

Statutory and common law remedies for oil pollution compensation in Nigeria: Towards a coherent legal framework

Christiana Tombari Bodo¹, Tombari Bodo²

¹ Faculty of Law, University of Uyo, Uyo, Akwa Ibom State, Nigeria

² Director, Centre for Integrated Environmental Management and Advanced Research, Port Harcourt, Rivers State, Nigeria

DOI: <https://doi.org/10.66856/ijl.2026.12.3.12311>

Abstract

Oil pollution remains the most persistent environmental and human rights challenge in the Niger Delta. Despite contributing over 80% of Nigeria's foreign exchange earnings, the region suffers severe ecological degradation, loss of livelihoods, and recurring oil spills resulting from equipment failure, operational negligence and third-party interference. While Nigerian law provides both common law and statutory remedies for compensation, victims continue to face inadequate redress due to systemic gaps in liability determination, assessment and enforcement. This study examines the coherence and effectiveness of the compensation framework for oil pollution in Nigeria. Adopting a doctrinal research methodology, it analyzes primary and secondary sources including the Oil Pipelines Act 2004, NOSDRA Act 2006, Petroleum Industry Act 2021, case law, and international environmental principles such as the polluter-pays principle and sustainable development. The paper finds that common law remedies of negligence, nuisance and the rule in *Rylands v Fletcher* (1868) are fault-based, technically demanding and exclude users of communal resources due to the proprietary interest requirement. Statutory remedies, though based on strict liability under Section 11(5) of the Oil Pipelines Act 2004 and Section 102 of the PIA 2021, are undermined by the wide sabotage defence, a flawed Joint Investigation Visit (JIV) process dominated by oil companies, reliance on outdated OPTS compensation rates (1997/2014), a restrictive 12-month limitation period, and weak enforcement by NOSDRA. The study further critiques Section 257(2)-(3) of the PIA 2021 which imposes collective punishment on host communities for acts of vandalism. The paper concludes that the current framework is incoherent and inadequate. It recommends the establishment of an independent environmental compensation tribunal, reform of the JIV process, development of a modern valuation guideline that includes pure environmental damage and future loss, amendment of Section 257 of the PIA 2021, strengthening of NOSDRA, and extension of the limitation period.

Keywords: Oil pollution, compensation, Niger Delta, polluter pays principle, environmental justice, Petroleum Industry Act 2021, strict liability, common law remedies

1.0 Introduction

Nigeria depends heavily on crude oil for its survival. Oil accounts for over 90% of the country's export income (UNEP, 2011; Bodo, 2025). However, this blessing has become a curse for the people of the Niger Delta. Since oil was first discovered in Oloibiri in 1956, the region has suffered from continuous oil pollution (World Bank, 1995; Bodo, Gimah, Seomoni, 2019) ^[5, 34]. Oil spills have become a daily occurrence in the Niger Delta. According to official records, thousands of spills have been reported in the last ten years (NOSDRA, 2020). These spills destroy everything they touch (Bodo & Gimah, 2020a; Bodo & Gimah, 2020b) ^[6]. Farmlands are rendered useless, fishing waters are polluted, drinking water is contaminated, and the air becomes unsafe to breathe (Amnesty International, 2016; David & Bodo, 2019) ^[1, 2]. For communities whose livelihood depends on farming and fishing, an oil spill means total loss of income, hunger and disease (Ikelegbe, 2005; Bodo & David, 2018; Bodo, 2019) ^[2, 8, 20].

When such damage happens, the law is supposed to help the victims get compensation and ensure that the environment is cleaned up. In Nigeria, the right to compensation comes from two main sources (Olaniyan, 2015; Bodo & Bodo, 2019) ^[2, 26]. The first is the common law inherited from England, which includes actions for negligence, nuisance and the strict liability rule in *Rylands v Fletcher* (1868). The second is statutory law, mainly the Oil Pipelines Act (2004),

the NOSDRA Act (2006) and more recently, the Petroleum Industry Act (PIA) (2021). In theory, these laws look adequate. The Oil Pipelines Act imposes a duty on oil companies to pay compensation to anyone who suffers damage from their pipelines (Oil Pipelines Act, 2004, s. 11(5)). The PIA goes further by stating clearly that the polluter must pay for any damage caused by pollution and must remediate the environment (PIA, 2021, s. 102). In practice, however, getting compensation is extremely difficult. Victims face huge legal and practical obstacles (Frynas, 2000) ^[19].

