remains compensation payment's major governance statute. Some of those guidelines include the Oil Producers Trade Section (OPTS) Rates issued by the Lagos Chambers of Commerce; and the Shell Petroleum Development Company's Lands Department Procedure Guide and Administrative Guidelines issued by the Government as contained in the Technical Committee Report on Guidelines for Assessment of Oil Related Pollution, approved by the Executive Council in 1998. However, in Nigeria, court retains the ultimate power as to the determination of the amount appropriate as regards compensation for oil pollution damage, owing to sections 11, 19, 20 of OPA and section 29 of LUA.

Where there exists a disagreement between the victim(s) and the energy corporation in relation to settlement or the appropriate amount payable as compensation, such disagreement will be resolved in court as considered just in the circumstance (Aidonjio et. al., 2023; Aidonjio, 2023). In determining or calculating the appropriate amount payable as compensation, the court is to utilize the aspects of LUA to the extent that they do not run contrary to any provision of OPA, and as though the affected properties were acquired by the President for public use.

English Law also play important role as regards subject of petroleum contamination redress. Anyone who suffers oil pollution caused by an identified oil company (polluter), may commence a court action for compensation under any of these torts which he considers suitable for his action and claims.

## **2. Compensation for Oil Pollution Damage in Nigeria**

There are two circumstances by which compensation applies in Nigeria's oil industry. The first one is where a property is compulsorily acquired from a land owner or anyone having proprietary interest in it for oil exploration or production purpose. That one is governed by a legal system which derives its source and validity from section 44 of the constitution of the federal Republic of Nigeria, 1999 (as amended). The second circumstance is where oil pollution damage is suffered by an occupier of a land as a result of exploratory activities of an oil company. This is not governed by any known legal system in Nigeria. Realization of compensation, in this case is subject to

the conventional system of dispute resolution which is, strictly, dependent on court action or litigation to be instituted by the claimant, or in any specialized court or under any special arrangement but in conventional courts, against the polluter, who is usually, an oil company. The claimant may bring his action under the statutes which are usually an adaptation of the provisions of the Oil Pipelines Act, Nigerian Minerals and Mining Act or the Land Use Act or a combination of all three. He may, also, bring his action under the Common Law tort of negligence, trespass, nuisance or the rule in *Rylands v Fletcher*.

A claimant who intends to rely on the fault-based Common Law tort for compensation has to prove that the defendant is at fault or negligent and that the said fault has resulted to a foreseeable injury or damage to him. Most often, claimants for compensation find it extremely difficult to get the desired remedy because of the inability to establish negligence, carelessness or recklessness against oil companies as courts sometimes insist on top-degree of proof before a claim can succeed. Such a standard of proof is usually difficult, especially with the attitude and tendency of oil companies in being too quick in blaming incident of oil spill on act of vandalism or sabotage of facilities by unknown persons.

For instance, in the case of *Shell Petroleum Development Company Limited v. Prince Ogan Mafmisebi & ors*, (2010) LPELR-4953 (CA) 112 the respondents who were farmers, fishermen and fish ponds owner respectively, claimed destruction of their businesses/properties by oil in the hand of the appellant.

They documented the valuation of the said damage and lodged it with Ondo State Environmental Agency. As a way of response to their complaint which was forwarded to it by the aforesaid agency, the appellant invited the respondents, representatives of the communities, the police and representatives of the Department of Petroleum Resources to do joint investigation of the said complaint of pollution. The result of the joint investigation was that the complaint occurred as a result of vandalism by an unidentified third party.

Based on this, the appellant refused to pay compensation to the respondents. The matter proceeded to court, and the trial court entered judgment for the respondents as entitled to compensation. However, on appeal, the appellate court reversed the decision and entered judgment for the appellant on the basis that the respondents were not able to establish that the pollution damage was as a

result of negligence of the appellant and not vandalism by third party.

### 2.1. Validity Test Using Coefficient of Concordance Technique

This coefficient is obtained with a view to testing for the validity of the instrument used for this study. The formula is stated as follows:

$$W = \frac{12 \sum_i D_i^2}{m^2 n(n^2 - 1)}, \text{ where:}$$

$n$  is the number of individuals or objects being assessed;

$m$  is the number of judgments on likert scale and

$D_i$  is the difference between individual sum of likert scale and the overall judgments. Thus, we have:

$m = 5, n = 400, D_i = R_i - \bar{R}_i$ , where  $R_i$  is the rank for the question under consideration. Therefore,  $\sum D_i^2 = 125,642,519$  (obtained from R-statistical software).

