LEGAL REMEDIES FOR VICTIMS OF ENVIRONMENTAL POLLUTION IN NIGERIA

BY

Aliyu Panti ISA

DEPARTMENT OF PUBLIC LAW,
AHMED BELLO UNIVERSITY, ZARIA
NIGERIA

JUNE, 2014

LEGAL REMEDIES FOR VICTIMS OF ENVIRONMENTAL POLLUTION IN NIGERIA

BY

Aliyu Panti ISA
LLM/LAW/000227/2006-2007
LLM/LAW/23184/2012-2013

A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES,
AHMED BELLO UNIVERSITY, ZARIA
IN PARTIAL FULFILMENT FOR THE AWARD OF MASTER OF LAWS (LLM)

DEPARTMENT OF PUBLIC LAW,
FACULTY OF LAW,
AHMADU BELLO UNIVERSITY, ZARIA,
NIGERIA

JUNE, 2014

DECLARATION

I declare that the work in the thesis entitled Legal Remedies for Victims of Environmental Pollution in Nigeria has been performed by me in the Faculty of Law under supervision of Dr. A. K. Usman (Major Supervisor) and Prof. B. Y. Ibrahim. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another Degree or Diploma at any University.

Aliyu Panti ISA **……..** **…….**
Signature **Date**

CERTIFICATION

This thesis titled LEGAL REMEDIES FOR VICTIMS OF ENVIRONMENTAL POLLUTION IN NIGERIA BY ALIYU PANTI ISA meets the regulations governing the award of the degree of Master of Laws of Ahmadu Bello University, Zaria and approved for its contribution to knowledge and literary presentation.

Dr. A. K. Usman **Department of Commercial law** **(Chairman, Supervisory Committee)**	..... **Sign**	..... **Date**
Prof. B. Y. Ibrahim **(Member, Supervisory Committee)**	..... **Sign**	..... **Date**
Dr. Yusuf Dankofa **Head of Department** **Public Law.**	..... **Sign**	..... **Date**
Prof. Adebayo A. Joshua **Dean, Postgraduate School**	..... **Sign**	..... **Date**

ACKNOWLEDGEMENT

The task of reaching this stage of academic pursuit in herculean, a lot is accountable for the success of this work while some other remains memorable. To this end I am grateful to Allah the Creator and Sustainer of all creatures. I am most sincerely grateful to my supervisors Dr. A. K. Usman of the Department of Commercial Law and Dr. B. Y. Ibrahim of Department of Public Law. The guidance of these noble gentlemen and distinguish academies have greatly enhance the quality of this work. My debt of gratitude goes to Prof. Y. Y, Bambale, the Dean Faculty of Law and Dr. I. F. Akande, Assistant Dean Postgraduate Studies. Thank you sirs.

I remain eternally grateful to Dr. A. M. Madaki and family and Dr. K. M. Danladi for their encouragement and support, may Allah continue to guide you too. My sincere appreciation goes to Mrs. Lar of the office of Dean of Law ABU Zaria. I am grateful to Mr. Everest Bauchi and Alhaji Maya of law Library of Ahmadu Bello University, Zaria. I wish to acknowledge the effort of Mohammed Danlami Usman and joy Godson Litigation Secretary in Messrs Umaru Kawu & Co. Minna for typing this work.

My sincere appreciation goes to the following friends and colleagues viz A.M. Gausu Esq Idris Mohammed J., Alhaji M. N. Mohammed Esq., Dr. T. D. Sheshi the head of Department of General Studies the Federal Polytechnic Bida, Benjamin Attah Esq. of Messrs Umaru Kawu and Co. Minna, Tanko Beji Esq. of Tanko Beji and Co. Minna, M. E. Abubakar Esq. Managing Solicitor Cosmic Chambers Minna Danlami Wushishi Esq. of Niger State Ministry of Justice Minna DSI Audi Danlami Esq and Husseini A. Sallawu Esq of IBB University Lapai. My gratitude also goes to my

brothers Alh. Yakubu Panti, TPL Abdul Shada Panti, Dr. M. A. Isa Panti, Dr. Abubakar Isa Panti of UDUTH Sokoto and Engr. Mahmud Isa Panti and to my father in-law Alhaji Abdussalam B. Muhammad of Islamic Education Trust Minna for his prayers.

DEDICATION

This work is dedicated to my dear mother Hajiya Aishetu Idris Panti (nee Usman Ma'ali) who sacrificed all to sustain my choice, to my wife Fatima Bint Abdulsalam and to my children Yusuf, Aisha, Hafsah and Isa (Abbati).

ABSTRACT

Environment pollution of different dimension has caused a lot of havocs to the health and wealth of some Nigerians. To this end, the study examines the array of legislation that provides for various remedies for victims of pollution in Nigeria. The study also analyzed various case laws their adequacy or otherwise. The study further investigates the mechanism for the enforcement of the claims by the victims of pollution in Nigeria. The general background of the study examines the research problem, which ascertain the adequacy of these laws or otherwise. The objectives are to among others identify these remedies. It also state the justification, the significance, of this scope the study and the methodology of this research is doctrinal. The study evaluates the criminal remedies especially in relation to the fact that most of the statutes are laced with penal provisions inform of fines and terms of improvement. The study also focus on the civil remedies in form of compensation, damages, restoration/rehabilitation and injunction. Similarly, the mechanism for the enforcement of the claims by the victims of pollution such as litigation which is plagued with series of problems such that victims often seek remedies under law of tort, thus they are unable to prove their case before the courts. The study also examines Alternative Dispute Resolution (ADR) viz: negotiation, mediation, conciliation and arbitration as a tool for enforcement. The study concludes with some findings which includes inter alia absence of express constitutional provision on pollution scattered legislations on pollution which as mostly penal the penalties are paltry sum and problem of jurisdiction vested in the High Court by some Acts which is in conflict with the constitutional provisions that vest same exclusively in the Federal High Court.

LIST OF STATUTES

1. Associated Gas Re-injection Act Cap A25 LFN
2. Constitution of Federal Republic of Nigeria 1999
3. Criminal Code Cap C38 LFN 2004
4. Criminal Procedure Act Cap C41 LFN 2004
5. Criminal Procedure Code Cap C42 LFN 2004
6. Evidence Act As Amendment 2011
7. Environmental Impact Assessment Cap E12 LFN 2004
8. Federal Environment Protection Agency Act Cap F10 LFN 2004
9. Harmful Waste (Special Criminal Provision etc.) act Cap H1 LFN 2004
10. International Convention on Civil Liability for Oil Pollution Damages
11. Mineral and Mining Act Cap M12 LFN 2004
12. National and Mining Standard Regulation Enforcement Act, 2007
13. National Oil Spill Detection Response Act, 2004
14. Nigerian Minerals and Mining Act, 2007
15. Oil Pipeline Act Cap 07 LFN 2004
16. Oil Navigable Water Act Cap 06 LFN 2004
17. Petroleum Act Cap P10 LFN 2004
18. Petroleum (Drilling and Production) Regulations
19. Regulated and other Professions (Private Practice Prohibition) Cap R LFN, 2004
20. Water Resource Act Cap W2 LFN, 2004

TABLE OF CASE

1. Abacha v. Fawehinmin (2000) 6 NWLR PT. 660 p. 228. - - - 9
2. Allor Iron v. SPD. Nig. Ltd Suit No. W/89/71. - - - - 3, 59
3. Broomer v. Atlantic Cement Company El 26 NV 2d 219. - - - 60
4. Dukubo Priye v. SPDC (2003) 4 NWLR Pt. 468 p. 259. - - - 55
5. Dumez Nig. Ltd. v. Ogobi (1992) 1 All NLR 343 - - - - 51
6. Elf Nig. Ltd v. Opere Sillo & Another (1994) 6NWLR Pt 350 p258 - 56
7. Godpower Nweke v. Nigerian Agip Oil Ltd. (1976) 9 – 10 SC 101. - 41, 50
8. Gulf Oil (Nig.) Ltd v. Otuba (2002) 12 NWLR Pt. 780 p. 22. - - 74
9. Lawani v. West African Portland Cement (1973) 3 UILR Pt. 4. p. 459. - 28
10. Kermer v. Nigerian Agip oil Co. Ltd. (Unreported) Suit No. FHC/PH/CP/27/99. The Guardian Monday, April 10, 2000, p. 41. - - 79
11. Minor Oposa V. Secretary of Department of Environmental KM (1994) 173 Supreme Court of the Philippines. - - - 89
12. Mother Cat (Oversea) Nigeria Ltd v. Chiakale Ughaleje (unreported) appeal No. CA/B/175/99. - - - - - - - 35, 48
13. Nwadiaro v. SPDC Ltd (1990) 5 NWLR Pt 150 p. 322 - - - 65
14. Ogaile v. SPDC Ltd (1997) 1 NWLR Pt 480 p.148. - - - 71
15. Onojoke v. Seismograph Services co. Ltd (unreported) suit No. SHC 28/59 of 29/1/91 - - - - - - - - 41
16. Pride of Derby and 1 other v. British Celaness Ltd. (1955) ch 149. - - 59
17. R. Mon and Another v. Shell B. P. (1970 – 720 1 RSLR 71 - - - 43, 58
18. Rylands v. Fletcher (1886) 1LR Exch 265 - - - 3, 57, 69, 84
19. Seismographs Services Ltd v. Akporovo (1974) All NLR 97 - - 70
20. Seismograph Services Ltd v. Mark (1993) 7 NWLR Pt. 203 - - 72
21. Seismograph Services Ltd v. Ogbeni (1976) 4 SC 85 - - - 71
22. Seismograph Services Ltd v. Onokpose (1972) All NLR p. 347. - - 57, 70
23. SPDC v. Adamkue (2003) 11 NWLR Pt. 832 p. 533. - - 76, 85, 88
24. SPDC v. Ambah (1990) NWLR Pt 593 p. 1 at 14. - - - - 55, 57
25. SPDC v. Farah (1995) 3 NWLR Pt 382 p.145. - 39, 43, 49, 55, 76, 85, 88
26. SPDC Ltd v. Isaiah and others (2002) 11 NWLR pt. 723 p. 168 - - 37
27. SPDC v. Otoko (1990) 6 NWLR Pt 159 p. 693 - - - - 52

28. SPDC Ltd v. Tiebo VII (2005) 9 NWLR pt 931 p. 439 - - - 57, 67
29. Thorsfall v. SPDC Ltd (1974) 2 RSLR 126. - - - - 74

LIST OF ABBREVIATION

Abbreviation	Meaning
AC	Appeal Cases
All NLR	All Nigerian Law Report
CA	Court of Appeal
Cap	Chapter
Ch	Chancery
CFRN	Constitution of Federal Republic of Nigeria
CC	Criminal Code
CPA	Criminal Procedure Act
CPC	Criminal Procedure Code
EGASPIN	Environmental Guideline And Standard for the Petroleum Industry in Nigeria
Exh	Exchequer
FEPA	Federal Environmental Protection Agency
HL	House of Lords
JCA	Justice of Court of Appeal
JPPL	Journal of Private and Public Law
JSC	Justice of Supreme Court
LFN	Laws of Federation of Nigeria
NESREA	National Environmental Standard Regulation Enforcement Agency Act
NOSDRA	National Oil Spill Detection Response Agency Act
NWLR	Nigerian Weekly Law Report

PC	Penal Code
SC	Supreme Court

TABLE OF CONTENTS

Title page

Declaration - - - - - - - - - i

Certification - - - - - - - - - ii

Acknowledgement - - - - - - - - iii

Dedication - - - - - - - - - v

Abstract - - - - - - - - - vi

Table of Content - - - - - - - - vii

List of Statutes - - - - - - - - - x

Table of Cases - - - - - - - - xi

Abbreviation - - - - - - - - xiii

CHAPTER ONE: GENERAL INTRODUCTION

1.1 Historical Background: - - - - - - - 1

1.2 Statement of Research Problem: - - - - - 10

1.3 Scope of Research: - - - - - - - 12

1.4 Objective of Research: - - - - - - - 13

1.5 Research Methodology: - - - - - - - 13

1.6 Literature Review: - - - - - - - 13

1.7 Justification: - - - - - - - 18

1.8 Organisational Layout: - - - - - - - 18

CHAPTER TWO: CRIMINAL REMEDIES

2.1 Introduction: - - - - - - - - 20

2.2 Legal Framework for Criminal Remedies: - - - - 20

2.3 Fines: - - - - - - - - - 25

2.4 Term of imprisonment: - - - - - - 26

2.5 Forfeiture - - - - - - - - 28

2.6 Constraints to impositions of criminal remedies - - - 30

CHAPTER THREE: CIVIL REMEDIES

3.1 Introduction: - - - - - - - - 32

3.2 Compensation: - - - - - - - - - 32

3.2.1 Constitutional Provisions for Compensation: - - - - 33

3.2.2. Oil Pipeline Act: - - - - - - - - 34

3.2.3 Petroleum Act: - - - - - - - - 39

3.2.4 Nigerian Minerals Mining Act, 2007:- - - - - 40

3.2.5 Rio Declaration vis-à-vis NESREA Act: - - - - 41

3.2.1.1 Quantum of Compensation: - - - - - - 43

3.3 Damages: - - - - - - - - - 45

3.3.1 Legal Framework for Remedy of Damages - - - - 46

3.3.2 Types of Damages - - - - - - - 51

3.3.2.1 Special Damages - - - - - - - 51

3.3.2.2 General Damages - - - - - - - 53

3.3.4 Difference between Special and General Damages - - - 54

3.3.5 Grounds for Award of Damages - - - - - 55

3.3.5.1 Loss of Property and means of livelihood - - - - 55

3.3.5.2 Damages for Emotional Distress - - - - 55

3.4 Injunction - - - - - - - - 58

3.5 Restoration/Rehabilitation- - - - - - 60

3.6 Resettlement - - - - - - - - 62

CHAPTER FOUR: MECHANISMS FOR THE ENFORCEMENT OF ENVIRONMENTAL CLAIMS

4.1 Introduction: - - - - - - - - 63

4.2 Litigation: - - - - - - - - - 64

4.2.1 Factors Militating Against Environmental Litigations: - - 64

4.2.1.1 Delays in Prosecution of Cases: - - - - - 65

4.2.1.2 Courts Attitude to Victims Claim: - - - - - 67

4.2.1.3 Corruption in judiciary - - - - - - 68

4.2.1.4 Burden and Standards of Proof: - - - - - 69
4.3 Negotiation: - - - - - - - - 75
4.4 Mediation; - - - - - - - - - 77
4.5 Conciliation: - - - - - - - - 78
4.6 Arbitration: - - - - - - - - - 78

CHAPTER FIVE: SUMMARY AND CONCLUSION

5.1 Summary: - - - - - - - - - 82
5.2 Findings: - - - - - - - - - 82
5.3 Recommendations: - - - - - - - 85
5.3.1 Need for Express Constitutional Provision on Pollution: - - 86
5.3.2 Compendium of Environmental Law: - - - - - 86
5.3.3. Imposition of Heavier Fines: - - - - - - 86
5.3.4. Extending the Mandate of NESREA: - - - - - 87
5.3.5 Shifting the Burden: - - - - - - - 88
5.3.6 Evolving New Precedence: - - - - - - 88
5.3.7 Adoption of Strict Liability: - - - - - - 89
5.3.8 Exploring ADR: - - - - - - - - 90
5.3.9 Establishment of Statutory Compensation Fund: - - - 90
Bibliography: - - - - - - - - 92

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Historical Background

Before the advent of British rule, communities in present day Nigeria utilized customary methods in the settlement of environmental disputes. Thus, the management of the environment in most Nigerian communities is based on customary law concept where this has been modified or repealed by statute. The number of customary laws may be as many as the number of ethnic-groups. There are about 300 ethnic groups in Nigeria.[1] Thus in the same state or among the same tribe there exist numerous customary laws.[2] The various customs of different ethnic groups and communities in Nigeria contain remedies for environmental pollution. For example, in the Iroko community bush burning under customary law is prohibited. A violation of this law will lead to the arrest of the offender who is taken before the village head who imposes fine on the offender.[3] Bush burning has a negative effect on the environment as it pollutes the air, and the fire spreads uncontrollable and on several instances destroyed large areas of land and also causes serious damage to other valuables. For example, in the case of **Busari Adediga V. Abati.**[4] The plaintiff wrote the defendant requesting that he be informed when the defendant would set fire to his farm to enable the plaintiff protect his property. The defendant claimed to have informed the plaintiff although the plaintiff denied. The

[1] Adewale, O. Customary Environmental Law. In Ajomo and Adewale (eds) *Environmental Law and Sustainable Development in Nigeria* NIALS Lagos and The British Council 1994 p 158.
[2] Obilade, A.O Nigeria Legal System, Sweet and Maxwell London 1979 p.83.
[3] Adewale, O. Op cit.
[4] Ake 'A' Native Court 50/1934.

defendant set fire to him farm and went fishing while the farm was burning. The fire went out of control and destroyed the plaintiff's farm. The customary court held that although bush burning is an acceptable customary practice, the defendant was liable for damage to the plaintiff's property.