Under common law, proving negligence against a powerful multinational oil company is very hard because the technical information about the cause of the spill is in the hands of the company (Kodilinye & Aluko, 1999) ^[21]. Even when strict liability is relied upon, oil companies often escape by arguing that the spill was caused by third-party sabotage, which is treated as an act of a stranger (Oil Pipelines Act, 2004, s. 11(5)(c)). The statutory process is also flawed. The Joint Investigation Visit (JIV), which is supposed to determine the cause and volume of a spill, is largely controlled by the oil companies (Stakeholder Democracy Network, 2020) ^[31]. In many cases, host communities are excluded or forced to sign reports they do not agree with. Where compensation is eventually paid, it is based on outdated rates for crops and trees fixed by oil producers as far back as 1997 (OPTS, 2014), which does not reflect the

current economic reality or the true value of environmental loss. The Petroleum Industry Act 2021 raised hope for reform, but it has also created new problems. Section 257(2) and (3) of the Act provides that if an act of vandalism or sabotage occurs that causes damage to petroleum facilities, the cost of repair will be deducted from the host community's development trust fund (PIA, 2021, s. 257). This provision has been widely criticized as a form of collective punishment against communities who may be innocent victims themselves (Policy Alert, 2021) ^[29]. This troubling situation raises fundamental questions about justice and environmental protection. If the law allows the polluter to avoid responsibility through technical defences, and if the compensation system does not restore victims to their original position, then the essence of environmental law is defeated (Wilde, 2002) ^[33]. A coherent legal framework must ensure that those who suffer from oil pollution are adequately compensated, the environment is properly restored, and oil companies are held strictly accountable for their operations.

2.0 Conceptual Clarifications

To understand how compensation for oil pollution works in Nigeria, we must first explain some important terms. Words like oil pollution, environmental damage, compensation and victim may look similar, but they have different meanings in law.

2.1 Oil Pollution and Environmental Damage

Oil pollution means the release of crude oil and its by-products into the environment in a way that harms people, plants, animals and the ecosystem (Emiri & Deinduomo, 2019) ^[12]. In the Niger Delta, this includes oil that spills onto land and water from pipelines and wells, dirty water produced during oil drilling that contains chemicals, and smoke and gases from gas flaring and illegal local refineries known as kpo-fire (Fagbohun, 2010) ^[15]. Environmental damage is wider than oil pollution. The Lugano Convention (1993, Art. 2) defines it as any loss or damage caused by contamination of the environment. In Nigeria, environmental damage from oil operations is not just about dirty land or water. It also includes loss of wildlife, destruction of the beauty of the land, and loss of services that nature provides like clean water and fertile soil (Olaniyan, 2015) ^[26]. The NOSDRA Act (2006) defines an oil spill as any accidental or intentional release of oil into the environment, including in offshore areas. It is important to separate two types of pollution. The first is operational pollution. This happens during normal oil company activities like drilling, pumping and transporting oil. The second is pollution caused by other people, such as sabotage, oil theft and artisanal refining (NOSDRA, 2020). This difference is very important in Nigeria because whether a victim gets compensation often depends on what caused the spill. The cause is determined through the Joint Investigation Visit (JIV) process, which is a joint inspection by the oil company, NOSDRA and the host community (Stakeholder Democracy Network, 2020) ^[31].

2.2 Compensation and the Polluter Pays Principle

Compensation in environmental law means money or other help given to a person who has suffered loss because of pollution (Wilde, 2002) ^[33]. The main aim is to restore the victim, as much as money can, to the position he was before

the pollution happened (Kodilinye & Aluko, 1999) ^[21]. Under international best practice, the damage that should be paid for includes loss of property, loss of income, cost of cleaning up and restoring the land, and in some countries, damage to the environment itself even when no one owns it (EU Directive 2004/35/EC). The main idea behind compensation is the Polluter Pays Principle. This principle was first endorsed by the OECD in 1972 and was reaffirmed in Principle 16 of the Rio Declaration on Environment and Development (1992) ^[30]. It simply means that the person who pollutes should pay for the cost of the pollution and for cleaning up the environment (Ladan, 2012) ^[22]. The Supreme Court of Nigeria has supported this idea in the case of *Centre for Oil Pollution Watch v NNPC* (2019), where the Court adopted a progressive approach to environmental justice. The principle is now clearly written into law in the PIA, which requires oil companies to be responsible for environmental remediation and compensation for pollution (PIA, 2021, s. 102).