Thus, we compute the coefficient as follows:

$$W = \frac{12 \sum_i D_i^2}{m^2 n(n^2 - 1)}$$

$$W = \frac{12(125,642,519)}{5^2 (400)(400^2 - 1)}$$

$$W = \frac{1,507,710,228}{1,559,990,000}$$

$$W = 0.9423 \cong 0.94$$

**Interpretation:** The Coefficient of Concordance value indicates unequivocally that the questionnaire contents are legitimate and that the instrumental technique (questionnaire delivery) is about 94% valid. Based on this, we can move further with the analysis.

### 2.2 Test of Reliability Using Kuder-Richardson Estimate

One of the most important reliability measures to take into account in the current investigation is internal consistency. Here, the Kuder-Richardson estimate is used to assess the study's internal consistency mainly in order to determine its reliability. The following is the formula:

$$KR_{20} = \frac{n}{n-1} \left[ 1 - \frac{\sum p_i q_i}{\sigma_x^2} \right],$$

where:

$n$  is the number of items in the test, that is, the number of the respondents;

$p_i$  is the proportion of correct items (responses that fall within the scales/ranks 3-5);

$q_i$  is the proportion of wrong items (responses that fall within the scales/ranks 1-2);

$\sigma_x^2$  is the variance of scores in the test when all items are of equal difficulty.

In this case, we obtained the following quantities from the questionnaires using  $R$ -statistical software:

$n = 400$ ,  $\sum p_i q_i = 18/23$  and  $\sigma_x^2 = 4.676$ , hence

the computation is done as follows:

$$KR_{20} = \frac{n}{n-1} \left[ 1 - \frac{\sum p_i q_i}{\sigma_x^2} \right]$$

$$KR_{20} = \frac{400}{400-1} \left[ 1 - \frac{18/23}{4.676} \right]$$

$$KR_{20} = \frac{400}{399} \left[ 1 - \frac{0.7826}{4.676} \right]$$

$$KR_{20} = \frac{400}{399} [1 - 0.1674]$$

$$KR_{20} = 0.8346 \cong 0.83$$

**Interpretation:** The result obtained as Kuder-Richardson's Estimate of Reliability indicates that, under all conditions, the respondents' responses to the surveys are approximately 83% reliable.

### 2.3 Empirical Results

Empirical results of the study conducted are presented in Tables 1 - 7.

**Table 1:** Victims of oil pollution damage are usually compensated immediately.

$H_o$ : Victims of oil pollution damage are usually compensated immediately.								
Comm.	Categories of Responses					Statistical Test		
	SA	A	N	D	SD	df	$\chi_{cal}^2$	P-value
Brass	1	0	2	18	24	28	38.8511	0.0833
Ijaw	0	0	0	19	27			
Nembe	0	0	0	19	31			
Ogoni	0	0	1	24	30			
Ogu	1	3	1	19	30			
Oloibiri	3	1	0	16	29			
Onne	0	0	0	23	29			
Otuasega	0	0	0	23	26			
Total	5 (1.2%)	4 (1.0%)	4 (1.0%)	161 (40.2%)	226 (56.5%)			

**Source:** Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 1 show that majority of the respondents (approximately 97%) disagreed and strongly disagreed to support the statement that victims of oil pollution damage are usually compensated immediately. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

**Table 2:** Victims of oil pollution damage are usually compensated fairly and adequately.

$H_o$ : Victims of oil pollution damage are usually compensated fairly and adequately.								
Comm.	Categories of Responses					Statistical Test		
	SA	A	N	D	SD	df	$\chi_{cal}^2$	P-value
Brass	1	0	2	18	24	28	38.8511	0.0833
Ijaw	0	0	0	19	27			
Nembe	0	0	0	19	31			
Ogoni	0	0	1	24	30			
Ogu	1	3	1	19	30			
Oloibiri	3	1	0	16	29			
Onne	0	0	0	23	29			

Otuasega	0	0	0	23	26			
Total	5 (1.2%)	4 (1.0%)	4 (1.0%)	161 (40.2%)	226 (56.5%)			

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 2 show that majority of the respondents (approximately 97%) disagreed and strongly disagreed to support the statement that victims of oil pollution damage are usually compensated fairly and adequately. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

**Table 3:** National Oil Spill Detection and Response Agency (NOSDRA) are involved in the facilitation of compensation to victims of oil pollution damage.