Similarly, among the Egbas there exists customary law governing the general use of the stream and pollution. This practice, Adewale[5] opined is uniform to some extent amongst various communities and state further that it is also the general practice in the eastern part of Nigeria. Customary law in most part of Nigeria prohibits trespassing, for example, in the north where Nomads move from one place to another for the purpose of grazing their animals. Often animals trespass into farm land and victims claim damages arising from their act[6]. These customary laws of various communities have been enforced long before the advent of colonial rule. Thus Amokaye[7] refers to this period as the first stage of development of environmental law in Nigeria.

The introduction of common law principles and statutory laws by the colonial administration to regulate pollution activities marked the beginning of the second era. Under the common law principles, which forms part of Nigerian legal system it provides means for the institution of legal action for pollution under spheres of nuisance, negligence, trespass to land and the rule in ***Rylands v. Fletcher***[8]. It should be noted that, nuisance are two types, private and public nuisance which by definition is said to be:

[5] Amokaye, G.O. *Environmental Law and practice in Nigeria,* University of Lagos Press, Akoka 2004. Pg.2
[6] Adewole, O. *op. cit.*
[7] Amokaye, G. O. *op. cit.*
[8] Nwosu, L.E. *Appropriate Mechanism for Enforcement Claim Juriscope,* 1st Edition, Corporate Design Consult, Ikeja, Lagos, 2001 pg.187.

'Unlawful interference with a person's use or enjoyment of land or some right over or connected with it'[9]

While on negligence this is one of the most frequently entrusted common law means of instituting legal action by the victims of environmental pollution. Negligence may be an ingredient of another tort. For example Nuisance in common law, under which victims of environmental pollution may seek remedies of damage for trespass to land. This is said to be unjustifiable introduction by a person upon the land by another. Here defendant conduct must be intentional and not careless and to succeed the damage which results most be direct consequence of defendant's act[10]. Furthermore on common law victims of pollution must invoke duty of care which the defendant has breached that entitles the plaintiff to damages. For example, in the case of **Onojoke v. Seismograph Services Company Limited**[11]. Also victims of environmental pollution rely on the rule in **Rylands v. Fletcher** for none natural rule of land and the principle of strict liability in environmental claims.

Meanwhile under the statutes there are various remedial provisions against environmental pollution. The period can be portioned into 2 namely the colonial era and after independence. The first statutory frame work for public health and environmental problems with the Public Health Ordinance of 1919[12]. However, Uwais CJN (as he then was) stated that:

[9] Rogers, Windfield and Jolowicz on Tort 14th Ed. 1994.
[10] Allar Iron v. SBPDC (Nig.) Ltd. Suite №. SHC/28/67 of 29/1/71.
[11] Suite No. SHC/28/67 of 29/1/71 unreported cited in
[12] *Op cit* p.2

> *The act of promulgation of laws to protect our environment and to compensate our citizens is of course, not new in Nigeria. As far back as 1915, the Water Ordinance, Cap 227 of the laws of Nigeria, 1948, provided for the protection of water been used for drinking, washing, cooking and for any domestic life. In 1916, the Criminal Code Ordinance, Cap 42 of the laws of Nigeria 1948 created offence against public health pertaining to the sale of unfit food or drink, diseased meat, fouling of water, burial in houses and fouling of the atmosphere so as to make it noxious to the health of person dwelling or carrying on business in neighbourhood. Again in 1917, the Public Health Ordinance Cap 133 of the laws of Nigeria, 1948, made provision against nuisance in general affecting the clearing of streets and open space in townships, infection disease, slaughter houses and sales of meat*[13].

Other statutes that were also enacted during the colonial era to address the issue of environmental pollution include the Mineral Ordinance of 1914 amended in 1925, 1950 and 1958[14] respectively. The objective of this statute is the prohibition of pollution of waters course[15] and it provides for compensation for example Section 95 and 96 of the Minerals Act. This Act was amended recently and referred to as Nigerian Minerals and Mining Act, 2007. It make provisions for compensation for damages and pollutions, and this is contained in Section 125. Also the Criminal Code 1958[16] provides for the legal framework for seeking redress from environmental claims.

[13] Uwais, M.L. CJN at National Work Shop on the Development of the Law on Responses, compensation and Liability for Environmental Damage in Nigeria Held at Sheraton Hotel and Towers Abuja From 25th-26th March, 1995 in Tobi, N. (ed.) *Uwais Through the Speeches* Snaps Press Ltd Enugu 2006 pp.2-5

[14] LFN Cap C38, 2004

[15] Ibid Section 99

[16] Ibid Cap C38, 2004

The colonial legislation was characterized with the fact that it was mainly aimed at accelerating pace of exploitation of the environmental resources[17] which led to irreversible degradation of the environment; glaring example is the effect of Tin Mining in Jos Plateau State, where open-cast mining has been going on for several decades. There is a tremendous amount of scarification of land surface, resulting in the existence of numerous mine pits now abandoned. These pits constitute serous permanent danger to human health[18].

Colonial legislations was also concerned with allocation, exploration and exploitation of natural resources than their management for example; the Forestry Law of 1938 focused on state monopoly rights and licensing for their exploitation. This laws, mostly never address the issues of rehabilitation of environmental damages[19].

However, upon the attainment of independence in 1960 various statutes were enacted to address the issue of environmental pollution. Some of these were enacted on the wake of impact of industrialization on the environmental policy in Nigeria a new concept of environmental laws had to be articulated. This brought about series of legislation which include *inter alia*: Oil Pipeline Act 1956 amended in 1965[20], which provides for prevention of pollution of land and water resources as a result of petroleum operations and also for remedies of compensation and damages arising from operation

[17] Amokaye, O. *Op. cit*
[18] Okorodudu Fabura, M.T. *Environmental Pollution Material and Text,* Cal Top Publication Nigeria Limited, Ibadan 1998
[19] *Op. cit*
[20] Oil Pipe Line Act, LFN Cap07, 2004

contained in sections 11 and 20 (1) (3) of (4) and 19, Oil in Navigable Waters Act 1968[21], Petroleum Act 1969[22] Petroleum (drilling and Production) (Amendment) Regulation 1973 petroleum refining 1974. It can be observed that the prevalence of these laws and regulations in the first decade of Nigeria independence is some indication of sudden shift in the concept of environmental law from what it was under colonial era. The protection of citizen's health, the balancing of the ecosystems, adequate management of natural resources the problem of compensation victims of pollution actual accounted for this moment in the concepts of environmental law.[23]

Nigerian government's effort towards the protection of the environment reached new height when it began to promulgate several stringent statutory environmental laws. Essentially these laws are directed at pollution activities arising from industrialization and modernization. Amokaye[24] refers to this era as third stage of the development of environmental law in Nigeria. While Atsagbua[25] refer to this period as post 1988 concept of development of environmental law in Nigeria, similarly, Okorodudu-Fabura[26] see this period as an awakened the Nigerian public and the country's leadership from environmental inactivity to what has become a sustained environmental consciousness in the country.

[21] Cap O6 LFN, 2004
[22] Cap P10 LFN, 2004
[23] *Op. cit*
[24] Amokaye, G.O. *Op cit*
[25] Atsegbua, L. et al *Environmental Law in Nigeria Theory and Practice,* Alaba Lagos 2004 p.5
[26] Okorodudu-Fabura M. T. Op. cit pp.8-9

Following the surreptitious dumping by ships load of toxic waste from Europe by an Italy company at a small town of Koko in present Delta State, South-South Nigeria, this incident actually motivated serious consideration by the government in formulating policies on environmental laws in Nigeria with the sudden realization of that the erstwhile scope and concept of environment needed a redefinition as well as drafting of new pollution measures to address emerging problems[27].

Furthermore, it is pertinent to note that Koko incident of 1988 actually increased Nigeria's awareness of the need not only to identify pollution agents but also to adopt a conceptual and systematic approach in environmental pollution. Consequently, at this point in time the concept of environmental law/pollution in Nigeria began to follow the patterns of some develop economics of the world[28]. The Federal government of Nigerian organized an international workshop on environmental policy from which it came out with a document titled 'Federal Republic of Nigeria National policy on the Environment[29]. Among other things, the national policy on the environment formulated national pollution goals and strategies for implementation[30]. It is here that the establishment of an administrative and enforcement organ in the nature of Federal Environmental Protection Agency[31] was proposed, prior to this workshop the Harmful

[27] Atsebua, *Op. cit*
[28] Ikhariale M. *The Koko Incident, The Environmental and The Law in Syllon* (ed.) The Law and the Environmental in Nigeria Vantage Publishers Ibadan 1989 p.73
[29] Atesebgua, et al Op. cit.
[30] The Workshop was Held in Collaboration with UNEP on 12-16th September 1988 at Lagos.
[31] Aina and Adedipe (eds.) *The Making of Nigeria Environmental Policy,* University Press, Ibadan 1991 p.311

Waste (Special Criminal Provision etc.) Act[32] was promulgated in the year 1988 and the waste same Act makes it criminal offence punishable with life imprisonment to carry, deposit, dump transport import sell or buy or negotiate trade in harmful within Nigeria territory or the exclusive economic zone and also provide for civil remedies arising from dumping of waste.

Also in the year 1988 saw the establishment Federal Environmental Protection Agency by the Act of Federal Environmental Protection Agency Act (FEPA)[33]. This statutory agency was charged with responsibility for overall protection of the environment. Similarly, FEPA was mandated to monitor the implementation of Harmful Waste Act[34]. The promulgation of FEPA Act mandated a shift from overdependence on common law principles to stringent statutory provision for environmental pollution.

By 1999 the Federal Ministry of Environment was created and it took over the functions of Federal Environmental Protection Agency which was created under the FEPA Act. Further in 2007 the National Environmental Standard Regulation Enforcement Agency Act (NESREA)[35] passes into law and by virtue of section 36 of NESREA Act it repealed Cap F10 of the Laws of Federation of Nigeria 2004.

Earlier, promulgated since Nigeria's return to democracy is the National Oil Spill Detection Responses Agency, Act[36] (NOSDRA). This Act provide for regulation of spillage oil and gas sector. Before now there were legislations such as Environmental

[32] Ibid p.327
[33] Cap H1 LFN, 2007.
[34] Cap F10, LFN, 2004
[35] Ibid
[36] Federal Republic of Nigeria Official Gazette №. 92 Vol. 93. 2007

Impact Assessment (EIA) Act[37] National Environmental Pollution (Efficient Limitation) regulations, National Environmental Protection (Management of solid and Hazardous waste) regulations.

Similarly, there are various International Treaties Charters Protocol Convention and Covenants which Nigeria is a signatory to ratified and domesticated and some of these international treaties by virtue of Section 12 of the Constitution[38] have been implemented and deemed to be part of our laws. See **Abacha v. Fawehimin**[39]. These International Treaties such as International Convention on Civil Liability for Oil Pollution damage 1954 as amended in 1962 and 1969[40]. This international law was introduced to check oil pollution and to compensate victims. The purpose of this is to provide uniform international rules and procedures to determine question of liability and provide adequate compensation to person who suffers damages cause by discharge of oil from ships.

Despite existence of these laws in Nigeria, there is no comprehensive statutory enactment for compensation of victims of pollution in Nigeria while some merely provides for punitive measures to be taken against polluters.

The injury caused to victim of environmental pollution can have far reaching effect on their activities and wealth. It is only fair that they be adequately compensated under our laws. No Act however perfectly and meticulously drafted can be free from

[37] Ibid №. 72 vol.93, 2004.
[38] Cap E iz Ibid
[39] CFRN 1999.
[40] NWLR (2000) 6 (Pt. 660) p.228.

drawbacks, shortcomings and lacunae. These Acts, have not adequately address the plight victims of pollution in Nigeria. There is the need to appraise comprehensively the remedies of victims of environmental pollution in Nigeria and the mechanism use for the enforcement of environmental claims.

1.2 Statement of the Research Problem

Arising from the historical background are the following problems:

First, from the literature review there has emerged a problem of victims of environmental harm securing remedies for the harm they have suffered.

Secondly, Courts and Alternative Dispute Resolution mechanisms for environmental pollution are plagued with certain problems.

It is beyond dispute that pollution has adverse effect on man's health and wealth. Consequently various Acts are enacted to regulate pollution activities some of these Acts are laced with criminal remedies in forms of fines or terms of imprisonment. These are a common feature of environmental statutes in Nigeria. It was the practice under various customs in Nigeria to impose fine in the event of pollution. The numerous statutes that provide for remedies for victims of environmental pollution includes the Harmful Waste (Special Criminal Provision etc.) Act, Oil Pipeline Act, Oil in Navigable Waters Act, Petroleum Act Nigerian, Mineral and Mining Act and National Environmental Standard Regulation Enforcement Agency, all these Acts made provision in form of criminal or civil remedies at times both but these have not adequately address the plight of the victims of pollution.

Despite the provision for remedies for victims of pollution under some of these Acts victims has continue to suffer without remedies at the expense of this laws or body charge with the responsibility of interpreting the provision of these laws. The first problem this research investigates is the adequacy or otherwise of the statutory provision for remedies for victims of environmental pollution, is the fines and terms of imprisonment commensurate to the offences and compensation and damages fair and adequate?

This research investigates the mechanism for the enforcement of the claims for environmental pollution. Environmental litigation which is main tool for the enforcement of some of these remedies is faced with plethora of problems that are disincentives to the victims. Examples are; prove of claim that requires expert witness, proximate course, time and the attitude of the court to evolve new precedence as it tend to have made law of tort seem static. Thus the polluters exploit these weaknesses in the existing laws. Example statute such as Oil Pipeline Act provides for payment of damages to be awarded but there is no clearly define standard for quantum of damages to be awarded. In this regard courts are left with wide discretion to ward damages fair and adequate. This is a problem given the conservatism nature of our courts.

1.3 The Scope of the Research

The scope of this research work is determined by the objective as identified by the research problems as such only issues germane to remedies for environmental pollution particularly statutes that provides for such remedies that aid in the attainment of the

objective of this research will be given prominence. Thus issues that do not help the attainment of this research will not be considered except where the circumstance demands.

In other words, the scope of this research is circumscribed by its objectives. Statutes such as the Harmful Waste (Special Criminal Provision etc.) Act, Oil Pipeline Act, Oil in navigable Waters, Petroleum Act Nigeria Mineral and Mining Act, 2007, National Environmental Standard Regulation Enforcement Agency Act, 2006 and International Treaty such as Rio Declaration on Environmental Development will be assessed. The provision for both criminal and civil remedies will also be examined within the framework of the research problem.

Although, the statutory provisions for remedies contained in the main bodies of the Acts identified above will be examined, the scope of examination and analysis will be limited to the specific provisions of these Acts that provides for remedies for victim of environmental pollution in Nigeria. This research is titled legal remedies for victims of environmental pollution in Nigeria is located within the Nigerian environmental laws so, it is expected that territorially, the work should be apply to the whole country, while attempts are made to cite relevant examples within the country and where necessary from other jurisdictions.

1.4 Objective of the Research

The objective of this research work is to find solution to the problems raised by the statement of problem. Specifically it is the objective of this research:

1. To identify the criminal and civil remedies for environmental pollution
2. To examine the problem if any, associated with the remedies provided under various laws on environmental pollution.
3. To enhance access to information on various mechanism that can be explore to enforce these remedies.

1.5 Research Methodology and Sources of Information

This research adopts doctrinal methodology i.e. content analysis. In other words, statutes, cases laws, and other relevant literature or data will be analysed. Therefore, this study is wholly library oriented research. Also, this research uses both primary and secondary sources. The primary sources here includes various Acts, and case laws, while the secondary sources of data for this research includes published and unpublished work of scholars relevant to the research. These include book; journals, articles, seminar papers, newspapers and other periodicals.