2.3 Who is a Victim?

A key question is who is entitled to compensation. The Oil Pipelines Act (2004, s. 11(5)) states that the holder of an oil licence must pay compensation to any person who suffers damage because of its activities. This includes owners and occupiers of land. However, in the Niger Delta, land is mostly owned communally by families and communities, not by individuals with paper titles. This makes it difficult to know who should sue. Is it the individual farmer, his family, or the whole community? Under common law, the position is even more restrictive. For claims under nuisance and *Rylands v Fletcher* (1868), a person must have a proprietary interest in land. This means that fishermen who do not own the river cannot claim for pollution of the river (Kodilinye & Aluko, 1999) ^[21].

This strict rule was relaxed by the Supreme Court in *Centre for Oil Pollution Watch v NNPC* (2019). In that case, the Court held that a non-governmental organization could file an action to protect the environment in the public interest, even though it did not own the polluted land. This decision expanded the right to sue in environmental cases. Similarly, the PIA (2021) recognizes host communities as beneficiaries of the Host Communities Development Trust Fund, thereby broadening the idea of victim beyond just individual landowners (PIA, 2021, s. 235; Etikerentse, 2022) ^[13]. For the purpose of this paper, a victim of oil pollution is defined as any person, family or community that suffers direct or indirect loss, including loss of property, loss of livelihood, health problems, or loss of use of common resources like rivers and creeks, as a result of oil pollution.

3.0 Common Law Remedies for Oil Pollution

Before specific environmental laws were made in Nigeria, victims of oil pollution relied on common law inherited from England. These are unwritten laws developed by judges over many years. The three main common law actions used for oil pollution are negligence, nuisance and the rule in *Rylands v Fletcher* (1868).

3.1 Negligence

Negligence is the most common claim made by victims of oil spills. To succeed in negligence, a victim must prove three things (Kodilinye & Aluko, 1999) ^[21]. First, that the oil company owed him a duty of care. Second, that the

company breached that duty by failing to act as a reasonable oil company would. Third, that the breach caused the damage complained of. In oil pollution cases, courts have held that oil companies owe a duty of care to people living near their pipelines and facilities (*Umudje v Shell-BP*, 1975)^[39]. They are expected to maintain their pipelines, replace old pipes, and take precautions to prevent spills. When they fail to do so and a spill occurs, they can be held liable. However, proving negligence is very difficult for rural farmers and fishermen. The victim must show exactly how the oil company was careless. But all the technical information about the pipeline, its age, when it was last maintained, and what caused it to burst is in the hands of the oil company (Frynas, 2000)^[19]. The victim has no access to this information. For this reason,

Nigerian courts sometimes apply the principle of *res ipsa loquitur*, which means the thing speaks for itself (Emiri & Deinduomo, 2019)^[12]. If an oil pipeline under the control of the company bursts and pollutes farmland, the court may infer negligence unless the company proves otherwise. This principle was applied in *Umudje v Shell-BP* (1975)^[39], where the court held that the bursting of a pipeline raised a presumption of negligence. Even with this help, oil companies still escape liability by arguing that the spill was caused by sabotage by unknown third parties. If sabotage is proved, the company will claim that it was not negligent because it could not have foreseen the criminal act of a stranger (Oil Pipelines Act, 2004, s. 11(5) (c)).

3.2 Nuisance

Nuisance is another common law remedy. It is of two types: private nuisance and public nuisance. Private nuisance is an unreasonable interference with a person's use or enjoyment of his land (Wilde, 2002)^[33]. For example, when crude oil from a company's pipeline floods a farmer's land and destroys his crops, it prevents him from using his land. The farmer can sue for private nuisance. To succeed, the victim must prove that he has a legal interest in the land, that the oil company's activity interfered with that interest, and that the interference was unreasonable. The advantage of nuisance is that the victim does not need to prove that the company was careless, only that the interference happened and was caused by the company (Kodilinye & Aluko, 1999)^[21].

However, there are limitations. Only a person with a proprietary interest in land can sue for private nuisance. This means a person who is just occupying land without a title, or a fisherman who fishes in a communal river, may not have the right to sue (Omorogbe, 2001)^[27]. In many cases in the Niger Delta, oil spills pollute rivers and creeks that are communally owned. Individual fishermen who lose their catch cannot sue because they do not own the water. Public nuisance is an act that affects the comfort and convenience of the general public. Oil pollution that contaminates a community's drinking water can be considered a public nuisance. But under common law, a private individual cannot sue for public nuisance unless he can show that he suffered special damage over and above what the general public suffered. This is a very difficult requirement.