$H_o$ : National Oil Spill Detection and Response Agency (NOSDRA) are involved in the facilitation of compensation to victims of oil pollution damage.											
Comm.	Categories of Responses					Statistical Test					
	SA	A	N	D	SD	df	$\chi^2_{cal}$	P-value			
Brass	0	0	1	17	27	28	37.3701	0.1110			
Ijaw	0	0	0	24	22						
Nembe	1	7	2	16	24						
Ogoni	0	4	1	27	23						
Ogu	1	5	0	18	30						
Oloibiri	2	1	0	23	23						
Onne	0	4	0	24	24						
Otuasega	1	7	0	18	23						
Total	5 (1.2%)	28 (7.0%)	4 (1.0%)	167 (41.8%)	196 (49.0%)						

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 3 show that majority of the respondents (approximately 91%) disagreed and strongly disagreed to the statement that National Oil Spill Detection and Response Agency (NOSDRA) are involved in the facilitation of compensation to victims of oil pollution damage. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

**Table 4:** Matters of compensation for oil pollution damage end up in court and the court determines whether compensation is payable; the amount payable as compensation, and the appropriate person to receive compensation.

$H_o$ : Matters of compensation for oil pollution damage end up in court and the court determines whether compensation is payable; the amount payable as compensation, and the appropriate person to receive compensation.											
Comm.	Categories of Responses					Statistical Test					
	SA	A	N	D	SD	df	$\chi^2_{cal}$	P-value			
Brass	35	7	1	0	2	28	21.3174	0.8120			
Ijaw	40	5	0	1	0						
Nembe	42	7	0	1	0						
Ogoni	44	4	2	2	3						
Ogu	44	6	1	1	2						
Oloibiri	41	3	1	1	3						
Onne	47	2	1	0	2						
Otuasega	44	4	1	0	0						
Total	337 (84.2%)	38 (9.5%)	7 (1.8%)	6 (1.5%)	12 (3.0%)						

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 4 show that majority of the respondents (approximately 94%) agreed and strongly agreed to the statement that Matters of compensation for oil pollution damage end up in court and the court determines whether compensation is payable; the amount payable as compensation, and the appropriate person to receive compensation. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

**Table 5:** Victims of oil pollution are usually satisfied with the compensation they receive for oil pollution damage through the court.

$H_o$ : Victims of oil pollution are usually satisfied with the compensation they receive for oil pollution damage through the court.								
Comm.	Categories of Responses					Statistical Test		
	SA	A	N	D	SD	df	$\chi^2_{cal}$	$P_{-value}$
Brass	0	0	1	0	44	28	31.4776	0.2960
Ijaw	2	1	2	0	41			
Nembe	0	4	2	2	42			
Ogoni	0	2	2	0	51			
Ogu	0	0	0	2	52			
Oloibiri	1	2	2	1	43			
Onne	0	3	0	2	47			
Otuasega	0	2	1	0	46			
Total	3 (0.8%)	14 (3.5%)	10 (2.5%)	7 (1.8%)	366 (91.5%)			

**Source:** Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 5 show that majority of the respondents (approximately 93%) disagreed and strongly disagreed to the statement that victims of oil pollution are usually satisfied with the compensation they receive for oil pollution damage through the court. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

**Table 6:** Compensation for oil pollution damage through court action is always delayed and take a long time.

$H_o$ : Compensation for oil pollution damage through court action is always delayed and take a long time.								
Comm.	Categories of Responses					Statistical Test		
	SA	A	N	D	SD	df	$\chi^2_{cal}$	$P_{-value}$
Brass	0	41	3	0	1	28	26.1537	0.5650
Ijaw	3	37	4	0	2			
Nembe	3	43	1	1	2			
Ogoni	5	46	0	1	3			
Ogu	5	44	2	2	1			
Oloibiri	4	42	2	0	1			
Onne	1	45	1	2	3			
Otuasega	2	42	0	1	4			
Total	23 (5.8%)	340 (85.0%)	13 (3.2%)	7 (1.8%)	17 (4.2%)			

**Source:** Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 6 show that majority of the respondents (approximately 91%) agreed and strongly agreed to the statement that compensation for oil pollution damage through court action is always delayed and take a long time. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

**Table 7:** An administrative body or institution is needed and necessary in order to effectively administer subject of compensation for oil pollution damage.