1.6 Literature Review

It is a fact that there are number of books and articles written and published in this area of environmental laws. There are also various legislations both national and international on this area. In this section we propose to review some existing literatures with the view of finding out the extent to which scholars, commentators and writers have

studied this all important area on one hand and on the other examine the lapses or lacunae in their presentations and the new development.

Amokoye's[41] contribution dwelt on existing customary practice before the advent of colonial rule, to the era of colonial regime. His discourse give a good chronicle of various Ordinances, Act and International Treaties to which Nigeria is a party and signatory to, this the learned author did up to 2002. New statutes have been enacted and the basis of his earlier analysis is no longer the position of some of our laws.

Atsegbua et al[42] their work focus on theory of environmental law in Nigeria this work besides its general treatment of pollution control and management it did not give any attention to the use of remedies for pollution. This is a major draw on this modest attempt by these authors.

Okorodudu-Fabura[43] discourse draws extensively from Federal Environmental Pollution Agency Act, which has been repealed pursuant to National Environmental Standard Regulations Enforcement Agency Act. The learner author anchors the basis of claim of pollution on negligence and rule of *Rylands v. Fletcher*. These are not the only means of seeking remedies under our laws, more so, some statutes expressly provide for remedies of compensation and damages.

[41] Op. cit
[42] Op. cit
[43] Okorodudu-Fabuire, M.T. Op. cit.

Abdullahi's[44] work which is rather recent given the year of publication is bereaved of current legislation on environmental regulations in Nigeria. The work ought to have capture and discuss the provisions of Nigerian Mineral and Mining Act, 2007, NESREA and NOSDRA. The inability to cover these statutes is the major constrain of this piece of work.

Ogbuigwe's[45] article is one of the earliest in this area and as at the time of the write up the writer admitted that there was no comprehensive statutory enactment on remedies for victims of oil Nigeria. The writer rightly observed that victims resort to the general principle of law of torts which in most cases are inadequate to meet with their plight given the then restrictive judicial approach. The contribution is anchored solely on oil pollution.

This is not the only environmental problem in Nigeria, moreso, new statutes have since been enacted.

Professor Ladan in his books Materials and cases in Environmental Law[46] and Biodiversity, Environmental Litigation Human rights and Access to Environmental Justice[47]. The former is a comprehensive study of environmental law material and cases the author's analysis was based on the existing statutes while the latter which was published in 2007 did not deal with new statutes that had came into force.

---

[44] Abdullahi, S. Z. *The Upstream Environmentalism Government: The Niger Delta and Multi National Oil Industry* Faith Printers International, Rimi Tsiwa, Zaria 2009

[45] Ogbuigwe, A.K. Compensation and liability for Oil Pollution in Nigeria. *Journal of Private and Public Law,* Vol. 3 1995

[46] Ladan, M. T. *Material and Cases on Environmental Law*. Econet Publishing Company Limited, Zaria, Kaduna State, 2004

[47] Ladan, M.T. *Biodiversity Environmental Justice,* Faith Printer and Publisher Rimi Tsiwa, Zaria 2007.

Nwosu[48] opined that broadly speaking environmental claims within the sphere of negligence trespass to land and nuisance, so as to extract compensation by the victims of pollution. It is an axiom there are inherent difficulties faced by victims in their quest to make claim under these common law rules. Victims can also make claims for remedies under various Acts and also there are new statutes in place.

Ebeku's[49] work in this area of environmental law just likes many other authors or writers examine the common law of tort as base of claims for remedies. The major fault of this write-up is the inability to examine other approaches to addressing issues as it affects the victim of environmental pollution in Nigeria. Also the writer draws exclusively from the FEPA Act which is now repealed.

Fekumo's[50] work sternly advocated that the victims of environmental pollution should prove strict liability and damages given the poverty level of most victims of environmental pollution in Nigeria. It will be a Herculean task for the victim to procure the services of expert witness also the judges and the legal practitioners are mostly ill equipped or marooned to appreciate the scientific issues involved or associated with environmental pollution cases. This is the problem of this contribution. It is also solely based on oil damages. It is worth noting that oil pollution has received perfunctory attention in Nigeria.

---

[48] Nwosu, L.E. Appropriate Mechanism for Enforcement of Environmental Claims Juriscope. A Completion of Workshop Materials of Alpha Juris Containing Legal Education. 1st ed. Design Constrain Ikeja, Lagos 2001 Series.

[49] Ebeku, K.S.A. Legal Remedies for Victims of Environmental Pollution in Nigeria N L P J Council of Legal Education, Nigeria Law School 1998 Vol. 2.

[50] Fekumo, J. F. "Civil Liability for Damages Cause by Oil Pollution", in Omotola (ed.) *Environmental Law in Nigeria Including Compensation,* University of Lagos, 1998.

Ibidapo-Obe's[51] discourse in premised on criminal liability resulting from pollution fines and other penalties- eventually imposed on the person responsible pollution do not impact on the victim for personal effects health and sources of wealth the pollution must have occasioned on them. This is the constrain of this write-up.

From the above it is glaring that there is no dearth of write-ups in this all important areas of environmental law. This literature will serve as foundation for this presentation. However, given the new Acts that have been enacted and coupled with the fact that statute such as FEPA which featured mainly in the earlier write-up has been repealed. Also it is quite clear that a great deal of academic research is still required to further enrich these existing literatures on legal remedies for victims of environmental pollution in Nigeria. For example, there is the need to clearly identify the adequacy or otherwise of these both criminal and civil remedies for pollution. What are the positions of the statute? What are the mechanisms for the enforcement of the laws? This research hopes to fill the gaps existing in the literature and to contribute to address issues as it relates to the topic under discourse.

1.7 Justification of the Research

This work is justified by the problems raised by the statement of the problems contained in section 1.3 of this thesis. The work is also justified by its relevance to law students, law lecturers, legal practitioners, courts and the general public.

[51] Ibidapo-Obe A. "Criminal Liability of Damages Cause by Oil Pollution" in Omotolla (ed.) *Environmental Laws in Nigeria Including Compensation.* University of Lagos.

It is a fact that the environmental pollution will always occurs, it is equally a fact that when this pollution occurs it must affect health and on wealth of some people, effort is therefore required to be made to ensure that people affected are compensated for the damages suffered. This research aims to appraise the existing legal remedies for victims of environmental pollution given the effect of same on the health, property and means of livelihood.

Consequently, it is significant to strengthen the statutes that provide remedies for victims of pollution. This research is an effort in that direction and therefore not only relevant but also timely.

1.8 Organisational Layout

This thesis is divided into five chapters. The first chapter is captioned the introduction. This chapter captures, among other things, the historical background, it review some literature pertinent to the field with a view to appreciating the extent to which other scholars have studied the area and find out the lacunae in the literature reviewed and some statutory provisions. Also it set out the scope of this research and it also identified the problem which this research intends to investigate.

Chapter two examines the criminal remedies provided by some statute on environment in Nigeria as well as constrains associated with enforcement of these criminal remedies.

Chapter three identifies and analysed the various civil remedies provided by the Acts. These statutory remedies are in form of compensation, damages, injunction and rehabilitation of polluted environment and the victims.

Chapter four considers the enforcement mechanism of the environmental claims and the problems associated with mechanism such as litigation and other avenues provided under Alternative Dispute Resolution

Chapter five which is the last chapter of this research present some major findings and recommendations of the research.

CHAPTER TWO

CRIMINAL REMEDIES

2.1 Introduction

There are various criminal remedies provided by different statutes on environmental protection in Nigeria. Essentially, these criminal remedies are fine, imprisonment and forfeiture. The common feature of various statutes in Nigeria is that they have been laced with penal provisions and hence they numerously prohibit the doing of certain things that will cause environmental pollution.

This chapter examines the various statutory provisions of criminal remedies for victims of environmental pollution and the underlying traditional theories of punishment such as deterrence and retribution are the centre of this discourse.

2.2 Legal Framework for Criminal Remedies

The provision of most of these Acts carries criminal sanctions with it in nature of monetary fines and/or a term of imprisonment. In other words, if an individual or corporate body violets any of the provision of such statute he is liable to criminal charge. In this case, the idea is to inflict some pain on polluters or cause them some monetary loss. Some of these statutory provisions are hereunder examine.

The Harmful Wastes (Special Criminal Provision etc.) Act[1] This Act essentially prohibits anyone from engaging in any activities relating to purchase, sale, importation, transportation, deposit and storage of harmful waste. While Sections 1 to 5 list offences

[1] Cap H1, L F N, 2004

in respect of harmful waste, Section 6 provides penalties in respect of indiscriminate dumping of harmful waste. It states; 'any person found guilty of crime under Sections 1 to 5 shall upon conviction be sentenced to life imprisonment.

It should be noted that the offences are strict liability offence[2]. It therefore removes the problems of proof that may arise in the event of litigation and makes the legislative provision easier to enforce. Also that Act provides penalty where the violator is a body corporate[3]. The officer in charge of the corporation at the time of the commission of the offence will be liable to punishment unless he can prove that the offence was committed without his knowledge or that he exercise all due diligence to prevent the discharge.

The Oil in Navigable Waters Act: This legislation is to protect waters from pollution and is to give effect to International convention[4]. This Act prohibits particular pollution activities and provides penalties. Pursuant to Section 6[5] provides that; 'A person guilty of any offence under Section 1, 3 and 5 of this Act shall, on conviction by a High Court or a Superior Court or summary conviction by any court of inferior jurisdiction be liable to a fine: provided that an offence of this Section be punishable on summary

[2] Akujobi, A.K. The Effectiveness of Criminal Sanctions under Environmental Laws in Nigeria. In Emiri and Deinduomo (eds.) *Law and Petroleum Industry in Nigeria. Current Challenges. Essay in Honour of Justice Kate Abiri,* Malthhouse Press Lagos 2009 p.352

[3] Section 7 Op. cit.

[4] International Convention for the Prevention of Pollution of the Sea by oil 1954 to 1962 and was hailed to by Nigeria in 1968

[5] Oil in Navigable Water Act Cap O6, LFN, 2004.

conviction by a court having jurisdiction inferior to that of a High Court by fine exceeding N2, 000[6].

It is observed that this Act vest jurisdiction in the High Court and an inferior court[7] (Magistrate Court). This provision is in conflict with Section 251 (n) of the Constitution of Federal Republic of Nigeria[8] that vest exclusive jurisdiction in the Federal High Court on matters: - mines and minerals (including oil fields, oil mining, geological surveys and natural gas).

It is also observed the sum of N2, 000 imposed as find is grossly inadequate considering the realities on ground and the need for this provision to be amended cannot be overemphasised.

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act [NESREA] replaces the repealed[9] Federal Environmental Protection Agency Act[10]. The National Environmental Standards Regulations Enforcement Agency Act has 37 Sections of which 8 Sections[11] are laced with provisions for criminal sanctions ranging from fine or term of imprisonment for individual or corporate polluters.

It is observed that the offence and provisions for penalty in the National Environmental Standards Regulations, enforcement Agency Act are not omnibus warded

[6] Ibid
[7] Ibidapo-Obe, A. Criminal Liability for Damages caused by Oil Pollution. In Omotola (ed.) *Environmental Laws in Nigeria including Compensation*. University of Lagos 1990 p.232
[8] 1999
[9] Section 36 Repealed FEPA
[10] Cap F10 LFN, 2004
[11] Sections 20(3) and (4), 21(3), 22(3) and (4), 24(4) and (5), 25(2) 26(3) and (4), and 27(3), (4) and (5) Provides for Penalties in form of Fines/Imprisonment.

and one have to wide into the entire 37 Sections to identify the various offences and penalties created therein.

It is also observed, NESREA provides for wide range of issues on environmental pollution for the agency notwithstanding the provision of Section 32(3)[12] which provides that;

> *Subject to the provision of section 174 of the constitution of the Federal Republic of Nigeria 1999 (which relates to the power of Attorney-General of the Federation to institute continue or discontinue criminal proceedings against any person in a court of law), any officer of the Agency may with the consent of the Attorney-General of the Federation conduct criminal proceedings in respect of the offence under this Act or regulation made under this Act.*

It is observe that given the limited reach of the Agency it can hardly leave up to expectation as it does not have the manpower to prosecute all environmental offenders. Also the Attorney-General is preoccupied with other issue as the chief law officer.

It is further observed that, the NESREA Act, pursuant to Section 32(4) provides;

> *In a judicial proceedings for any offence under this Act or any offence under this Act or nay regulation made under it, the provisions of the Criminal Procedure Act, or depending on the venue, the criminal procedure code shall, with such modification as the circumstance may require, apply in respect of such matter to the same extent as they apply to the trial offences generally.*

It is observed that this statutory provision can be invoked by victims of environmental pollution for the purpose of extracting compensation. The Criminal

[12] NESREA Act, 2007

Procedure Act (CPA) and Criminal Procedure Code (CPC) respectively provide that offender pay for injury cause to the victim.

These provisions are contained in Section 435(2) of CPA[13]. Similar, provision is provided for by Section 365(1) of CPC to the effect that: whenever under any law in force for the time being a criminal court impose a fine, the court may when passing judgment, order that in addition to a fine, a convicted person shall pay a sum - (b) in *compensation in whole or part for injury caused by the offence committed where substantial compensation is in the opinion of the court recoverable by civil suit*[14]

It is observed that this provision have for decade existed in our statutes but have not been subjected to judicial interpretation by the superior courts of the land and this account for lack of precedence on these provisions.

The Associated Gas Re-injection Act[15] this important legislation is aimed at addressing the menace of atmospheric pollution through gas flaring in Nigeria. It was meant to compel companies producing oil and gas in Nigeria to submit preliminary programme for gas re-injection. Section 3 prohibits the flaring of gas produced in association with oil production after 1st January 1984, without permission of the Minister .Penalties prescribed under Section 4 includes forfeiture of conditions and withholding of all or part of any entitlements.

[13] Cap C41 LFN, 2004
[14] Cap C42 LFN, 2004
[15] Ibid

It is observed, this very important Act aimed at controlling gas flaring since 1984 has not met it statutory mandate as it has not succeeded in stopping gas flaring. The major defect in that the companies can apply to continue gas flaring.

There are some other statutes lace with criminal sanction some of these are Water Resources Act[16] which pursuant to Section 18 makes an offender liable under this Act to be punished with a fine not exceeding N2,000 or an imprisonment term of 6 months. Also, Acts such as Criminal Code and penal code provides for various sanctions for environmental pollution in Nigeria

2.3 Fines

This is a common provision in all environmental statutes in Nigeria. It is the most common punishment in every part of the world. Where a fine is imposed, this exculpates the offender from further liability. However by virtue of the provision of Section 32(4) of NESREA Act which provides for the application of either Criminal Procedure Act or Criminal Procedure Code depending on the venue the court should be able to extract some forms of compensation for the victims of environmental pollution.

It is observed that the fine imposed by earlier statutes for example Section 6 of Oil in Navigable Water Act[17], for a fine of N2,000 is ridiculously low or paltry and not likely to serve as deterrence to pollution whose pollution activities is far reaching to both human health and environment.

[16] Cap W2, LFN, 2004
[17] Cap O6 Ibid

It is suggested that the heavier the fines it will have greater deterrent effect. More so, where the polluters are multinational corporations with vast resources at their disposal it is suggested that the basic principle that should underlay the imposition of such heavy fines are the need to rehabilitate the environment which has been polluted.

Perhaps it is because of the quantum of fines of some of these provisions that are grossly inadequate the some of these laws are honoured more in breach than compliance.

Customary Law: Various customs in Nigeria provides for the imposition of fines arising from environmental pollution. The violator is usually summoned before the village head who after having heard the parties imposes fine on the offender.[18]

2.4 Term of Imprisonment

Virtually, every environmental related statutes in Nigeria provides for term of imprisonment arising from the doing of certain prohibited act as prescribed by the statutes. For example Section 6 of the Harmful Waste (Special Criminal Provision etc.) Act[19] prescribed life imprisonment for any person convicted for indiscriminate dumping of toxic waste in Nigeria. Since the coming into force of this Act there is no record of any criminal conviction of crime arising from the breach of the provision of the Harmful Waste Special Criminal Provision Act.

Similarly, various Sections of the National Environmental Standard Regulations Enforcement Agency Act for example section 20(3) which provide that:

[18] Adewale, O. Customary law. In Ajomo and Adewale (eds.) *Environmental Law and Sustainable Development in Nigeria.* NAILS 1994 p.158
[19] Cap H1 LFN, 2004

> *"A person who violates the regulations made pursuant to sub-section (1) of this section commits an offence and shall on conviction, be liable to a fine not exceeding N200,000 or imprisonment for a term of one (1) year or to both such fine and imprisonment and additional fine of N20,000 for every day the offence subsists"*[20].