3.3 The Rule in *Rylands v Fletcher*

The rule in *Rylands v Fletcher* (1868) is the third common law remedy. This rule was established in an old English case

where water from a reservoir built by the defendant escaped and flooded the plaintiff's mine. The court held that a person who brings something dangerous onto his land and keeps it there, if it escapes and causes damage, will be strictly liable (Wilde, 2002)^[33]. The rule applies where a person brings a dangerous thing onto his land, uses his land in a non-natural way, and the thing escapes and causes damage. In oil pollution cases, crude oil is a dangerous thing. Keeping large quantities of crude oil in pipelines that pass-through villages is considered a nonnatural use of land. If the oil escapes and causes damage, the oil company should be strictly liable (Fagbohun, 2010)^[15].

The advantage of this rule is that it imposes strict liability. The victim does not need to prove negligence, only that the oil escaped and caused damage. This aligns with the polluter pays principle (PIA, 2021, s. 102). However, Nigerian courts have been inconsistent in its application (Olanian, 2015)^[26]. There are also many defences that can defeat a claim under *Rylands v Fletcher*. These include act of a stranger, default of the claimant, statutory authority and act of God (Kodilinye & Aluko, 1999)^[21]. In many oil spill cases, oil companies successfully invoke the defence of third-party sabotage as an act of a stranger, thereby escaping strict liability (Oil Pipelines Act, 2004, s. 11(5) (c)). Furthermore, in *Bodo Community v Shell* (2014)^[35], the English court noted the difficulty of applying *Rylands v Fletcher* to extensive pipeline networks crossing vast areas of land. Because of these difficulties with common law remedies, victims often find it hard to get justice. This led to the need for statutory remedies created by laws made by the legislature.

4.0 Statutory Remedies for Oil Pollution Compensation

Because common law remedies are difficult to prove and have many defences, the Nigerian legislature enacted specific laws to make compensation for oil pollution easier. These statutory remedies are mainly found in the Oil Pipelines Act, the NOSDRA Act, and the Petroleum Industry Act 2021.

4.1 The Oil Pipelines Act 2004

The Oil Pipelines Act is the oldest and most used law for claiming compensation for oil spills in Nigeria (Omorogbe, 2001)^[27]. Section 11(5) of the Act provides that the holder of an oil pipeline licence must pay compensation to any person who suffers damage as a result of his pipeline activities. The damage compensable under the Act is wide. It includes damage to buildings, economic crops and trees, loss of income, and damage to land. The Act also provides for compensation for injurious affection, which means loss of value of land due to the presence of pipelines (Oil Pipelines Act, 2004, s. 11(5) (a)). The strength of the Act is that it imposes strict liability. The victim does not need to prove that the oil company was negligent. He only needs to show that damage was caused by the company's pipeline (Fagbohun, 2010)^[15]. This should make it easier for victims to get compensation. However, the Act has serious weaknesses. First, Section 11(5) (c) provides a wide defence for oil companies. It states that no compensation is payable if the damage was caused by the default of the victim or by the malicious act of a third party (Oil Pipelines Act, 2004, s. 11(5) (c)).

In practice, oil companies often claim that spills were caused by sabotage by unknown persons, even when the

spill was due to corroded pipes (Stakeholder Democracy Network, 2020) ^[31]. Since the cause of the spill is determined by the Joint Investigation Visit (JIV) process which the company dominates, many spills are wrongly classified as sabotage. Second, the Act does not provide any clear method for assessing compensation. As a result, oil companies rely on outdated compensation rates prepared by the Oil Producers Trade Section (OPTS) in 1997, later revised in 2014 (OPTS, 2014). These rates are very low and do not reflect the true market value of crops or the long-term loss of livelihood. Third, the Act requires that a case for compensation must be filed within 12 months of the damage (Oil Pipelines Act, 2004, s. 11(5)). This limitation period is very short for poor rural communities who may not have money or knowledge to go to court quickly (Frynas, 2000) ^[19].

4.2 The NOSDRA Act 2006

The National Oil Spill Detection and Response Agency (NOSDRA) was created to be the lead agency for oil spill management in Nigeria (NOSDRA Act, 2006, s. 1). The Act gives NOSDRA the power to detect oil spills, coordinate clean-up, and ensure remediation of polluted sites (Ladan, 2012) ^[22]. Under Section 6 of the NOSDRA Act, an oil spiller is required to report any oil spill within 24 hours and to clean up the polluted site. Failure to do so attracts a penalty of one million naira for each day of failure (NOSDRA Act, 2006, s. 6(3)). The Act also gives NOSDRA the power to assess damage caused by oil spills. In theory, NOSDRA should protect victims. In reality, the agency is very weak. It lacks funding, laboratory facilities, boats and helicopters to visit spill sites promptly (Amnesty International, 2016) ^[1]. It depends on oil companies for transportation and logistics, which compromises its independence. Its enforcement powers are also limited and rarely used.