$H_o$ : An administrative body or institution is needed and necessary in order to effectively administer subject of compensation for oil pollution damage.								
Comm.	Categories of Responses					Statistical Test		
	SA	A	N	D	SD	df	$\chi^2_{cal}$	$P_{-value}$
Brass	23	19	1	1	1	28	24.9749	0.629
Ijaw	21	22	3	0	0			
Nembe	16	30	2	1	1			
Ogoni	19	35	0	0	1			
Ogu	19	33	1	0	1			
Oloibiri	20	24	1	1	3			
Onne	24	26	0	1	1			
Otuasega	15	32	1	0	1			

Total	157 (39.2%)	221 (55.2%)	9 (2.2%)	4 (1.0%)	9 (2.2%)			
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Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 7 show that majority of the respondents (approximately 94%) agreed and strongly agreed to the statement that an administrative body or institution is needed and necessary in order to effectively administer subject of compensation for oil pollution damage. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

### 3. Compensation for Oil Pollution Damage under International Law

Oil and gas being global commodities have attracted international attention. It is also globally acknowledged that oil production may be accompanied by environmental damage, hence, provisions for compensation for oil pollution damage provided for, even, in international legal instruments.

There are international instruments on pollution due to oil, such as the Convention on Civil Liabilities for Oil Pollution Damage (Civil Liability Convention), 1969 and the Convention on the Establishment of International Fund for Oil Pollution Damage (Fund Convention) 1971 (Ukhurebor and Aidonojie, 2021; Aidonojie et. al., 2022). These Conventions cover compensation for all sea-going vessels carrying oil in bulk as cargo and they apply to pollution damage within the waters of countries that are party to them; they are applicable to oil spillage caused by ships while on the high seas.

The occurrence of oil spillage under the international regime is a strict liability offence and therefore, there is no need for a victim to prove that the ship-owner is negligent. More importantly, the plaintiff has the opportunity of claiming from ship-owners whose ships caused the oil pollution harm. Where the sum from the ship owner is limited or is insufficient to compensate the victims because of the enormity of the damage; the victims can also recover from the International Oil Spill Compensation Fund (IOPC Fund) (Jacobsson, 2007).

IOPC Fund is raised by levies from all persons who have received in the calendar year, more than 150,000 tons of crude oil and heavy fuel oil from a state party to the IOPC Fund and from the contributions received from state contributors. Although there are no uniform compensation schemes under international law, there are few principles they have in common, which are:

- damage to property tends to be calculated by reference to the actual cost of repairing or replacing the property, or the difference between the value before and after the spill;
- compensation for damage to natural resources (where this is provided for) tends to be calculated by reference to the cost of remediating or replacing the lost or damaged natural resources. The compensation schemes do not generally provide for additional, independent compensation for damage to natural resources;
- damages for loss of subsistence use of natural resources can be included compensation for consequential losses and pure economic losses (such as loss of income) are generally provided;
- it can include the cost of bringing a claim, including the use of advisers where appropriate;
- the heads of loss identified in the compensation schemes are generally not exhaustive or exclusive: for example, the French court awarded damages for non-pecuniary losses in addition to those provided for by the International Convention on Civil Liability for Oil Pollution Damage 1992 similarly, the American Oil Pollution Act does not contain damages for personal injury but these can be claimed under state or admiralty law;
- non-pecuniary losses (save to the extent that these might be recoverable as damage to natural resources or loss of subsistence use) and punitive damages are generally not expressly recoverable under the compensation schemes.