This provision is omnibus worded that it contained provision for fine or prescribed term of imprisonment to an individual offender. This is a common characteristic of National Environmental Standard

It is observed that despite the prevalent air pollution, noise pollution and water pollution that is being perpetuated there is no record of any criminal prosecutions by this regulatory agency. However, Usman[21] observed that: 'even though it is the Attorney-General who is vested with the locus standing to litigate environmental harm, there are no case in which he has done so in Nigeria. He stated further that instead of initiating prosecution for environmental offences the office of the Attorney-General[22] often constitutes a stumbling block to successful litigation by aggrieved individuals.

In the case of ***Jimoh Lawani v. West African Portland Cement***[23]. The plaintiffs who were inhabitants of Ilori Village in Ogun State while the defendant a multinational organisation engaged in production of cement. The plaintiff's claim was for damage allegedly done to their crops, buildings, stream and other property as result of the defendant's company operations. The court dismissed this suit on the ground that the Attorney-General was a necessary party and failure to join the A.G. was fatal.

---

[20] NESREA Act, 2007

[21] Usman A.K. An Assessment of Environmental Protection Law in Nigeria. *Unpublished Ph.D Thesis.* Submitted to Faculty of Law ABU Zaria. 2005 p.312

[22] Section 174, CFRN 1999

[23] (1973) 3 UILR (Pt.4) p.459

It is observed that some environmental action challenging industrial pollution had been rebuffed by court insistence that the A.G. must be made a necessary party. This has denied many victims of environmental pollution in Nigeria opportunity to seek remedy for pollution.

2.5 Forfeiture

This penal sanction is prescribed by some environmental statutes. It is impose more on corporate polluter usually in lieu of any other term of penalty such as fine or term of imprisonment example of forfeiture is contained in Section 6(a) and (b) of the Harmful Waste (Special Criminal Provision etc.) Act[24] that:

a. Any carrier, including aircraft, vehicle, container and any other thing whatsoever used in the transportation or importation of the harmful waste; and

b. Any land on which the harmful waste was deposited or dumped, shall be forfeited to and vested in the Federal Government without any further assurance other than this Act.

Similarly, provision for penalty of forfeiture can be form in Section 4 of the Associated Gas Re-injection Act.

The objectionable purpose of imposition of fine, term of imprisonment or both on individual pollutes and imposition of fine and in some cases forfeiture by corporate polluters is mainly for deterrence of the polluters and other members of the society that are likely to follow suit.

[24] Cap H1 LFN, 2004

Another underlying philosophy for criminal sanctions for environment statute is the utilitarian approach which stemmed from believes that punishment is imposed with eye on the future result that others do not commit the same offence. Also these arrays of sanctions or penalties are put in place with a view of retribution/fair desert. This philosophy is to the effect that let the offender feel the pain too. Having denied other members of the larger society free and healthy environment free of pollution the polluter should also suffer.

It is observed that the philosophy of deterrence as rightly observed by Okonkwo and Nash is doubtful[25]. Hence the idea of deterrence, retribution and punishing in environmental statutes has not really yielded the desired result particularly from corporate bodies considering the seriousness of environmental pollution particularly on the health and wealth of person. It is suggested that these penalties are not adequate enough and as such has not really been able to curb or control further environmental degradation.

It is our submission that these corporate bodies make huge profit from various activities that result in pollution and as such the sanction should be increased and possibly to be made to restore the environment.

2.6 Constraints to Impositions of Criminal Remedies

Some legislations were discussed in 2:2 in this research work which provides for various penalties for environmental pollution, however, there are certain constraints

[25] Okonkwo, C.O. *Okonkwo and Nash on Criminal Law in Nigeria*, 2nd Edition, Sweet and Maxwell 1980 p.34

which make the environmental criminal remedies in above statutes ineffective in their application as remedies for victim, of environmental harm in Nigeria. These include:

Prosecution of environmental crime in Nigeria is not yielding desired result when compared to economically advance nations of the world, reason being that the culprit in the whole affairs are government and corporate organisations, who are the manipulators and promulgators of the sanctions. Based on the above Akujobi[26] opined that the dormancy of criminal sanctions is largely due to the fact that they are primarily not intended to be effective.

The enforcement agencies are chronically under staffed underfunded and often tend to be more overly sympathetic to the technical and economic problems of the companies they regulate. Also enforcement mechanisms provided by the laws are weakened by fraud, a number of abuses and irregularities. As a result the activities of some Agency personnel place a clog on effective implementation and enforcement of some provisions of the law[27].

Environmental offences are matters of public interest and as such are presented on behalf of the state. As a result only agents of state such as police[28], Ministry of Justice etc. can prosecute for these offences. This has left enforcement and implementation to the discretion of these agents. Most time, these officials are settled by the operators and as such no prosecution is carried out. Where they decide to prosecute the unnecessary delays

[26] Akujobi, Op. Cit p.355
[27] Nlerun, F.A.E. The Challenges of Environmental Protection in Nigeria, *UNIZIK Law Journal,* Vol. 5 No.1 2005 p.355
[28] Tobi, N. Judicial Enforcement of Environmental Laws in Nigeria, In Ladan (ed.) *Law, Human Right and The Administration of Justice in Nigeria. Essays in Honour of Justice Muhammed Lawal Uwais.* Faculty of law ABU Zaria 2001 p.263

in our judicial process makes nonsense of the proceedings and very minimal sanction are imposed after protracted prosecution.

CHAPTER THREE

CIVIL REMEDIES

3.1 Introduction

There are various types of civil remedies that can avail victims of environmental pollution in Nigeria. These civil remedies include; compensation, damages, injunction, restoration and rehabilitation. Victims of environmental pollution are faced with these varieties of civil remedies to mitigate the harm suffered by them.

This chapter examines the statutory provision for compensation arising from exploration and mining activities that has occasioned personal and proprietary damage to the victim of pollution. It will also examine damages arising from wrongful act of polluters and grounds upon which damages can be awarded, so as to put the victim as nearly as possible to the position he was before the pollution occurred[1]. Further to be examined are the various civil remedies highlighted above.

3.2 Compensation

Generally, compensation means recompense for loss suffered by an aggrieved person[2]. It ensured that injured victim is not worse off after the injury complained of or his property is destroyed, a fair market value is paid for the loss or deprivation of his property. Hence there exists a statutory compensation regime for victims of environmental pollution in Nigeria.

[1] Osipitan, T. Problem of Proof in Environmental Litigation, In Omotola (ed.) *Environmental Law in Nigeria Including Compensation,* University of Lagos 1990 p.112.
[2] Amokaye, O. G. *Environmental Law and Practice in Nigeria,* University of Lagos 2004 p.661

Compensation could be relevant in two circumstances in pollution cases, first, where the land is acquired for exploration and exploratory activities. Secondly, where pollution arises from pipeline leakage, breakage or the exploratory activities[3] compensation is also supposed to be paid. The focus of this research is the second circumstance. Here, compensation in environmental matters is not restricted to personal or proprietary damages, it could be inform of restitution that is, restore the victim to status quo ante in so far as it is possible to so do through payment of monetary compensation.

3.2.1 *Constitutional Provisions for Compensation*

The right to just compensation is guarantee under the Section 44(1) and (3) of the 1999[4] . This provision is to the effect that payment of compensation to persons whose property has been compulsorily acquired shall be prompt. It is observed that this constitutional basis itself is inconclusive as it failed to provide the mode of assessing compensation and timing of payment. The payment is also not automatic; a person who claims compensation must also establish some degree of damage either to his person on property as compensation is determined by extent of damage.

However, the degree of prove of claim under common law of nuisance or negligence. It is sufficient if it can be shown that damage exists.

Other examples of legal compensatory regime are hereunder examined.

[3] Ibid
[4] Constitution of Federal Republic of Nigeria

3.2.2. *Oil Pipeline Act*

Oil Pipeline Acts[5], this Act provides for various heads of compensation. For instance under Section 6(3) of the Act it state that:

> *"The holder of a permit to survey acting under authority of Section 5 of this Act shall take all reasonable steps to avoid unnecessary damage to any land entered upon and any buildings, crops or profitable tress thereon shall make compensation to the owners or occupiers for any damage done under such authority and not made good"*[6].

This provision impose a duty on holder of license to avoid damage to the land entered upon and where damage are occasioned the occupiers or owners are entitled to be compensated for the damage done to the land and building.

Also this Act pursuant to Section 11(5) provides for various heads for payment of compensation viz:

a. *to any person whose land or interest in land (whether or not it is land in respect of which the licence has been granted)is injuriously affected by the exercise of the right conferred by the licence, for any such injurious affection not otherwise made good' and.*
b. *To any person suffering damage (other than and account of his own default or account of the malicious act of third person) as a consequence of any breakage of or leakage from pipeline or an ancillary installation for any such damage not otherwise made good. And if the amount of such compensation is not agreed*

[5] Cap O7 LFN, 2004
[6] Ibid

between any such person and the holder it shall be fixed by a court in accordance with Part IV of this Act[7].

Also this Act pursuant to Section 20(2) provides various heads for compensation for damage which the court shall award. These are:

a. damage done to any buildings, crops or profitable trees;
b. any disturbance caused by the holder in the exercise of such right;
c. any damage suffered by any person by reason of any neglect on the part of the holder or his agents, servant or worker;
d. any damage suffered as consequence of any breakage of or leakage from pipeline and
e. loss (if any) in value of land or interest in land.

These various provisions arising from activities of oil gas exploration and exploitation that occasioned pollution to victims of environmental pollution entitle them to claims for monetary compensation for damage suffered.

The major problem of compensation from this provision Fekumo[8] opine is the improper identification of the cause of action which would be gathered from the writ of summons and statement of claim. This is as a result of lack of understanding of the important element of disturbance and injurious affection thereby leading to interpolation of common law action for damages with clear provision for compensation. Example in

[7] Ibid
[8] Fekumo F. J. The Problem of Jurisdiction in Compensation for Environmental Pollution and Degradation in Nigeria, (Oil and Gas) A fundamental Right Enforcement Alternative. Being a paper presented at the Nigerian Bar. Association 2004 Annual Delegate Conference on Wednesday 25th August, 2004 at La meridian Hotel Abuja p.15

the case of **Mother Cat (overseas) Nigeria limited v. Chikale Ughaleje**[9]. The plaintiff claim was for the sum of N50,000 being for reasonable and adequate compensation and/or damages due and payable to the plaintiff by the defendant for paralyzing and/or obstructing and/or disturbing plaintiff's fishing right and/or surface right. The defendant /appellant counsel contended at the trial that the action is not an action for compensation but founded on tort. The Court of Appeal approved the above reasoning on appeal.

It observed that this problem is created by the inelegant drafting of the claim by the learned counsel. A lawyer's competence is anchored on, the knowledge gained in the course of qualification; post qualification knowledge acquisition and experience gained in the ordinary course of practicing his profession[10]. With Nigeria's population over 150 million people and over 121 universities (Federal, State and privately owned)[11] no single university offers degree programme in environmental law. Acquisition of expertise practice is an illusory goal for environmental lawyer in Nigeria[12]. As a reaction to the imperative that lawyers need to be trained to obtain the much needed expertise, there is need to strengthened capacity of not only legal practitioners but also judges who play critical role at the national level in environmental law process through workshops, seminar and conferences in Nigeria.

[9] (Unreported) Appeal No. CA/B/175/97 of 19th June, 1990

[10] Awogbade, S. What is the Place of Practice of Environmental Law in Africa's Development? Being a Paper Presented at Guinea current Large Marine Ecosystem project Regional Capacity Building Workshop for Environmental lawyers and journalist held at Accra, Ghana, 8 – 10th May, 2006 p.17

[11] Joint Admission Matriculation Board Brochure 2012/2013 Unified Tertiary Matriculation Examination. Published by Office of Registrar JAMB National Headquarters, Bwari, Abuja.

[12] Ibid

While still on Oil Pipeline Act, it is observed that they have certain constraint, such as the issue of jurisdiction is vested in magistrate courts and the High court of the State. This is provided for under Section 19[13] that:

> *If there is any dispute as to whether any compensation payable under any provisions of this Act or as to person to whom payable such compensation should by such dispute shall be determined by magistrate exercising civil jurisdiction in the area concerned if such magistrate has in respect of any other civil matter monetary jurisdiction of at least as much as the amount of compensation claimed and if there be no such magistrate, by High Court exercising jurisdiction notwithstanding the provision of any other Act or law, in respect of the decision of a magistrate in accordance with this Section there shall be an appeal to the High Court of the State and in respect of the decision of Higher Court of the State under this Section whether original or appellate there shall be an appeal to the Court of Appeal.*

This provision is in conflict with the provision of Section 251(n) of the 1999 constitution of the Federal Republic of Nigeria which vest exclusive jurisdiction in the Federal High Court on matters relating to Mines and mineral including oil fields, oil mining, geological surveys and natural gas.

This is the position in the case of **Shell Petroleum Development Company of Nigeria Limited v. Abel Isaiah and 2 others**[14]. The brief fact of the case is that in 1988. The defendant/appellant engaged a contractor to effect repairs on its pipeline oil spill into the plaintiff/respondent dry land, swamps and streams and caused pollution. The

[13] Cap 07 LFN, 2004.
[14] (2002) 11 NWLR (Pt.723) p.168.

plaintiff/respondent sued the defendant appellant in River State High Court claiming compensation for damages.

The trial court awarded N22 million in favour of the plaintiff. The Court of Appeal affirmed the judgement of the trial court. The appellant then appeal to the Supreme Court which held that it was only the Federal High Court that is vested with exclusive jurisdiction in matters connected with or pertaining to mines, mineral, oil fields and oil mining. Ladan[15] queried that at what stage is amendment necessary given the difficulties and suffering borne by the victims. He stated further that victims will go through further difficulties given their weak position even if the case were to start *de novo*.

Also observed under this Act is the provision of Section 20[16] which provides that where the interests injuriously affected are those of the local community, the court may order the compensation to be paid to any chief, headman or member of that community. This provision raises a number of issues such as how are the monies gotten from monetary compensation going to be utilized. Are the community leaders sincere? The payment and usage of monies paid as compensation have a very nasty history in Nigeria.

Hutchful[17] pointed out that:

> *A frequent complaint is that compensation paid by companies is inadequate and sometimes below the already existing rates. In any events compensation payment has a particularly nasty history in Nigeria (as elsewhere in West Africa). Compensation is usually not paid directly to the community concerned but to*

[15] Ladan M. T. Biodiversity Environmental Litigation, Human Rights and Access to Environmental Justice. Econet Publishers Rimi Tsiwa Zaria 2007 pp.78 – 79.
[16] Cap O7 LFN, 2004
[17] Hitchful, E, Oil Companies and Environmental Pollution in Nigeria. In Ake, *The Political Economy of Nigeria.* Longman, London 1986 p.112

intermediaries. Most of it never reaches the community but is appropriated by various lawyers, state and oil company officials, contact men and local chiefs and influential.

A process of accountability should be evolved so as to effectively make the leaders and those generally entrusted liable in the event of misappropriation or the monies can be used/or the provision of some basic infrastructural activities for the entire community.

3.2.3 *Petroleum Act*

Paragraph 37 of the First schedule of the Petroleum Act[18] the provision provides for the payment of compensation for disturbance of the surface or other right on any person...

It is glaring that this provision is like that of Oil Pipeline Act. A positive response to this is provided in the case of **The Shell Petroleum Development Company (Nigeria) Limited. v. Councillor F. B. Farah[19]**. This is a case of oil blow out which polluted vast hectare of land and efforts were made by the appellant to get expert to rehabilitate the land which was later abandoned. The trial judge ruled in favour of the plaintiff/respondent relying on the provision of Petroleum Act and awarded compensation to the tune of over 4 million naira. This was affirmed by the Court of Appeal. The significance of this case is that it was wholly decided under statute[20].

[18] Cap p12 LFN, 2004.
[19] (1995) 3 NWLR Pt. 382 p.145
[20] Fekumo J. F. The Problem Jurisdiction in Compensation for Environmental Pollution and Degradation in Nigeria (oil and gas): A Fundamental Right Enforcement Alternative being a paper presented at the Nigerian Bar. Association 2004 Annual Delegates Conference on Wednesday 25th August, 2004 at Le Meridian Hotel Abuja.