4.3 The Petroleum Industry Act 2021

The Petroleum Industry Act 2021 is the most recent and comprehensive oil and gas law in Nigeria (PIA, 2021). It seeks to reform the industry and address environmental concerns. Section 102 of the Act clearly incorporates the polluter pays principle. It states that a licensee or lessee is liable for any damage or pollution caused by its petroleum operations (PIA, 2021, s. 102). It also requires operators to take all reasonable measures to prevent pollution and to remediate and restore polluted areas. The PIA creates two important funds. The first is the Environmental Remediation Fund under Section 103, which is to be used for cleaning up and restoring polluted sites. The second is the Host Communities Development Trust Fund under Section 235, which requires settlors (oil companies) to contribute 3% of their annual operating expenditure for the development of host communities (PIA, 2021, s. 235; Etikerentse, 2022) ^[13]. These provisions are commendable because they recognize the need for both environmental restoration and community development. However, the PIA contains a controversial provision that undermines its good intentions. Section 257(2) and (3) provides that where an act of vandalism, sabotage or civil unrest causes damage to petroleum facilities or disrupts production, the cost of repairs shall be deducted from the Host Communities Development Trust Fund belonging to that community (PIA, 2021, s. 257). In other words, the entire community is punished for the

criminal act of a few persons, even when the community is not responsible. This has been described as collective punishment and a violation of the right to a fair hearing (Policy Alert, 2021) ^[29]. Also, Section 102(2) provides that where damage is caused by third-party interference, the licensee is not liable if it proves that it took reasonable steps to prevent it. This re-introduces the sabotage defence that has been used to deny compensation for many years. In summary, while statutory remedies were designed to make compensation easier than common law, they still suffer from weak enforcement, vague compensation guidelines, and defences that allow polluters to escape liability.

5.0 Comparative Analysis of Common Law and Statutory Remedies

Although both common law and statutory remedies aim to compensate victims of oil pollution, they differ in their nature, requirements and effectiveness. Understanding these differences is important to show why the current system is not coherent.

5.1 Similarities

First, both systems are based on the idea of restoring the victim. Whether under negligence or under the Oil Pipelines Act, the goal is to put the victim back, as much as money can, to the position he was before the spill (Wilde, 2002) ^[33]. Second, both systems allow the polluter to escape liability by blaming third parties. Under common law, sabotage is treated as an act of a stranger which is a defence to Rylands v Fletcher (Kodilinye & Aluko, 1999) ^[21]. Under statutory law, the same defence is expressly provided in Section 11(5) (c) of the Oil Pipelines Act (2004) and Section 102(2) of the PIA (2021). This common weakness has denied many victims compensation (Stakeholder Democracy Network, 2020) ^[31]. Third, both systems focus mainly on private property damage. They are concerned with compensation for destroyed crops, buildings and economic loss to land owners. They do not adequately provide for pure environmental damage, such as loss of biodiversity or damage to communal rivers where no one has private title (Olaniyan, 2015) ^[26].

5.2 Differences

Despite these similarities, there are important differences between the two remedies.

- a. **Basis of Liability:** Common law negligence is fault-based. The victim must prove that the oil company was careless (Kodilinye & Aluko, 1999) ^[21]. On the other hand, statutory remedy under the Oil Pipelines Act is based on strict liability. The victim only needs to prove that damage was caused by the pipeline, not that the company was negligent (Fagbohun, 2010) ^[15]. In this respect, statutory law is more favourable to victims.
- b. **Who Can Sue:** Under common law nuisance and Rylands v Fletcher, only a person with a proprietary interest in land can sue (Omorogbe, 2001) ^[27]. This excludes fishermen and other users of communal resources. Under the Oil Pipelines Act, any person who suffers damage can claim compensation, which is wider (Oil Pipelines Act, 2004, s. 11(5)). This was further expanded by the Supreme Court in Centre for Oil Pollution Watch v NNPC (2019), which allowed NGOs

to sue in the public interest, and by the PIA (2021), which recognizes host communities as beneficiaries.