### 4. Comparative Study of Compensation for Oil Pollution Damage in Nigeria with the International Best Practice under the Civil Liability Convention and the Fund Convention

The current legal arrangement in Nigeria for compensation for oil pollution damage presupposes that court is the ultimate determinant of merit or otherwise of any claim or subject of compensation. There is no room for arbitration, conciliation or mediation. There is, also no establishment of any regulatory institution or administrative body to strictly investigate and articulate claims of compensation in

order to establish the veracity of such claim, and to undertake action and responsibility for the purpose of processing compensation. Instead, any matter or claim for compensation has to proceed to court (Aidonojie et. al., 2020; Aidonojie and Anani, 2024). This is contrary to our traditional conflict resolution philosophy and worldview which is premised on the fact that two people cannot engage each other in court action and still remain friends.

Nigeria is not ripe for this cosmopolitan system of compensation. Majority of Nigerians, especially the inhabitants of communities where oil is deposited are uneducated, poor and starving. It is difficult for them to take up an action against a polluter in court. The late sage, Chief Obafemi Awolowo, once reflected that as thus: “though, there are no statistics on the assessment of poverty in Nigeria, anyone who has been to all parts of the country will readily agree that more than seventy percent of Nigerians live in abject poor conditions and not less than sixty percent of them are actually starving (Anani et. Al., 2024; Anani et. Al., 2023). They have for houses shelters unsuitable for poultry or piggery. The vast majority of our poor live in rural areas which are neglected and almost forgotten”. Late C.A. Oputa, also once made an heartfelt and emotional comment that “while some Nigerians are poor at one time or another during their lives, majority, especially, in the Niger Delta, are poor all of their lives (Oputa, 1989).

Court actions are, also, highly technically oriented. Once a claimant commences his action on a legally wrong foot, it will be difficult for him to regularise or perfect his position and continue in the matter. Most times, oil companies undertake production of oil in joint terms with the country’s petroleum corporation, NNPC. In that case, any oil pollution damage that occurs under such joint venture is deemed to be jointly caused by the oil company and the NNPC. To commence an action against, or join NNPC in any court action, a pre-action notice, as and in the format prescribed by law, is required, and it constitutes a condition precedent to commencement of such action. Where a claimant fails to issue one month notice, in writing, of his intention to commence such matter, his suit, as constituted, becomes impossible. Court is robbed of jurisdiction to hear such. This position has long been confirmed by the apex court of the land in *Madukolu v. Nkemdilim (1962) 2SCNLR 341* that:

A court is said to be competent when:

- It is properly constituted as regards members and qualification of members of the bench, and no member is disqualified for one reason or another

- The subject matter of the case is within its jurisdiction and there is no feature in the case, which prevents the court from exercising its jurisdiction
- The case before the court was initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction

If after the suit is struck out, the claimant takes a step to regularise his action by, thereafter, giving the required pre-action notice, and then recommences his action after one month of which the notice has been served, it would be already well over statute barred by being caught up by relevant provisions of statute on public officers’ protection which:

prohibits prosecution or proceeding in court against a public officer unless it is commenced within three months next after the act, neglect or default complained of. The implication of this is that such claimant, by mere commencement error of his suit, is deprived justice.

Little wonder that actions for claims hardly succeed against oil companies. Recently, Nigerians who have claims against multinational oil companies for compensation choose to pursue their case against the multinational oil companies in their home countries (headquarters) where the parent or holding companies are situated.

Unlike in Nigeria where compensation is not governed by a specific legal framework and not administered by any authoritative body, the international regime of such compensation is based and governed by two sets of conventions, the International Conventions for Oil Pollution Damage (Civil Liability Convention) and the International Convention on the Establishment of International Fund for compensation for Oil Pollution Damage (Fund Convention) respectively (Barandiaran, 2003); and which are administered by the International Maritime Organization (IMO) (Anani et. al., Aidonojie et. al., 2022).

Civil Liability Convention’s principle towards ship owners is not fault based but that of legal responsibility that is strict. The system of the convention also enforces liability insurance, which limitable to the ship’s tonnage.

Fund Convention, on its own, is to provide support for the civil liability convention in terms of provision of compensation to claimants where the compensation the one available under civil liability convention is not enough to recompense a claimant. An organisation of the international community known as International

Oil Pollution Compensation Funds (IOPCF) was established in 1978 by the Fund convention to provide compensation to those who are injuriously affected by oil pollution from ships or tankers or vessels where compensation available from the ship owners under the Civil Liability Convention is not enough to reasonably recompense for loss or injury suffered (Gennaro, 2004).