It is however, observed that there is absence of guideline in the assessment of compensation. Also observed is the restrictive meaning attached to the phrase 'fair and adequate compensation' under the Act. **Farah's** case distinguished the concept of fair and adequate compensation between the oil company and the court. While the oil company considered N2,000 as 'fair and adequate compensation'. The court thought otherwise and awarded N4.6 million. Nwosu[21] opined that; till date this decision is locus classicus in compensation claim for environmental pollution in Nigeria.

It hopes that our courts will take more of these positive steps of award of reasonable and substantial sum as compensation for damage to victims of environmental pollution in Nigeria.

3.2.4 *Nigerian Minerals Mining Act, 2007*

The Nigerian Minerals and Mining Act, 2007 pursuant to Section 161 repealed the Mineral and Mining Act[22], this Act provides for the payment of monetary compensation for damage and pollution. This is provided for under Section 125(a)[23] that; 'A licensee or leases shall pay compensation to the owner occupier;

a. whose land or interest in the land is injuriously affected by the existence of a right conferred by the licence or lease for any such injurious effect not otherwise made good and;

[21] Nwosu, L.E. *Appropriate Mechanism for the Enforcement of Environmental Claims*, Juriscope Continuing Legal Education Series 2001 p.197
[22] Cap M12 LFN, 2004.
[23] Nigerian Minerals and Mining Act, 2007

b. Who suffers damage as a result of pollution of any source of water use for domestic and other purpose as a consequence of exploration or operation of any work connected with the property, for any such damage not otherwise made good.

This provision can be explored by victims of environmental pollution. Example of negative effect of mining of minerals can be seen in Jos Plateau State where open – cast mining has been going on for several decades and there are tremendous amount of scarification of land surface[24] and ironically none of the provisions of the Minerals Act since 1946 have been invoked for the victims of environmental pollution arising from exploration and exploitation of mineral in Jos.

However, example of the application of old Mineral Act can be seen in the case of **GodPower Nweke v. Nigerian Agip Oil Nigeria Limited**[25]. The brief fact of the case is that the plaintiff claim compensation for damages to their economic tree and land due to minerals and mining operations of the defendant. The defendant admitted the averment of the plaintiff/appellant but submitted that they offered reasonable amount of compensation to the plaintiff. The Lower Court applied the provision of Section 77 of the Minerals Act[26] which provides for the payment of compensation which is 'fair and reasonable' to persons who suffers damages due to mineral and mining operations.

3.2.5 *Rio Declaration Vis-A-Vis NESREA Act*

[24] Okorodudu – Fabura M.T. *Law of Environmental Protection:* Materials and Text, Caltop, Ibadan 1998 p. 368.
[25] (1976) 9 – 10 SC 101.
[26] Cap 226, LFN, 1990.

This international instrument by virtue of Principle 13 of the 1992 Declaration which provides as follows:

> *State shall develop national law regarding liabilities and compensation for victims of pollution and other environmental damage. State shall also cooperate in an expeditions and more determined manner to develop further international laws regarding liability and compensation for adverse effect of environmental damage cause by activities within their jurisdiction or control to area beyond their jurisdiction.*

Given that there are wide range of issues of pollution that NESREA seek to regulate also germane to this is that fact that the Act is wholly mute on issue of compensation arising from other forms of pollution on which the Act has mandate[27], given that Section 7(c)[28] on the function of National Environmental Standards Regulations Agency that it shall:

> *Enforce compliance with the provision of International Agreement Protocol, Convention and Treaties on the environmental, including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous waste, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreement as may from time to time come into force.*

This provision provides a glimpse of hope on issue of compensation on other aspect of pollution given the provision of Article 13 of Rio Declaration.

[27] Section 7 NESREA Act, 2007.
[28] Ibid

It is however observed, that while Section 7(c) of Nigerian Act provides for the enforcement of compliance of international agreement other provision with same section for example Section 7(b)(i)(k) and (j)[29] oust oil and gas from areas on which the agency can exercise powers. Another example of conflict created within the statute can be seen under Section 8(g), (k) (m) and (n)[30] .

3.2.1.1 Quantum of Compensation

The quantum of compensation which may be claimed by victims of environmental pollution is not fixed and the courts in this regard are not helpful. The definition of the term fair and adequate compensation by various statute have given the courts wide latitude of discretion and is observed to have led to situation where claimant may not be adequately compensated in respect of their peculiar circumstances.

Example in the case of ***R. Mon & Another v. Shell B. P.***[31] in this case the plaintiff claimed compensation for damages from oil spell and were unable to lead evidence of specific negligent act of the defendant but however established the fact of their losses. The trial judge assesses the damages at a figure he considers to be fair and awarded them N200. This amount is obviously small.

It is submitted that the court should award something substantial to serve as deterrent to the polluters. Adewale[32] asserted that one of the major causes of strained relationship between communities and oil companies is the inability to agree on what

[29] Ibid
[30] Ibid
[31] (1970-72) 1 RSLR 71.
[32] Adewale, O. Sabotage and oil pollution in Nigeria NIALS 1991. Also Adewale, O. Judicial Attitude to Environmental Hazards In the Nigerian Petroleum Industry, *Ibadan University Law Review,* Vol. 4 No.9 p.29.

constitutes fair and adequate compensation. In ***SPDC v. Farah***[33] the Court of Appeal tried to give a definition of the term Edozie JCA (as he then was) said: 'the Petroleum Act did not define the meaning of the expression 'fair and adequate compensation'. In my view however, such compensation must be compensation to which they are entitled for the damage to their land.

It is hope that the court will shift from their rather conservative posture to positive judicial activism as we have seen from other jurisdiction. Potentially with respect to environmental related matters. In this regard also the position of the Court of Appeal is quiet commendable. It is also hope that a valuation principle would be developed that will provide basis or adequate and fair compensation/or loss suffered by the victims of environmental pollution in Nigeria. It should be noted that several factors are often taken into consideration in determining compensation[34] payable to pollution victims, these includes;

a. population and the type of community impacted,
b. the size of crops affected, whether they are seedling, medium or mature,
c. the area polluted – whether it is an area of high value,
d. time of the year – whether it occurs in dry or rainy season ,
e. the fact that pollution at times act as fertilizer and would be to the advantage of the victim in future,[35]

[33] supra
[34] Ugbe, R.O. The Polluter Pays Principles: An Analysis, *The Calabar Law Journal* Vol.vi – vii 2002 – 2003 p.153.
[35] Omotola, J. A. Environmental laws in Nigeria including Compensation. In Omotola (ed.) *Environmental Law In Nigeria Including Compensation.* University of Lagos 1990 p. 290

f. medical history of a person complaining of respiratory problem owing to air pollution and

g. The before and after value of the impacted structure

These factors will enable a fair and adequate compensation to be awarded to the victims of environmental pollution in Nigeria.

3.3 Damages

Damages are compensatory remedies provided by the statutes and under the common law. They are awarded, in form of monetary compensation to a person who complains of the violation of his legally protected right by the defendant[36]. The remedy of damages cannot be overemphasized, this is because when pollution occurs it often spears nothing as it spreads to building, farmland, road, source of drinking water and at times have adverse effect on the health of the victims.

Damages have been described as mother of all action in environmental litigation. Whether an action is commenced on negligence nuisance or both the final relief sought by the Plaintiff is usually damages arising there from[37]. Damages are awarded on the principle of *restitution in integrum* meaning that the Plaintiff be restored to status quo. The remedy of damages is therefore awarded for the purpose of restoration and rehabilitation and to reduce the consequence of the harm that has been inflicted on the victims or any other loss or injury which they have suffered as a result of environmental

[36] Amokaye, O.G. Op. cit p.654.

[37] Tobi, N. Judicial Enforcement of Environmental Laws in Nigeria. In Ladan, M.T. (ed.) *Law Human Rights and the Administration of Justice in Nigeria*. Faculty of Law A.B.U Zaria 2001, p. 272.

degradation. For remedy of damages to avail a victim of pollution the fault element on the part of the Defendant is paramount.

3.3.1 *Legal Framework for Remedy of Damages*

There are various statutory regimes that provide for remedy of damages for victims of environmental pollution, some are here examined. The Harmful Wastes (Special Criminal Provisions etc.) Act though most of its provisions are punitive. It however, provides for civil liability arising from damages[38]. The Act pursuant to Section 12(1) provides that where damages has been caused by any harmful waste which has been deposited or dumped on any land, territorial waters, contiguous zone, exclusive economic zone of Nigeria or its inland water ways any person who deposited dumped or imported the harmful waste or cause, the harmful waste to be so deposited, dumped or imported shall be liable for damages except where these damages:

a. Was due wholly to the fault of the person who suffered it, or
b. Was suffered by a person who voluntarily accepted the risk there of.

This statutory provision can be invoked by victims of environmental degradation arising from harmful wastes in any part of Nigeria. However it can avail victims on the ground that it was not his fault nor did he accept voluntarily the risk arising from the dumping of the waste on his land.

[38] Cap H1 Ibid

Further from the Act where damages such as death of or injury to any person (including any diseases and any impairment of physical or mental condition) the polluter shall be liable in damages to the victim[39]

Also the Oil Pipeline Act[40] pursuant to Section 11(5) provides for remedy of damages occasioned as a result of damage cause by the exercise of right conferred on the holder of license. Section 11(5) provides as follows:

The holder of a license shall pay compensation:-

(a) *To any person whose land or interest in land (whether or not it is land in respect of which the license has been granted) is injuriously affected by the exercise of the rights conferred by the license for any such injurious affection not otherwise made good: and*

(b) To any person suffering damage by the reason of any neglect on *the part of the holder or his agents, servants, or workmen to protect maintain or repair any work, structure or thing executed under the license for any such damage not otherwise made good: and*

(c) To any person suffering damage (other than on account of his own default or account of malicious act of a third party) as consequence of any breaking of or leakage from the pipeline or ancillary installation for any such damages not otherwise made good.

[39] Section 12(2) HWSCP Act Ibid
[40] Cap O7 LFN, 2004

This Act provides for remedy of damages to victims of pollution where injury is occasioned by an Oil company. The remedy of damages can also avail victim of pollution arising from oil operation as a result of breakages or leakage from pipeline installation arising from oil operation as a result of breakage or leakage from pipeline installation arising from negligent of the holder or his agent or even from the act of a third party.

It is observed that rather than invoke the statutory provision for remedy of damages which is clearly provided for under the Act the courts shy away from this and prefer to subject the victim to the great burden of proof under negligence in common law[41]. For example in the case of **Mothercat (Overseas) Nigeria Limited v. Chikale Ughateja**[42].

This was a claim under Section 11(5) (a) of the Oil pipeline Act but the case was decided on action for damages for negligence. Uche Omo J.C.A. (as he then was) observed *inter alia*:

> *The claim as framed is for liquidated sum representing compensation and or damages. Ex facie therefore it should be regarded either as a claim for compensation simplicita (sic) or as damages for injury done to fish pond/track on land. To decide which it really is or tilts more towards, in view of the learned trial judge founded in tort. Here again I think he is right. Even if the respondent were formerly pursuing a claim for compensation, the claim can be founded on tort and evidence led leaves the issues in no doubt.*

[41] Fekumo, J.F. *Oil Pollution and Problems of Compensation in Nigeria,* F. & F Publishers Port Harcourt 2001 pp.1-2
[42] (Unreported) Appeal No. CA/B./17/97

It must be pointed out that plaintiff's counsel who are often times marooned on issues of pollution should endeavour to draft the claims appropriately and the courts should equally shift from their conservative position. While the provision of this Act with respect to protection of individuals' right and interest is quiet commendable but it weakness, lies in its failure to make provision for restoration of land upon which compensation is paid.

Also this Act under Section 21[43] provides that where interest is injuriously affected are those of Local Community, the court may order payment to be made to any Chief, headman or member of that community on behalf of that community or that it is paid in accordance with a scheme of distribution approved by the court or that it be paid into fund to be administered by a person approved by the court on trust. The provision failed to provide a clear guide as to how this fund will be administered on the victims.

Also the Petroleum Act[44] pursuant to Section 36 of the First Schedules to the Act provides for remedy of damages. The Act expressly made attempts to regulate environmental problem of oil pollution as it affects human life and property. The provision of this Act was positively applied in the case of ***Shell Petroleum Development Company Limited v. Councilor Farah.***[45] One of the gravamen of the plaintiff respondent's action is that restoration and rehabilitation activities of the respondent's contaminated land were grossly inadequate and below the minimum standard which

[43] Cap O7, LFN, 2004
[44] Cap P 10, LFN, 2004
[45] (1976) 9-10 SC 101

ultimately led to low crop yield. The plaintiff/respondent was awarded over N4 million by the trial judge which are affirmed on appeal by the Court of Appeal.

The lesson from **Farah's** case is that victim can obtain the remedy of damages without resort to common law of tort as the action was wholly statute based. It is however observed that as a result of absence of guidelines for assessment of damages the court had to rely on common law principles of assessment of damages as there is none under the Acts regulating oil exploration and exploitation. This is a major drawback and can impede proper utilization of this provision for remedy of damages to the victims of pollution.

Another Act that has provision for remedy of damages is the Nigerian Mineral and Mining Act, 2009 it repealed the Mineral and Mining Act[46]. The 2009 Act by virtue of Section 125 (a) and (b) provides remedy of damages, arising from exploration and exploitation of minerals in Nigeria. The applications of remedy of damages can be seen in the case of **Godpower Nweke v. Nigerian Agip Oil Company Limited**[47]. The provision of Section 77 of the repealed Mineral and Mining Act was applied and damages awarded in favour of the plaintiff.

The Nigerian Mineral and Mining Act, 2007 under Section 121 (1) and (2) provides for the establishment of Environmental Protection and Rehabilitation Fund for the purpose of guaranteeing the environmental obligation of the holder of Mining title as

[46] Cap M 12 LFN, 2004
[47] (1976) 9-10 SC. 101

provided under this Act. This is welcome development but in left to see what will be made out of the fund given the place of corruption in Nigeria.

3.3.2 *Types of Damages in Environmental Claims*

There are various types of damages, these includes exemplary or punitive damages nominal damages, aggravated damages and contemptuous damages[48]. However, our concern here is with respect to special and general damages because they provide grounds for claims of environmental harm to the victims to seek for remedy of damages.

3:3:2:1 Special Damages

This species of damages is one which the law does not presume and which must therefore be specifically pleaded and proved. In Bowen LJ's words: "special damage is a particular damage (beyond the general damage) which results from the particular circumstances of the case, and of the plaintiff's claim to be compensated, for which he ought to give warning in his pleading in order that there may not be surprise at the trial[49]."

Special damages are those items of loss which are capable of precise calculation such as medical expenses already incurred, loss of property and means of livelihood amongst other. Each of these items must be specifically pleaded and proved. For example, in the case of Dumez Nigeria Limited v. Ogobi[50]. The defendant/appellant was sued on the account of damages caused to the farm and crops of the plaintiff/respondent

[48] Kodilinye, G. and Aluko, O. The Nigerian Law of Torts Spectrum Books Lagos 1996 p. 258. Amokaye, O.G. Environmental Law and Practice in Nigeria. Op. cit p. 656. Tobi N. Op. cit

[49] Ratcliffe v Evans (1892)2 QB 524 at p.528

[50] (1972) 1 All NLR 347 at 352

as a result of construction. The respondent failed to lead evidence on special damages. The Supreme Court emphasized that:

> *It is axiomatic that special damages must be strictly proved and (unlike general damages, where if the plaintiff establishes in principle his legal entitlement to them a trial judge must make his own assessment of the quantum of such general damages) so far as special damages are concerned a trial judge cannot make his own. Individual assessment but must act strictly on the evidence before him which he accepts as establishing the amount awarded*[51].

It must be noted that this, does not mean that the law lay down or requires an extra-ordinary measure of evidence to establish entitlement to special damages. It does not also mean that an award of special damages cannot be made unless such damages are established beyond reasonable doubt as is the position in criminal cases. All that is required is that the person making the claim in special damages should establish his entitlement to the type or class of damages by credible evidence of such character as would satisfy the court that he is indeed entitled to an award under that head otherwise the general law of evidence as to proof on the balance of probabilities or by preponderance or weight of evidence which ordinarily applies in civil cases[52].

In **Shell Petroleum Development Company v Otoko**[53] , it was held that the plaintiff owes it as an obligation to particularized special damages he is at an advantage of being able to base his claim upon a precise calculation and must give access to the

[51] Ibid
[52] Shell Petroleum Development Company (Nigeria) Limited v. Tiebo VII (2005) 9 NWLR pt. 931 p. 439 at 445.
[53] (1990) 6 NWLR pt. 159 p 693 at 721.

facts which make such calculation and must give access to the facts which make such calculation possible.