- c. **Limitation Period:** Under common law, the limitation period for claims for damage to property is generally six years under the Limitation Law of various states. Under the Oil Pipelines Act, a claim must be made within 12 months (Oil Pipelines Act, 2004, s. 11(5)). This very short period under statutory law makes it harder for victims, especially poor rural dwellers, to seek justice (Frynas, 2000) ^[19].
- d. **Assessment of Compensation:** Under common law, courts assess damages based on evidence of actual loss suffered by the victim. Under statutory regime in practice, compensation is assessed based on fixed OPTS rates from 1997/2014, which are very low and outdated (OPTS, 2014). This leads to inadequate compensation.
- e. **Role of JIV:** The JIV process is a statutory administrative process that does not exist under common law. Under statutory claims, the outcome of JIV is crucial because it determines the cause and extent of spill (NOSDRA Act, 2006). Under common law, the court determines causation independently. The dependence on JIV under the statutory regime creates unfairness because oil companies dominate the process (Amnesty International, 2016) ^[1]. In conclusion, while statutory remedies were intended to improve on common law by imposing strict liability, they have been weakened by short limitation periods, sabotage defences, outdated compensation rates and a flawed JIV process. Common law, on the other hand, is difficult to prove and excludes many victims due to the proprietary interest requirement. Neither system alone provides adequate justice.

6.0 Gaps and Challenges in the Nigerian Compensation Framework

Despite the existence of both common law and statutory remedies, victims of oil pollution in the Niger Delta rarely get adequate compensation. There are several gaps and challenges that make the framework incoherent.

6.1 Over-Reliance on the Sabotage Defence

The biggest challenge is the misuse of the sabotage defence. Oil companies often classify spills as caused by sabotage in order to avoid paying compensation (Stakeholder Democracy Network, 2020) ^[31]. This defence is allowed under Section 11(5) (c) of the Oil Pipelines Act (2004) and Section 102(2) of the PIA (2021). Because the Joint Investigation Visit (JIV) is controlled by the companies who provide transport, equipment and expertise, host communities are unable to challenge this classification (Amnesty International, 2016) ^[1]. In many cases, spills caused by corrosion of old pipelines are recorded as sabotage. The UNEP Report on Ogoniland found that many pipelines were over 40 years old and badly maintained, yet spills from them were still blamed on third parties (UNEP, 2011).

6.2 Lack of Independent Assessment Mechanism

Nigeria lacks an independent body to assess the cause and volume of oil spills and to determine compensation. NOSDRA is supposed to play this role, but it is weak and

dependent on oil companies for logistics (Ladan, 2012) ^[22]. The OPTS compensation rates used for assessment were prepared by oil producers themselves in 1997 and revised in 2014 without input from communities (OPTS, 2014). These rates are grossly inadequate. For example, the rate for a mature palm tree does not reflect its lifetime economic value.

6.3 Collective Punishment Under PIA 2021

Section 257(2) and (3) of the Petroleum Industry Act (2021) introduces collective punishment. It provides that the cost of repairing damaged petroleum facilities due to vandalism will be deducted from the host community development trust fund. This punishes an entire community for the criminal act of a few individuals, even when the community has no control over the criminals (Policy Alert, 2021) ^[29]. This provision is contrary to natural justice and Section 36 of the Constitution of the Federal Republic of Nigeria (1999, as amended), which guarantees fair hearing.

6.4 Delay in Justice and High Cost of Litigation

Oil pollution cases take many years in Nigerian courts. The case of Farah v Shell lasted over 20 years before judgment (Fagbohun, 2010) ^[15]. Victims are poor fishermen and farmers who cannot afford lawyers to fight multinational oil companies with unlimited resources (Frynas, 2000) ^[19]. Many cases are settled out of court for very small amounts because victims cannot continue. Furthermore, courts often award low damages that do not include compensation for long-term environmental damage, loss of future earnings, and health consequences (Olaniyan, 2015) ^[26].

6.5 Lack of Provision for Pure Environmental Damage

Nigerian law focuses on compensation for private property damage. It does not provide for compensation for damage to the environment itself, such as loss of biodiversity, destruction of mangrove forests, and pollution of communal rivers (Wilde, 2002) ^[33]. Under common law, only a person with proprietary interest can sue, so damage to communal resources is not compensated (Kodilinye & Aluko, 1999) ^[21]. International best practice under the EU Directive on Environmental Liability (2004/35/EC) requires polluters to restore the environment itself, not just pay private owners.

6.6 Weak Enforcement and Regulatory Capture

NOSDRA is empowered to enforce clean-up and remediation under Section 6 of its Act (NOSDRA Act, 2006). However, it rarely sanctions oil companies. It is underfunded and lacks equipment (Amnesty International, 2016) ^[1]. Oil companies often refuse to clean up spills, and there is no effective penalty. The fine of one million naira per day for failure to clean up is too small for companies that make billions of dollars annually. These gaps show that the Nigerian framework is fragmented, weak and unfair to victims.