One good thing about the IOPCF, which a country like Nigeria needs to learn from is that it encourages out of court settlement of cases of compensation. It does not wait for such cases to be determined by courts. However, there is a predetermined limit as to amount the organisation can pay in settlement of claims of compensation. Where such limit is to be exceeded or where a particular claim brings forth a subject of principle not previously known to or previously been treated or decided, the director of the organisation will require the approval of relevant governing council of the organisation.

In Nigeria, there is not such administrative authorities like IMO which administer international compensation for oil pollution damage through the Civil Liability Convention, Fund Convention and the IOPC Fund.

### **5. Arbitration Model and Compensation for Oil Pollution Damage in Nigeria**

Arbitration is one of the models created by the wide spectrum of legal avenues called Alternative Dispute Resolution (ADR) which use means other than court trial to settle disputes. It is a process in which a panel of arbitrators or just one arbitrator sit to resolve a dispute between parties. Its activities are regulated by the Arbitration and Conciliation Act Cap A18, Laws of the Federation of Nigeria 2004 which mandatorily applies to all domestic arbitrations where parties have not chosen another law to govern their proceedings. Some states of the federation have also enacted their own arbitration laws. For example, in Lagos, the Lagos State Arbitration Law 2009 applies to all arbitrations that have not specified another law.

For arbitration to apply, the parties to a dispute must agree to arbitrate. The desire of one of the parties to a dispute to enter into arbitration does not foreclose another party's right to go to court. It only comes about when two parties agree to it, either before or after a legal dispute comes up.

For the process to commence, it is the complaining party that will send a notice to the opposing party of his intent to arbitrate a dispute, outlining the basis for

the dispute. After that, there is, typically, a period for response from the opposing party. Selection of arbitrators comes after the period of response. This is followed by the hearing of parties by the arbitral panel.

Arbitration process involves many of the same components and characteristics of a courtroom trial such as presentation of argument with evidence; calling on witnesses and subsequent questioning of the witness by the opposing party (cross-examination), and so forth. However, these facets and processes are simplified and hastened up in arbitration so as to make the process quick than the typical courtroom trial.

Following the required hearings, an arbitral ruling/award is delivered within a very short and specific period of time; and, depending on the type of arbitration, the ruling of an arbitration is final. There may be options to appeal only where the arbitration exceeded its jurisdiction, the arbitration panel was guilty of misconduct; or the arbitral award was fraudulently procured.

Since there is not yet a specific legal system for compensation for oil pollution in Nigeria, the country may develop a legal system which will be a combination (blend) of establishment of an administrative body and the use of arbitration to solve the problem of lack of realization of prompt, fair and adequate compensation for oil pollution damage in the Nigeria's oil-producing communities. For the system to effectively work, there may be a statutorily created regulatory institution which will also be statutorily given powers of arbitration.

To this extent, when an incident of oil pollution is reported to the National Oil Spill Detection and Response Agency (NOSDRA), NOSDRA will conduct its usual Joint Investigation Visit (JIV) involving the victims of oil spill, representatives of the oil company involved, and some NOSDRA officials in line with Regulation 5 of NOSDRA's Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation, the results of the JIV will be forwarded to an compensation regulatory authority or institution established by an Act, which, in addition to its administrative powers, will also have the powers of arbitration over subject of compensation for oil pollution damage only; and has to conclude its activities in respect of a given case within a specified time frame.

### **6. Recommendations**

There is the need for Nigeria to take a clue from the international community's establishment of a body

like the International Convention on Civil Liability for Compensation for Oil Pollution Damage (Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) which jointly govern subject of compensation for oil pollution damage at the international level without any need for a recourse to court. The two conventions jointly established an International Oil Pollution Compensation Fund (IOPCF) which provides fund to compensate claimants for oil spill damage where the compensation from the shipowner under the Civil Liability convention is inadequate to fully compensate a victim of oil pollution damage.