The law required qualitative and credible evidence in order to establish entitlement to special damages. In order words, it is a general guide and arises from the fact that it is impossible to prescribe the quantity and nature of evidence required in a given case to justify entitlement to award of special damages.

As a result of the gap in Act for example NESREA Act, 2007 most the cases are likely to be premised on the tort of negligence or nuisance and the plaintiff has the burden of proof and this is consistent will the provisions of Sections 136 and 137 of the Evidence Act[54] which requires that whosoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those fact exists. This rigorous rule of evidence has in no small measure helped to undermine claims of victims of environmental pollution.

It is observed that stern requirement of qualitative and credible evidence is not an easy task for victims seeking remedy of damages in environmental pollution.

3.3.2.2 General Damages

These are damages which the law implies in every breach and in every violation of a legal right. It is loss which flows naturally from the defendant's act and its quantum need not to be pleaded or proved as it is generally presumed by law[55].

[54] Evidence Act 2011
[55] Amokaye, O.G. Op. cit

General damages need not be proved strictly as they are regarded as damages resulting from the defendant's tortuous conduct. The merit of claim of general damages is that there is no strict requirement of proof as in special damages and there exist tendency for the judge to make estimation. This is not the case with Special damages. General damages are at the discretion of the court and depends on assessment based on certain considerations.

3.3.4 *Differences between Special and General Damages*

The distinction between 'special' and general damages is significant not only for the purpose of form of award but also in relation to pleading and proof[56].

Special damages are such as the law will not infer from the nature of the act. They do not flow in the ordinary course they are exceptional in their characters and therefore must be specially and strictly proved[57]. They are given in respect of any consequences reasonably and probably arising from the breach complained of. Hence they must be proved and like the operative word "Special" ought to be specially proved to the satisfaction of the court.

General damages on the other hand are presumed by the law to be the direct and natural or probable consequence of action complained of. They are such as the court may give when there is no measure by which they are to be assessed except in opinion and judgment of reasonable man[58]

[56] Ibid
[57] SPDC v Tiebo (Supra)
[58] Ibid

3.3.5 *Grounds for the Award of Remedy of Damages*

Damages are awarded for various reasons some are premised on statutory provisions, however, claim of remedy of damages whether special or general are base on the following:

3.3.5.1 Loss of Property and Means of Livelihood

A victim of environmental pollution may be awarded damages on proof of loss of farmlands, fishing Ponds Lake. In the case of **Shell Petroleum Development Company Limited v. Farah**[59], The plaintiff quantified in monetary terms and particularized in their statement of claim the losses suffered as a result of pollution arising from the defendant / appellant's activities. The trial court awarded over N4 million this decision was affirmed by the Court of Appeal.

Similarly, where there is a claim for total destruction of property the measure of damages will be the value of the property as at the time of destruction. For example, in the case of **Shell Petroleum Development Company Nigeria Limited v. Ambah**[60] illustrate the stern requirements of special damages and the value of the property as at the time of alleged destructions.

3.3.5.2 Damages for Emotional Distress

A victim can claim damages under this against the defendant that as a result of his action he suffered emotional distress for example, in the case of **Dukubo Priye v. Shell**

[59] (1995) 3 NWLR pt. 382 p.148 at 198
[60] (1999) 3 NWLR pt. 593 p.12

Petroleum Development Company Limited[61] where the plaintiff upon fear of contacting disease as a result of pollution, the court held that such claim of damages is sufficient to entitle the victim to remedy of damages.

Also in the case of **Elf Nigeria Limited v. Opere Sillo**[62] The trial court held that the plaintiff were entitled to damages arising from injury to family feelings of dignity and pride from the annihilation of their river goddess and the consequent discontinuance of the traditional rites associated with the satisfactory performance of the goddess. This decision was affirmed by the Court of Appeal and the Supreme Court.

It is observed that the corpus of Nigerian law on exploration and exploitation of resources has provision for remedy of damages for pollution. Example most of the referred statutes, contain terms such as: "other right" as used in Oil Pipeline Act, Petroleum Act and recently Nigerian Minerals and Mining Act 2007 is virtually boundless. It is submitted that these provisions are wide enough to effectively and efficiently encompass any right or interest of persons that are affected and obligation for remedy of damages arising thereof in favour of the victims of pollution. Nigerian Courts in some instance have given positive interpretation to some of their provision as exemplified in the case of ***Shell Petroleum Development Company Limited v. Farrah***[63].

Further, observed that the claim of environmental harm by the victims is mostly often based on either negligence nuisance trespass or the rule of **Rylands v. Fletcher**[64].

[61] (2003) 4NFWLR pt. 468 p.259
[62] (1994) 6 NWLR pt.350 p.258
[63] Supra
[64] (1888) 1 LR Exh. 281

Many of the above writers are of the opinion that most at times victims of pollution institute action under these spheres. It is observed under these spheres of law of tort great burden of proof is placed on the victims which is not easily surmountable in environmental litigation. Example of requirement of expert witnesses which the poor and ignorant victims can hardly afford to prove their claim. This issue of expert has been emphasized as in the case of **Seismograph Services Limited v. Onokpasa**[65] echoed the importance of expert witnesses.

This is not an easy *sine qua non* yet very important. It is submitted that where strict adherence to some of these rigid requirements will lead to manifest injustice the rule should be strict liability on the polluters.

Also it is observed there is absence of standard guidelines for the assessment of damages. This has led to the award of paltry sum as damages by the courts to victims of pollutions. Example, of the case of **Shell Petroleum Development Company Limited Ambah**[66] where from 1976-1987 and ultimately when the Apex Court passed judgment and awarded the sum of N27,000 as damages the value of naira has greatly diminished and to a great extent defeated the whole aim for which damages is awarded. Another example of where ridiculous sum was awarded as damages as in the case of **R Mons and Another v. Shell BP**[67]. Where the court awarded the sum of N200 as damages for victims of pollution this is obviously very small. We submit that value be attached to purchasing power of naira and there should be a standard guidelines for assessment of

[65] (1972) All NLR 347 at 352
[66] (1999) 3 NWLR pt. 593 p.12
[67] (1970-72) 1 RSLR 71

damages arising from pollution to guide the court in discharging this function as this will greatly assist the court in awarding something substantial as damages to victims of pollution for their vicissitude. This will ensure that justice is adequately done to address the plight of victims of pollution as far as remedy of damages is concern.

3.4. Injunction

This is discretionary remedy granted by the court temporarily or permanently restraining the act or omission perpetrating hazard[68]. Injunction is a remedy sought by victim of tort to stop the continuing injury to the victim[69]. The granting of this remedy either prohibits or restricts a defendant from carrying on an environmentally damaging activity[70]. Normally, either the activity complained of has to be continuing at the date of claim or has to be a threat that the activities will continue[71].

It is however, observed that seeking injunctive remedy imposes several difficult burden on the litigants as they are extraordinary remedy which the court grant sparingly and at in discretely and will only be granted if it is just and convenient.

A victim seeking the remedy of injunction must first establish a right recognised and enforceable either at law or in equity. He must also demonstrate that he will suffer irreparable injury and that no other adequate remedy is available. In the case of **Allar**

[68] Demfebo K. D. Litigation Problems in Compensation Claims for Oil and Gas Operations In Nigeria. In Emiri and Demduomo (ed.) *Law and Petroleum Industry in Nigeria Current Challenges. Essay in Honour of Justice kate Abir*i. Malthouse, Port Harcourt 2009.
[69] Ladan, M. T. Cases and Materials on Environmental law Op. cit p. 387.
[70] Ibid
[71] Amokaye, O.G. Op. cit pp.658 – 659.

Iron v. Shell B. P. Development Company (Nig.) Ltd[72]. The plaintiff prayed the court for an order of injunction restraining the defendant from further polluting his farm land fish pond and creek. This was denied on the ground that the order would cause stoppage of trade or throwing out large number of people from work, mineral oil is the main source of the nation's economy and an order of injunction may render nugatory such licence. In environmental litigation the use of injunction will depend on the nature of harm to be prevented. Where an ongoing activity is causing pollution of environment, which will result in nuisance for example contamination of aquifer, an injunction restraining the continuation of that action may be the appropriate and effective remedy for the victim. This was the situation in case of **Pride of Derby and Derbyshire Angling Association Limited v. British Celanese Limited**[73]. Injunction and damages were granted against the defendant for industrial effluents, untreated wastes and thermal wastes discharged in the water course.

In American case of **Boomer v. Atlantic Cement Company**[74], an injunction was refused by the New York Court of Appeal in a nuisance action and permanent damages were awarded in lieu of injunction on the ground that, the loss recoverable would obviously be small as compared with the cost of removal of the nuisance' and to grant injunction would be to close down the plants at once. It is submitted that this reasoning can be applied by Nigerian court in respect of relief of injunction relating to environmental pollution.

[72] Suit No. W/89/71, Warri High Court 1973.
[73] (1955) Ch. 149
[74] NY 2d 219, 259

3.5 Restoration / Rehabilitation

This remedy entails the resuscitation of the ecological status of the environment prior to the pollution[75]. This is a remedy that can avail victims of environmental pollution that the status of the environment in which the victim lives in be restored to where it was before it was polluted. This was the crux of the issue before the court in the case of **Shell Petroleum Development Company Limited v. Farah[76]**. The appellant had undertaken to rehabilitate the polluted and the services of an expert was engaged, this was later abandoned the plaintiff/respondent went to court and were awarded 4.6 million naira by the trial court this was affirmed by the Court of Appeal.

It is observed that very little or no attention is being paid to the issue of rehabilitation of the land in which the victims live on and source for means of livelihood on it. Restitution does not mean monetary recompense but that the polluter found liable for pollution should be responsible for the cost of cleaning up the polluted area and reinstating same to the status quo as much as it is most practicable. This is remedy is in tandem with the concept of polluter pays principle.

The polluter pays principle refers to the requirement that cost of pollution should be borne by the polluter or the person responsible for the pollution and consequential cost[77]. Ugbe[78] opines that the polluter pays principle (PPP) was evolve in environmental litigation to relief the victims of pollution from the burden of proving polluter's fault'

[75] Mussod, G. In Situ Technology of Vadose Zone Remediation Encyclopaedia of Environmental Control Technology, Hazadous Waste Contamination and Treatment. vol. 4 Gall Publication London
[76] (1995) 3 NWLR Pt. 382 p.148
[77] Amokaye, O.G. Op. cit p.10

Although PPP can be said to be essentially a principle of economic policy rather than legal principle but further examination show that it has a place in law. For example under Section 21(1) of the repealed Federal Environmental Protection Agency Act[79] provides for polluter pays principle but this has been repealed by virtue of Section 34 of the NESREA Act 2004 which incidentally did not make such laudable provision. Thus it is observed that the victims of environmental pollution are denied the opportunity of invoking the provision that had earlier existed.

Although PPP can be said to be essentially a principle of economic policy rather than legal principle but further examination show that it However, by virtue of Principle 16 of the Rio Declaration on Environment and Development it provides for polluter pays principle (PPP) the provision is as follows:

> *National activities should endeavour to promote the internationalization of economic instrument taking into account the approach that the polluter should in principle bear the cost of pollution with due regards to the public interest and without distorting international trade and investment.*

Ibrahim[80] observed rightly that polluter pays principle of intergenerational equity are hardly incorporated into our environmental laws. And according to Usman[81] the state of affairs of the application of PPP is lamentable, in some foreign jurisdiction with

---

[78] Ugbe, R.O. The Polluter Pays Principle: An analysis. *The Calabar Law Journal* 2002 – 2003 Vol. vi – vii p.155
[79] Cap F10, LFN, 2004.
[80] Ibrahim, B.Y. The Framework of Environmental Law in Nigeria. A Critical Analysis. *ABU JPCL,* Vol. No. 2 2006 p. 224
[81] Usman, A.K. An Assessment of Environmental Protection Laws in Nigeria. Unpublished Ph.D Thesis Faculty of Law ABU Zaria 2005 p.353.

developed economies such as UK and the USA the polluter pays principle is what is in vogue. We submit that Nigeria should not be an exception in the application of this principle particularly as it relate to the right of victims of environmental pollution.

3.6 Resettlement

This is a remedy that can also avail victim of environmental pollution. Where there is recurrence of pollution victims can be resettled in an area where they are not likely to be affected by subsequent pollution.

CHAPTER FOUR

MECHANISMS FOR THE ENFORCEMENT OF ENVIRONMENTAL CLAIMS

4.1 Introduction

There are various mechanisms for the enforcement of the legal remedies for environmental pollution in Nigeria. The mechanisms for the enforcement of these remedies are provided for mainly by different statutes; these mechanisms are litigation and Alternative Dispute Resolution (ADR) such as arbitration, mediation, negotiation and conciliation[1].

Traditionally, litigation has served the age long purpose of attempting to address the plight of an aggrieved person with the aim of settlement of the dispute or perceived wrong done or committed by one person against another. However, environmental litigation in Nigeria is characterised with inherent difficulties which includes *inter alia* high cost, delay[2], technicalities and burden of proof.

In view of some of the above common features of litigation in Nigeria it is gradually giving way to Alternative Dispute Resolution (ADR) given the wide spectrum of benefits that ADR offers. This chapter examines and analyse different modes for the enforcement of environmental pollution claims that can avail victims of environmental pollution.

[1] Illegbune, U.C. Mediating Community/Company Environmental Disputes in Oil and Gas Industry in Nigeria. On http/www.sdsg/wp. Content 201 visited on 11/10/2011

[2] Amakaye, O.G. Op. cit p.575

4.2 Litigation

Litigation is a powerful and effective mechanism for seeking remedies of compensation and damages by victims of environmental pollution. It is also a tool for compelling compliance and imposition of various criminal remedies such as fine or term of imprisonment on a polluter. As noted in previous chapters i.e. 2 and 3 of this work various statutes on environmental law create environmental offence and impose both criminal sanction and civil liability or damages for injury for victims of pollution[3].

However, it is observed that most of these laws are honoured more in breach than in compliance for a victim seeking the enforcement of some of the remedies provided by various statutes by the law courts it has to be through the instrumentalities of litigation[4]. Without such mechanism then the law, not minding how comprehensive and well couched it is nothing but a paper tiger[5].

4.2.1 *Factors Militating against Environmental Litigations*

Litigation is the mechanism through which victims of pollution seek remedies for compensation, damages and injunction. Unfortunately in Nigeria quite of a number of factors militates against litigation as an effective tool for the enforcement of legal remedies by the victim of environmental pollution of these factors have been discussed in the preceding chapter of this work (.i.e. Chapter 2) others are hereunder specifically identified and examined.

[3] E.g. Harmful Waste (Special Criminal Provision etc.) Act cap H_1 LFN, 2004
[4] Usman, A.K. Op. Cit p.310
[5] Ibid

4.2.1.1 Delays in Prosecution of Cases

There are unnecessary delays associated with the prosecution of case in our courts. Polluting agencies often employ delay tactics to sap the patience and resources of the plaintiff with the hope of eventually making him abandon the suit or at least delay justices[6].

Example of delay in prosecution of cases can be seen in the case of **Nwadiaro v. Shell Petroleum Development Co. Ltd**[7]. Brief fact of the case is that the plaintiff depends on uti-iyi creek for fishing and access this was blocked by the defendant since 1966 and parties had negotiated and the defendant agreed to pay compensation but never paid. The plaintiff sued in 1985 and the defendant objected on the ground that the suite was statute barred. The trial court agreed and dismissed the suit the plaintiff appealed to the Court of Appeal which held that it was not statute barred an order of trial was made. Consequently, the matter was relisted in 1988 again the defendant filed an application for dismissal of the entire suit which was refused by the trial court. The defendant again appealed to Court of Appeal which heard and dismissed the appeal. The Court of Appeal in strong terms condemned the delay tactics of the defendant.

Most litigants complains about incessant delays and some seem to have lost hope in the judiciary because of the delays[8]. Derri[9] stated that number of reason give rise to this delay. This includes:

[6] Ibid. p.341
[7] (1990) 5 NWLR Pt. 150 p.322.
[8] Akeredolu, O.O. Access to Justice Problems and Solution. *Ibadan Bar Journal,* Vol. 2 No. 1 2003 p.14

a. Lawyers writing letters of adjournment of cases

b. Inability of judges to deliver judgment on time, indiscriminate public holidays, and the rule that once a judge is transferred and a new one takes over a case has to start *de novo*. Although this rule is well intended but has become a factor contributing to delay of trial of cases.