7.0 Conclusion and Recommendations

This paper has examined the legal framework for compensation for oil pollution in the Niger Delta. It discussed both common law and statutory remedies and showed that although these remedies exist on paper, they have not provided adequate justice for victims. Common law remedies of negligence, nuisance and the rule in *Rylands v Fletcher* (1868) are difficult to prove. Negligence

requires proof of fault which is hard for poor communities because technical information is in the hands of oil companies (Frynas, 2000) ^[19]. Nuisance and Rylands v Fletcher require proprietary interest in land, which excludes fishermen and users of communal rivers (Omorogbe, 2001) ^[27]. Statutory remedies under the Oil Pipelines Act (2004), NOSDRA Act (2006) and the Petroleum Industry Act (2021) were meant to improve on common law by imposing strict liability.

However, they have been weakened by the sabotage defence in Section 11(5) (c) of the Oil Pipelines Act (2004) and Section 102(2) of the PIA (2021), a flawed JIV process, outdated OPTS compensation rates (2014), and a very short 12-month limitation period. The comparative analysis reveals that the system is incoherent. It punishes victims instead of polluters, as seen in Section 257 of the PIA (2021) which introduces collective punishment of host communities (Policy Alert, 2021) ^[29]. It also fails to provide for pure environmental damage and long-term loss of livelihood.

In the light of the above, the following recommendations are made:

1. **Establishment of an Independent Environmental Compensation Tribunal:** Nigeria should establish a special independent tribunal for oil pollution claims. The tribunal should have experts in environment, valuation and law, and should not depend on oil companies for logistics. This will ensure prompt and fair determination of compensation (Ladan, 2012) ^[22].
2. **Review of the Sabotage Defence and JIV Process:** The burden of proving sabotage should be on the oil company, and it must be proved beyond reasonable doubt. The JIV process should be reformed to make NOSDRA truly independent and to allow community participation with video recording and independent observers (UNEP, 2011; Amnesty International, 2016) ^[1].
3. **Development of a Modern Compensation Valuation Guideline:** The outdated OPTS rates should be discarded. A new guideline should be developed by the National Commission for Environmental Compensation with input from communities, valuers and environmental experts. It should reflect market value, loss of future income, health costs and environmental restoration costs (OPTS, 2014; Olaniyan, 2015) ^[26].
4. **Amendment of Section 257 of PIA 2021:** The provision on collective punishment should be repealed. Communities should not be punished for criminal acts they did not commit. Instead, oil companies should be required to improve security of their facilities (Policy Alert, 2021; Constitution, 1999, s. 36) ^[10, 29].
5. **Recognition of Pure Environmental Damage:** The law should be amended to allow claims for damage to the environment itself, even where no private property is involved. This aligns with international best practice under the EU Environmental Liability Directive (2004/35/EC) and the polluter pays principle in Principle 16 of the Rio Declaration (1992) ^[30].

6. **Strengthening of NOSDRA:** NOSDRA should be adequately funded, equipped and empowered to enforce clean-up and sanctions. The daily penalty for failure to clean up under Section 6(3) of the NOSDRA Act (2006) should be increased substantially to deter noncompliance (Amnesty International, 2016) ^[1].

7. **Extension of Limitation Period:** The 12-month limitation period under Section 11(5) of the Oil Pipelines Act (2004) should be extended to at least six years to allow victims enough time to seek redress (Frynas, 2000) ^[19]. In conclusion, environmental justice in the Niger Delta requires a coherent, fair and effective compensation framework. Until these reforms are made, oil pollution will continue to destroy lives and livelihoods while victims remain without adequate remedy.