This interventionist initiative of IOPCF goes a long way to give compensation, in that direction, with administrative ease

Nigeria may borrow a leaf from this international legal system and establish administrative interventionist statutory body (regulatory institution or authority) with power of arbitration and with strict rules of claims procedure for administration of compensation for oil pollution damage. The rules guiding such administrative body may cover areas such as:

1. Compensation and claims management

This context may take after what is obtainable with the United Nations Compensation Commission wherein a governing council will be provided for the commission by the statute establishing it. The said governing council will be its highest decision-making body and will be responsible for formulating the institution's compensation's rules of procedure to be applied to claims. Such rules of procedure will specify how claims are to be processed and managed in an order that is predictable, certain and not prone to manipulation.

a. Claimants

These may be individuals, communities, partnerships, companies, private organisations or public bodies, including states or local authorities.

b. Description types, dimension of injury or pollution suffered

c. Reception and registration of claim

There may be appointed officers who will receive and review claims for the commission's consideration.

d. Different phases of transparent inspection of claim or injury to ascertain credibility of claim.

e. Official communication with the polluting company by the body.

f. Joint assessment of sight of injury for determination of actual cause of pollution and quantum of compensation in a transparent manner.

g. Meeting to officially commence amicable assessment and mediation, where necessary with parties preceding payment of compensation.

2. Claims settlement

a. The authorities of the administrative body should be the point of first resort in event of oil pollution damage. NOSDRA will refer such cases to it, and should have power of arbitration to settle claims and see to payment of compensation between parties.

b. The body is to have a governing council which will be its highest decision making and be responsible for formulation, regulation and modification of principles and rules of claim procedure for the body.

c. The body should be headed by a director-general who sees to the day to day administration of the body.

d. Where the body is faced with question of principle which has not previously been decided or treated by the administrative body, its director-general should require approval of the governing council on the direction to take and in line with the provisions of the statute creating the body.

e. The administrative body should be able to make provisional payment of compensation to the victim before a claim is finally settled if this is necessary to mitigate undue financial hardship to victims of pollution incidents.

f. There should be an obligation on the body to give parties equal treatment.

3. Admissibility of claims for compensation

a. To be entitled to compensation, pollution damage must result in an actual and quantifiable economic loss. The claimant must be able to show the amount of his loss or damage by producing accounting records or other appropriate evidence.

b. An oil pollution incident should generally give rise to claims for the following types of pollution damage or others as may from time to time decided by the governing council and in line with statute establishing the body:

i. Property damage

ii. Costs of clean-up operations at sea and on shore

iii. Economic loss by fishermen or those engaged in mariculture

iv. Economic loss in the tourism sector

v. Costs for reinstatement of the environment

c. Claims are also to be assessed strictly in accordance with relevant laws, especially the country's environmental impact assessment statute and other well-established uniform criteria, principle or rules to be formulated by the governing council and such should be published in the body's claim manual assessable to members of the public.

4. How to submit a claim
  - a. Claims should be made in writing and submitted to the body by hand or electronic media (including e-mail), presented clearly and with sufficient information and supporting documentation to enable ease of assessment of the amount of the damage.

Each item of a claim should be substantiated by invoice or other relevant supporting documentations such as work sheets, explanatory notes, accounts and photographs which need to be complete and accurate. It should be the responsibility of claimants to submit sufficient evidence to support their claims.

Court should be the last resort where there is a clear-cut incident of deviation from the transparently, laid down set of rules guiding the activities of the body or suppression of principles of fairness or rules of natural justice.

## 7. Conclusion

It is the opinion of this paper that decisions and claims of compensation should not be left only for court determination. There ought to be an administrative body created by statute that will regulate, administer and process oil pollution damage compensation transparently as would have been meticulously provided for by a singular enabling statute. Court, at best, ought only to be the last resort in which an aggrieved party, in settlement of claim for oil pollution damage, who must have already be in compliance, but seeks a reversal or a modification of the decision reached by the administrative body in accordance with dictates of statute, may approach court for a redress or reversal of such decision. Such, however, should not be a conventional court with heavy load of cases before it. Litigation in such respect should be reserved for a specialised court. Manipulation or any form of shoddy practice by any personnel of such administrative body, jointly or individually, should be criminalised and on conviction by a court of law, in criminal trial, punishable by long term of imprisonment with or without option of fine.

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