No doubt that delay has greatly eroded public confidence in the judicial process and it has also undermined the very existence of our courts. This is in spite of the fact that speedy trial is guaranteed by Section 36(1) of the Constitution of Federal Republic of Nigeria[10] which provides that:

> *"In determination of his civil rights and obligation, including any question or determination by or against any government or authority, a person shall be entitled to fair hearing within a reasonable time by a court or other tribunal by law and constituted in such manner as to secure its independence and impartiality".*

It is observed that the constitution did not define the meaning of the expression 'within a reasonable time'. Where any trial lasted more than three to four years such can hardly be said to be within a reasonable time[11]. It may be conceded that some delay be unavoidable since parties are to be given adequate time and facilities to prepare to the administration of justice when delay is inordinate. In the circumstance it is submitted that

---

[9] Derri d. K. Litigation Problems in Compensation Claims for Oil and Gas Operations in Nigeria. In Emiri and Deinduomo (eds) .Op cit p.22 Okogbule N.S Access to justice and Human Right Protection in Nigeria. Problems and prospects, *Benin Journal of Public Law,* Vol. 3 Dec. 2004 p.34

[10] 1999.

[11] Okogbule, N.S. Access to justice and Human right Protection in Nigeria. Problems and prospects, *Benin Journal of Public Law,* Vol. 3 Dec. 2004 p.34

courts should sternly consider issue of applications for adjournment of case such that one designed to aid the due process of litigation should be granted while those dictated by sheer laziness or a failure to grasp the real issue should not be entertained[12].

4.2.1.2 Courts Attitude to Victims Claim

The attitude of Nigerian courts to litigation particularly to the award of damages which mostly are general in character, also operate as a constrain to litigation as a mechanism for seeking remedies for pollution in Nigeria. For example in the case of **Shell Petroleum Development Co Ltd v. Teibo[13]**

The plaintiff claimed the sum of N64 million as general damages from the defendant for oil spillage into nun river which serve as a source of drinking water, fishing and desecration of their juju. Despite the fact that the plaintiff was able to prove the damage alleged by calling experience and knowledgeable expert witnesses, the court awarded a paltry sum of 6 million to the community.

Similarly, our courts have developed a rubber stamp syndrome of 'give me an authority for that submission' have become in active in creating such precedents[14]. Nwosu observed further that the legal training in Nigeria do not take into account the realities of the scientific world in which the legal practitioners has to operate. The lawyers and judges are both marooned[15]. The resultant effect is that neither Judge, nor the lawyer as well as the victim are in position to appreciate the cause, effect and remedy from the

[12] Usman, A.K. Op. cit p. 343
[13] (1996) 4 NWLR pt. 445 p.657
[14] Nwosu, L.E. Appropriate Mechanism for the Enforcement of environmental Claims. Juriscope. A compilation of Workshop Materials of Alpha Juris. Continuing Legal Education series 1st Edition 2001 series p. 191 – 192.
[15] Ibid

sophisticated scientific question they need to resolve. Thus they seek shelter in technical rule of procedure while sacrificing substantial justice on alter of their inadequacies.

4.2.1.3 Coruption in Judiciary

Nigerian legal system is replete with allegations of judicial corruption at all levels. The socio-economic implication of such corruption is most dangerous than other forms of official corruption[16.] Courts are often said to be the last hope of as common man and if that last hope loses, confidence of the common man, the society has no choice but is likely to return to primitive age.

It is observed that serious cases of environmental pollution are often one between an illiterate farmers and a very powerful company for example a multinational oil company. A corruption prone judge who has little or no integrity may easily be induced by the strong financial muscle of oil multinational company to give a decision that would be favourable to the company. This has greatly undermined litigation as an effective tool for seeking remedies for environmental pollution in Nigeria.

4.2.1.4 Burden and Standards of Proof

The success of any litigation depends ultimately on evidence, without which no criminal prosecution or civil suit could succeed. Essentially, the handling of burden of proof may be crucial factor in determining the outcome of environmental litigations[17]. The victims of environmental pollution rely on the vagaries of the common law tort such

[16] Derri D. K. Litigation Problems in Compensation Claims for Oil and Gas Operations in Nigeria. In Emiri and Deinduomo (eds) *Law and Petroleum Industry in Nigeria* Op cit p.24
[17] Amokeye O. G. Op. cit p. 634

as negligence, nuisance, trespass and the rule in **Rylands v. Fletcher**[18] to seek for remedy of compensation and damges[19]. Nigeria courts over the years have insisted particularly in deciding pollution related cases on the high standard of proof by the plaintiffs before their claim is upheld. The following cases illustrates how this stringent requirement of proof and other prerequisites such as expert evidence combine to frustrate litigation commenced by individual and communities against polluting industries.

The first case is **Seismograph Services limited v. Onokpasa**[20]. In this case the plaintiff/respondent who was the proprietor of a college claimed that the defendant's/appellant seismic blast in the area caused cracks to the college buildings. The defendant called three experts witness viz; a chartered structural engineer, geologist and seismologist. The expert called by the plaintiff was skilled enough in the relevant field and testified that the cracks were caused after the blast. The trial court awarded compensation to the plaintiff/respondent. On appeal to the Supreme Court it was held that the trial judge ought to have believed the expert witness of the defendant/appellant. Sowemimo JSC (as he then was) stated that:

> *The contention of each party is of a technical nature therefore such evidence as could support it must necessarily be that of people specially qualified in particular field of service which is this case comprise the knowledge and practice of seismology and civil engineering. It is on the examination of such evidence, as is considered relevant that a determination*

[18] (1886)
[19] Derri d. K. Litigation Problems in Compensation Claims for Oil and Gas Operations in Nigeria. In Emiri and Deinduomo (eds) Op. cit p. 14.
[20] (1972) All NLR p.347

must be arrived at so as to determine cause of alleged damage[21].

Similarly, in the case of **Seismograph Service v. Akporuovo**[22]. The plaintiff claimed that the defendant's operations caused damage to the building and household goods. The trial judge awarded damages to the plaintiff. The Supreme Court reversed on the ground that the respondent did not call any expert to proof that the defendant was liable.

Also in the case of **Ogaile v. Shell Petroleum Development Co. Ltd**[23]. The plaintiff's lost their case both at the High Court and the Court of Appeal simply because they could not match the quality of expert evidence given on behalf of the defendant in that cases[24].

With increase in industrial activities in oil exploration, minerals mining and manufacturing sectors of the economy and attendant consequences on the environment various legislations are in place to check pollution most of which are penal in nature and take very little or no account of economic loss or injuries suffered by the victims as a result of the observed gap in some Acts for example, National Environmental Standard Regulation Enforcement Agency Act[25] which repealed Federal Environmental Protection Agency Act many cases on environmental pollution find their way to the court on tort of negligence or nuisance.

[21] Ibid.
[22] (1974) All NLR 97
[23] (1997) 1 NWLR Pt. 480 p. 148
[24] Seismograph Services Ltd v. Ogbeni (1976) 4 SC 85.
[25] NESREA Act, 2007

In an action for negligence the plaintiff has the burden of proof and this is consistent with provision of Sections 131 and 132 of Evidence Act[26] which provides for burden and standard of proof.

It is observed that the above rigorous rule of evidence has in no small measure help in undermining claims of victims of pollution for example, in the case of **Seismograph Services v. Mark**[27]. The plaintiff claimed compensation for damages from the defendant for destroying his fishing nets by a seismic boat. At the trial, it was impossible for the plaintiff an ordinary fisherman to show that the company acted negligently. On appeal the Court of Appeal held that the defendant appellant did not breach the duty of care towards the respondent, this is in spite of the fact that seismic boat tore through the fishing nets. It was further held that the plaintiff/respondent did not provide the technical detail of the breach the case was dismissed. For the victims of environmental pollution, experts' witnesses are difficult to come by and where secured it cost money to carry out test and expert services of the expert in question[28]. It is not every plaintiff that has the money to meet this cost which is often very prohibitive.

It is observed that some of these experts are found in ministries and other agencies but their services cannot be engaged by the victims because of the Regulated and other Professions (Private Practice Prohibition) Act[29].

[26] As amended, 2011
[27] (1993) 7 NWLR Pt. 203
[28] Usman A. K. Op. cit p. 329.
[29] Cap R LFN, 2004

It is submitted that section 8(1), (n) and (p) of NESREA Act, 2007 which are to effect that the agency shall develop monitoring networks, enter into agreement with public, private and individual to share basic data on chemical, physical and biological effect of activities on the environment and to collate and make available through publication and other appropriate means basic scientific data and the information pertaining to environmental standards. Paragraph (q) provides for; charge of fees for tests, investigation and other services performed by the agency. This can be explored by victims of pollution other than in oil and gas section.

Still on burden of proof it should be noted that certain pollution does not manifest itself in apparent and vivid terms like harm to human health; it takes time to manifest. Pollution may be committed today, but the effect may not manifest immediately. It may take a year or more to manifest. Thus proving such harm if a suit is filed immediately after the commission of the act becomes a problem. If litigation is delayed until the manifestation of the harm, then proving proximity of causation to be entitled to damages against the defendant becomes a problem[30].

In the case of **George Thorsfall of others v. Shell B.P. Development Company**[31] the plaintiff claimed the sum of N100, 000 for damages done to his building arising from defendants oil exploration many years before the trial court held that negligence the cause of action accrues at the time it was then that the damages was

[30] Usman A.K. Op. cit P. 234
[31] (1974) 2 RSLR 126

caused even though it consequences may not be apparent then until later the plea for damages therefore failed.

Usman[32] opined that given the position of law a victim may find it difficult to successfully claim under negligence if the effect of the pollution does not become immediately obvious. In every common law action, the plaintiff must bring the case within the statute of limitation and establish the causation between the harm and the defendant's conduct[33]. If the plaintiff waits for the acts to become glaring manifest he may be caught by limitation act.[34]

In the case of **Gulf Oil (Nig) Ltd. v. Otuba**[35]. The respondent/ plaintiff's brought an action against the appellant/defendant in 1986 to recover damages for pollution of their land, fishing pond swamp etc. As a result of seismic and other oil exploratory activities within their community in 1973, the court of appeal found no difficulty in holding that the cause of action was statute barred. In environmental litigation, limitation could be potentially important and difficult given the period for manifestation of harm or it detection.

Again statutory corporation operating in area where their activities are likely to cause pollution are shielded by special statutory provision which have shortened the period of limitation of actions. For example Section 12(1) of the Nigerian National

[32] Op. cit p. 335
[33] Amokaye, O.G. *Environmental Law and Practice in Nigeria,* University of Lagos Press Akoka 2004 p. 677
[34] Cap L LFN 2004
[35] (2002) 12 NWLR Pt. 780 p. 22

Petroleum Corporation Act[36] puts the period of limitation at 12 months therefore any claim filed outside the period becomes statute barred.

It is observed that limitation of time to bring an action is an unnecessary impediment in the way of victims of environmental pollution in Nigeria.

4.3 Negotiation

Negotiation is a consensual bargaining process, with which a third party intervenes, whereby the parties to dispute attempt to reach agreement on a disputed matter or potentially disputed matter[37]. It is ranked first in order of hierarchy of Alternative Dispute Resolution[38] (ADR).

Negotiation involves discussions on dealings about matters with a view of reconciling differences and establishing areas of agreement, settlement or compromise that would mutually be beneficial to the parties or that would satisfy the aspiration of each party to the negotiation.

It is observed that the mechanism of negotiation has been widely embraced in resolving several environmental disputes in the Niger Delta. As observed by Gberesu[39] whenever there is an oil spillage, the practice is for oil operator and affected host communities to arrange for a joint inspection of the affected sites to assess the level of damage to the environmental and the properties of the member, the community after

[36] Cap N 123 LFN 2004
[37] Amokaye, O. G. Op cit p. 683
[38] Damfebo and Emiri towards Alternative dispute resolution (ADR) for Compensation Claims for Oil and Gas Operations in Nigeria. In Emiri of Deineduomo (eds) op cit p. 37
[39] Gberesu, D.A. The Concept of Fair and Adequate Compensation in Nigeria Oil Industry' in the Petroleum Industry and Nigerian Environment – Proceeding of 1989 Seminar (NNPC) Lagos 1989 p.46 at 48

which both parties will undertake independent financial assessment and evaluation of the damage done for the purpose of negotiation. The host community are then invited for negotiation. Where the company makes an offer of accepted the amount agreed upon will be paid to the affected victim of pollution. If rejected, further negotiation may be made or in some cases the aggrieved party will resort to litigation. This was the position in the case of **Shell Petroleum Development Company Limited V. Farah**[40] where the appellant through negotiation paid paltry a sum to the affected families for damage to their land. The parties not being satisfied with the compensation paid went to court and got substantial sum in damages. Another example of litigation after failure of negotiation is the case of **Shell Petroleum Development Company Limited V. Adamkue**[41].

Amokaye[42] opined that in order to achieve a successful negotiation, it is important for the claimant to seek services of a legal practitioner and the determination of assessment and preparation of pre-negotiation terms and if necessary for the expert to be part of the negotiation team. The scope and measure of damage, type of injuries (personal and proprietary) suffered by the victims, cost of mitigation, alternative costs basis assessment and administrative cost[43].

It is equally important that the parties to the negotiation must appoint the right person having the requisite capacity to bind the parties. In this respect, the parties many

[40] (1995) 3 NWLR Pt. 382 p.148
[41] (2003) 11 NWLR pt. 832 p. 533
[42] Amokaye, O.G. Op. cit p. 682
[43] Ibid

pollution cases involving several communities, the choice of representative is very important because they must have authority and capacity to accept or reject.

EGASPIN, 2002, part VIII – Control and Combating Oil and Hazardous Substance Spill Para 82 Petroleum Act section 11(1) decisions that bind the communities. The Environmental and Safety Guidelines for the Petroleum Industry in Nigeria (EGASPIN 2002)[44] encourage oil companies to negotiate compensation with the host communities in settlement of pollution related case. It is observer that most negotiators prefer not to negotiate with team members with little authority as it may result in allegation of lack of authority or even payment being made to wrong persons.

4.4 Mediation

This is a process of resolving dispute with the aid of a neutral third party. Mediation is an important tool to resolve compensation dispute particularly where parties could not agree among themselves[45].

Mediation offer a unique opportunity for both the host community and oil companies for example in resolving gray areas. The use of mediation in resolving environmental dispute particularly in environmental impact assessment matters in elaborately authorised by Sections 32 and 33 of the Environmental Impact Assessment[46].

[44] EGASPIN, 2002, part VIII – Control and Combating Oil and Hazardous Substance Spill Para 82 Petroleum Act section 11(1)
[45] Derri, D.K. And Emiri, O.F. Op. cit p.38
[46] Cap E12, LFN, 2004

4.5 Conciliation

This is also mechanism that can be utilised by the victims of environmental pollution. When negotiation fails, conciliation offers another opportunity for parties in environmental cases to reach out of court settlement[47]. Agreement through conciliation is generally recognised by the parties. The conciliatory body, the case gears the parties and in appropriate case submit its terms of settlement to the parties and does not impose it on them. When the parties agree to the terms of settlement the body draws up record of settlement for the disputers to sign if they do not agree they may submit to arbitration or resort to litigation. It is observed that the mechanism is not be explore by victim of environmental pollution in Nigeria.

4.6 Arbitration

Arbitration is a process by which parties voluntarily refer their disputes to an impartial third person, an arbitrator selected by them for a decision based on the evidence and agreement to be presented before the arbitral tribunal[48]. In contentious environmental pollution disputes, parties may by mutual agreement, refer the case to arbitral penal for resolution.

Both Petroleum Act[49] and Oil Pipeline Act[50] have provisions for arbitration. Section 11 (1) of the Petroleum Act provides:

---

[47] Amokaye, O.G. Op. cit p. 685

[48] "Domke on Commercial Arbitration", 3rd Edition cited in Orojo and Ajomo (eds.) *Law and Practice of Arbitration and Conciliation in Nigeria*. Mbayi Associate Lagos 1999 p.37

[49] Cap P10 LFN, 2004

[50] Cap 07 LFN, 2004

> *Whereby any provision of this Act or any regulation made there under, a question or dispute is to be settle by arbitration, the question or dispute shall be settled in accordance with the law relating to arbitration in the appropriate state and that provision shall be treated as submission to arbitration for the purpose of that law.*

On the other hand Section 17(6) of the Oil Pipeline Act provides that; every licence shall be deemed to include a provision that any question or dispute arising between the President or the Minister and the holder of the licence regarding the licence or any matter connected thereafter shall if it cannot be resolved by agreement be referred to arbitration.