References

1. Amnesty International. Negligence in the Niger Delta: Decoding Shell and Eni's poor record on oil spills. Amnesty International Publications, 2016.
2. Bodo T. Deep Issues behind the Crisis in the Niger Delta Region: The Case of Oil Exploration in Ogoniland, Rivers State, Nigeria. *Asia Journal of Exploration in Ogoniland, Rivers State, Nigeria. Asia Journal of Geographical Research*, 2019;2(1):1-12.
3. Bodo T, Bodo CT. The Applicability of the Rule in Rylands V. Fletcher to Petroleum Activities in Nigeria. *Asian Journal of Advance Research Reports*, 2019;3(1):1-10.
4. David LK, Bodo T, Gimah BG. "Petroleum Pollution and Decrease Neuroplasticity in Brain Development of the Ogoni Children in Rivers State, Nigeria". *Journal of Advances in Medicine and Medical Research*, 2019;29(11):1-13. <https://doi.org/10.9734/jammr/2019/v29i1130141>.
5. Bodo T, Gimah BG, Seomoni KJ. Illegal Oil Bunkering in the Niger Delta Region of Nigeria: A Challenge to Nigeria's Development. *European Scientific Journal*, 2019;16(29):134154.
6. Bodo T, Gimah BG. The Pollution and Destruction of the Niger Delta Ecosystem in Nigeria: Who is to be blamed? *European Scientific Journal*, ESJ, 2020a;16(5):161. <https://doi.org/10.19044/esj.2020.v16n5p161>
7. Bodo T, Gimah BG. Oil Crisis in the Niger Delta Region of Nigeria: Genesis and Extent. *European Scientific Journal*, 2020b;15(36):141-158.
8. David LK, Bodo T. The Petroleum Exploitation and Pollution in Ogoni, Rivers State, Nigeria: The Community Perspective. *European Scientific Journal*, 2018;14(32):97-212.
9. Central Bank of Nigeria. Annual statistical bulletin, 2022.
10. Constitution of the Federal Republic of Nigeria (as amended), 1999.
11. Ebeku KSA. Oil and the Niger Delta people in international law: Resource rights, environmental and equity issues. Rudiger Koppe Verlag, 2006.
12. Emiri F, Deinduomo G. Law of torts and environmental litigation in Nigeria. Malthouse Press, 2019.
13. Etikerentse G. The Petroleum Industry Act 2021 and host communities: Issues and perspectives. *Journal of*

- Sustainable Development Law and Policy, 2022;13(1):1-18.
14. European Union. Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage. Official Journal of the European Union, 2004.
 15. Fagbohun O. The law of oil pollution and environmental restoration: A comparative review. Odade Publishers, 2010.
 16. Federal Republic of Nigeria. Oil Pipelines Act, Cap O7, Laws of the Federation of Nigeria, 2004.
 17. Federal Republic of Nigeria. National Oil Spill Detection and Response Agency (Establishment) Act, 2006.
 18. Federal Republic of Nigeria. Petroleum Industry Act, 2021.
 19. Frynas JG. Oil in Nigeria: Conflict and litigation between oil companies and village communities. LIT Verlag, 2000.
 20. Ikelegbe A. The economy of conflict in the oil rich Niger Delta region of Nigeria. Nordic Journal of African Studies, 2005;14(2):208-234.
 21. Kodilinye G, Aluko O. The Nigerian law of torts (2nd ed.). Spectrum Books, 1999.
 22. Ladan MT. Review of NESREA Act 2007 and NOSDRA Act 2006: A new dawn in environmental compliance in Nigeria. Ahmadu Bello University Press, 2012.
 23. Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment. Council of Europe, ETS No. 150, 1993.
 24. National Oil Spill Detection and Response Agency. Nigerian Oil Spill Monitor, 2020.
 25. Nigerian Oil Producers Trade Section of the Lagos Chamber of Commerce. Revised compensation rates for economic crops and trees, 2014.
 26. Olaniyan A. Environmental justice and the Niger Delta crisis. Journal of Environmental Law and Policy, 2015;5(2):44-62.
 27. Omorogbe Y. Oil and gas law in Nigeria. Malthouse Press, 2001.
 28. Organisation for Economic Co-operation and Development. Recommendation of the Council on guiding principles concerning international economic aspects of environmental policies [C(72)128], 1972.
 29. Policy Alert. An analysis of host communities provisions in the Petroleum Industry Act 2021, 2021.
 30. Rio Declaration on Environment and Development. Report of the United Nations Conference on Environment and Development, 1992.
 31. Stakeholder Democracy Network. Oil spill data and JIV reports in Nigeria, 2020.
 32. United Nations Environment Programme. Environmental assessment of Ogoniland, 2011.
 33. Wilde M. Civil liability for environmental damage: A comparative analysis of law and policy. Kluwer Law International, 2002.
 34. World Bank. Defining an environmental development strategy for the Niger Delta. World Bank, 1995.
 35. Bodo Community v Shell Petroleum Development Company of Nigeria Ltd EWHC 1973 (TCC), 2014.
 36. Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation 5 NWLR (Pt. 1666) 518, 2019.
 37. Farah v Shell Petroleum Development Company of Nigeria (Unreported) Suit No. FHC/B/CS/53/86.
 38. Rylands v Fletcher LR 3 HL 330, 1868.
 39. Umudje v Shell-BP Petroleum Development Company of Nigeria Ltd 9-10 SC 155, 1975.