It is observed that the provision of Section 17(6) of the Act never contemplate dispute arising from compensation. Rather it is directed towards dispute between Oil Company and the President or Minister arising from concession contract or joint venture agreements. But it seems that the provision of the petroleum Act set out above are large enough to accommodate compensation dispute which include dispute under Oil Pipeline Act, by virtue of Section 11(6) of the latter Act.

The practical relevance of arbitration is settlement of environmental dispute for compensation can be seen in the case of **Chief Dr. M. W. Kemmer and others v. Nigerian Agip Oil Company Ltd**[51]. The brief fact of the case is that by a head lease agreement dated February 21, 1971 made with Tenneco Oil Company of Nigeria (which later assigned to Agip) the host community agreed to a lease of land to the oil company

[51] (Unreported) Suit No. FHC/PH/CP/27/99 of March 31, 2001 reported in the Guardian, Monday, April 10, 2000 pp.41 – 42

for a rent of £5 (N1,000) per acre per annum for 50 years. Apart from this there are also forfeiture claims. For the community the sum of £5 (N1, 000) was not fair and adequate compensation for the loss of surface of the land and call for review of the rates. The host community went to the Federal High Court, Port Harcourt base on this an arbitration was appointed.

Notwithstanding the very short period spent to dispose of the matter the sole arbitrator examined and applied the relevant law at his award.

The arbitrator carefully examines and correctly interpreted the relevant provisions of the Oil Pipeline Act particularly Section 19 dealing with compensation for injurious affection. This underscores the relevance of arbitration in the settlement of dispute arising from pollution. On the relevance and advantages of arbitration the sole arbitrator reiterated that:

> *In addition, I am to say that arbitration has its advantage over court litigation: there is lack of publicity in relation to the proceedings: hearing is expedition, the vexatious delays in litigation and procrastination are avoided. It provide(s) for amicable settlement between the parties. This is more good thinking might have made the judge refer this matter to the arbitrator, particularly in these days when communities enforce their rights by violence*[52].

Compare with litigation and it problems there no doubt that arbitration is a mechanism for enforcement of environmental pollution remedies by the victims. However, arbitration have its own constraints such as the issue of enforcement of the award and sitting aside of the award. This may end up in litigation for either non-

[52] (Cited) in Derri And Emiri (eds.) Op. cit p.44

enforcement or by the party against whom such award is made that cannot set it aside and the time and money use for arbitration will be lost[53]. Also a party may attempt to impinge the award on ground of misconduct.

[53] Oturu, E.G. Law and Practice in Settlement of Dispute Arising from Petroleum Operations. *Nigerian Bar Journal* Vol.3, No.4 October 2005 p.41.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

This thesis examined the legal remedies for victims of environmental pollution in Nigeria, specifically; it considered the criminal remedies provided by some of the statute, given the penal nature of most of the Acts. Also considered the civil remedies under various laws it further considered the mechanisms for the enforcement of these remedies, this is with a view to analysing the findings from the observations and preferring recommendations.

5.2 Findings

The statement of problem in 1:3 of this work raised a number of problems of research on which the following findings were made:

Firstly, the study observed that the 1999 Constitution Federal Republic of Nigeria under Cap II on Fundamental Objective and Directive Principle of State Policy identifies with environment, but unfortunately provisions relating to exact scope and nature as it relate to pollution are not explicit. Also there various pieces of legislations on environment in Nigeria which are scattered in different statutes from the Harmful Wastes (Special Criminal Provisions etc.) Act, Oil in Navigable Waters Acts, Oil Pipeline Act, Nigerian Minerals and Mining Act, National Environmental Standard Regulation Enforcement Agency Act all these Acts contained scattered provisions aimed at

protecting and providing remedies for victims of pollution most of these provisions are penal in nature.

Secondly, the study also observed that given that most of the statutes on environmental issues are laced with penal provisions in form of fine, term of imprisonment and rarely forfeiture. These sanctions are often ridiculously low or paltry. For example, the fine for violation of provision of Oil in Navigable Waters Act is N2, 000. The need for the amendment of provisions such as this cannot be overemphasized. Hence that is why the Acts are honour more in breach than compliance.

Thirdly it is observed there is the problem of jurisdiction created by Section 19 of the Oil Pipeline Act which vest jurisdiction in the Magistrate Court and the State High Court. This provision is in conflict with the provision of section 251(n) of the 1999 constitution of the Federal Republic of Nigeria which confers exclusive jurisdiction on such matters on the Federal High Court. This Act also create another problem example section 20 that compensation be paid to any chief, or headman portends difficulty for the victims given the nasty history of usage of money paid as compensation.

Fourthly the study further observed that NESREA which repealed FEPA have mandate on wide range of issues relating to pollution the agency does not seems equipped in terms of personnel (legal) to effectively discharge this mandate. Also observed by virtue of the provision of NESREA is conflicting provision as contained in Sections 7(h) (i) (k) and (j) and Section 8 (g) (h) (m) and (n). Further on NESREA is the provision for the application of CPA and CPC respectively to proceedings. These procedural laws that

have existed in our laws for long has no history of been utilised nor have they been subjected to judicial interpretation by superior courts.

NESREA Act also provide that to effect for the agency to institute criminal proceedings, it must first seek for the consent of the Attorney General before embarking on same, both the agency and the office of Attorney General have no history of prosecution in this regard. It is also observed that Act such as NESREA which provide for broad spectrum of issues/activities on pollution is wholly mute on issue of damages and compensation arising from pollution.

Fifthly, the study observed that there is no standard guideline for the assessment of compensation and damages for victim of pollution in Nigeria.

Sixthly, the study observed that victim of pollution often institute action under common law of tort of negligence, nuisance or rule in **Rylands v. Fletcher**. The requirement for proof under this common law of tort is usually insurmountable by the victims. The requirement of proof and other prerequisite associated with it such as expert witnesses which are usually not easily affordable by the claimant. Others associated with burden of proof is the period of manifestation of some pollution which are not immediately noticeable and the victim may be caught up with problem of an act been statute barred all these combined to frustrate litigation as a mechanism for enforcement of claims by victim of pollution.

Seventhly it is observed that the conservative nature of our courts. The courts are not willing to develop/evolve new precedent and rather they have a rubber stamp attitude

of insisting on been given authority for any submission. Further on court and the legal practitioners that appear before the courts have little knowledge of environmental science, environmental economic and specialized nature of environmental litigation involving expert witnesses as such both the judge and legal practitioners are marooned.

Eighthly, the research observed that very little or no attention is being paid to the issue of rehabilitation of the environment that is polluted. Also the polluter pays principle that is in vogue in other jurisdiction seems to be relegated to background particularly with the repeal of FEPA.

Lastly, also further observed by this work is that alternative dispute resolution is been embraced in the Niger Delta region as seen in the **SPDC v. Farah** and if not resort is made to litigation as seen in **Farah's** case (supra) and also in **SPDC v. Adamkue**. The research observed that EGASPIN provides for arbitration and also statute such as Oil Pipeline Act pursuant to Sections 11 and 17(c). These mechanisms are however clouded with problems of enforcement of award or same may be set aside by the court.

5.3 Recommendations

It observed in the course of this research that some solutions to the problems were either proffered forthwith after the problems were identified. However, for emphasis and completeness, we would highlight some salient recommendations here which we hope will go a long way in addressing the problems victims of environmental pollution face while seeking for remedies.

5.3.1 *Need for Express Constitutional Provision on Pollution*

The constitution of Federal Republic of Nigeria should accord significant status to issue of compensation for the impairment of individuals' health or property caused by environmental pollution. It should not just be a mere pious declaration as contain in Section 20 which falls under non justiceable umbrella, this has denied the victims of environmental pollution in Nigeria of constitutional weapon in their armoury. The provision of Section 20 should be a fundamental a right that should be enforceable.

5.3.2 *Compendium of Environmental Laws*

As a way out of the problem of scattered character of various Nigerian environmental legislations a compendium of environmental protection laws is recommended for Nigeria. There is also need for harmonisation of some of these laws as leaving them the way they are makes it difficult to enforce by some regulatory agencies. Also issue of limitation of time as it relates to pollution is recommended to be relaxed because of period of manifestation of pollution in some cases.

5.3.3. *Imposition of Heavier Fines*

It is an axiom that most of the statutes on environmental protection in Nigeria are laced with penal sanctions, most of which are ridiculously low and for these fines to serve as an effective tool for deterrence to the polluters particularly multinational corporation in oil exploration and exploitation there is need to review these fines upward so as to deter the polluters.

5.3.4. *Extending the Mandate of NESREA*

The oil industry is a major culprit in environmental pollution; therefore the law on environmental pollution should contain adequate provisions to address this industry. In this regard it is recommended that the NESREA Act, 2007 should be consolidating enactment to the FEPA rather than its outright repeal. This can be done in such a way that provision excluding the oil and gas should be removed.

Also NESRREA and other agencies such as DPR should have a strong prosecutory arm and should not solely and wholly relay on the office of Attorney General before prosecuting environmental offenders.

The NESREA Act, 2007 need to be amended and provision for civil remedies should be made as was the case with repealed FEPA Act under Sections 20 and 36 on payment of compensation to third party and for damages to repair and restore the polluted environment, this is line with Principle 10 of Rio Declaration on Environment and Development with priority on issue of pollution and remedies for the victims.

Further, the statutory provision of Section 32(4) of NESREA Act which provides that judicial proceedings of an offence under the Act or any regulation made under, it the provision of CPA or CPC depending on the venue shall apply the CPA pursuant to Section 435 and CPC by virtue of Section 365 provides for payment of compensation to a victim of crime, this provides a glimmer of hope for victims of pollution in Nigeria given the problem associated with burden of proof under law of tort.

5.3.5 *Shifting the Burden*

The general trend vis-à-vis rules of evidence lies in shifting the burden of proof in environmental litigation. Shifting the burden will undoubtedly assist the victims in proving his case in environmental suit. That is why the Harmful Wastes (Special Criminal Provisions etc.) Act should be viewed as a good piece of legislation in spite of its punitive outlook. The Act significantly affected the rule on burden of proof with respect to damages or dumping of waste; provision of Section 12 of this Act should apply to all environmental litigation.

5.3.6 *Evolving New Precedence*

The English common law of tort is outdated and seems not to meet up with modern technical demand this common law requires proof of damages in case of negligence, nuisance and trespass. These rules are not static body of rules but capable of being altered to meet the need of changing society. The judges should use their learning and ingenuity to modify the requirement of proof under common law of tort in order to bring them in line with modern civilization and to truly do justice to all manner of person without fear or favour.

Our judiciary should not await new legislation. The position of Edozie JCA and Onalaja JCA in **Shell B. P. Development Nigeria Limited v. Farah**[1] is commendable, this is has opened new vistas in the attitude of our court to issue of environmental pollution. This is a glimmer of hope that Nigerian courts may take progressive judicial

[1] (Cited in Derri, D.K. And Emiri, O.F. Op. cit p. 44

path. This was the decision in the case of **Shell Development Company Limited v. Adamkue**[2].

Nigeria needs more of this judicial activism to enable the victims with genuine claims to make same and such claim should not be seen or use as a gold digging exercise. Judiciary exist for the people and not vice-versa and therefore must impart effectively and promptly[3]. Courts are pressed on to activates this rights and extinguish exploitation injustice. The court must activate itself rather than remain static judges impart on million through positive approach. This approach will ensure the concept of protecting the environmental right for future generation example of this can be seen in the decision of Supreme Court of Philippines in the case of **Minor Oposa v. Secretary Development of Environment and Natural Resources**[4].

5.3.7 *Adoption of Strict Liability*

Most environmental protection laws are now based on strict liability in other jurisdiction such as USA. Nigeria should follow suit as it greatly relieve victims of pollution of the Herculean task of prove associated with environmental litigation. There is need for our courts to come up with their own rule on strict liability with reference to the rule in *Rylands v. Fletcher*[5]. This will ease the stern requirement of prove on the victims of environment pollution. Courts should note that common law is not static.

---

[2] (2003) 11 NWLR pt. 832 p. 533

[3] Mehta C. S. Environmental protection and the law APH publishing corporation New Delhi 2009 p. 78.

[4] Reported in Bright, C.A. Toede the Right to Health as Human Right in International Law Groningen School for Human Right Research 1999.

[5] (1886) LR1 Exch. 265

5.3.8 EXPLORING ADR

Claims for compensation are generally very difficult to prove in court much scientific and technical data are often required to establish the real nature of polluting agents and the causal connection between it and damages complained of, for this the polluter is in vintage position. It is recommended that victims should explore the option of Alternative Dispute Resolution first and to do so seriously as both parties have to deal with each other over long period of time and litigation destroys long term relation.

5.3.9 *Establishment of Statutory Compensation Fund*

There is need for the government to establish a statutory compensation fund for victims of environmental pollution, such fund or scheme can equally be used for restoration and rehabilitation of the environment. Similar super fund has been existing in the USA under Comprehensive Environmental Response Compensation and Liability Act 1982[6]. An attempt in this regard can be seen in the provision of Section 121(1) and (2) of the Nigerian Minerals and Mining Act, 2007 which provides for the establishment of environmental protection and rehabilitation fund is a good step in right direction. It hopes that this will be extended to other aspects. There is also need for a standard for assessment of quantum of compensation to effectively guide our courts in determining issues of compensation and damages to be awarded for injurious affection to victims of pollution.

[6] The United State Congress established the Superfund programme in 1980. It is administered by U. S. Environmental protection Agency.

In conclusion, we must note that pollution has caused adverse effect to man's health and wealth it is only fair that the victims be adequately compensated for their vicissitude to enable the victims cope with realities confronting them. The victims on their own part should not seek the remedies as gold Digging Avenue.

BIBLIOGRAPHY

1. Amokaye, G.O. *Environmental Law and Pracitice in Nigeria*, University of Lagos, Akoko 2004.
2. Atsegbua, L. Akpotaire, V. and Dimowo, F. *Environmental Law In Nigeria*. Ababe Press Limited Lagos, 2003.
3. Abdullahi S. Zuru, *The Nigeria's Upstream Oil and Environmentalism. Government, the Niger Delta and Multinational Oil Industry*. Faith Printers International, Rimi Tsiwa, Zaria 2009.
4. Ladan, M.T. Biodiversity, Environmental Litigations Home Rights and Access to Justice Faith Printers Rimi Tsowa Zaria 2007.
5. Ladan, M.T. Materials and Cases on Environmental Law Econet Publishing Co. Zaria. 2004.
6. Ogun Dan Non-governmental Organizations, the Law and Environmental Protection in Nigeria. Green World Publishing, Jos 2002.
7. Okorodudu – Fabura, M.T Law of Environmental Protection Material and Text. Caltop Publication Nigeria Limited 1998.

JOURNALS AND ARTICLES

Adewale O. Customary Environmental Law. In Ajomo and Adewale (eds) *Environmental Law and Sustainable Development in Nigeria* NIALS Lagos 1994

Adewale O. Judicial Attitude Environmental Hazards on Nigeria Petroleum Industry Vol. 4 No 1 2 UILR.

Adeyinka M. A. et. A1. Environmental Statistics Situation in Federal Republic of Nigeria. Being a Country Report presented at Workshop on Environmental Statistic held in Dakar Senegal 28th February 2008.

Akande O. Pollution Control Regulation in Oil Industry. In Ajomo and Adewale *Environmental Law and Sustainable Development in Nigeria* NIALS 1994

Akujibi A. K. the Effectiveness of criminal Sanctions under Environmental Laws in Nigeria. In Emiri and Deindomow. *Law and petroleum Industry in Nigeria Current Challenges.* Essays in Honour of Justice Kate Abiri Malth House Law Books Surulere Lagos 2009.

Ebekn, K.S.A Legal remedies for Victims of Environmental Pollution in Nigeria. *Nigeria Law and Practice Journal* Published by Nigerian Law School 1998.

Erhonsele F. The Onus of Proof in Cases of Environmental Degradation in Oil Related Litigation. A case for change in Attitude of Nigeria Courts. In Atsegbu (ed) *Selected Essays on Petroleum, and Environmental Law.* UNIBEN 2000.

Fekumo J.F. The Problem of Jurisdiction in Compensation for Environmental Pollution and Degradation in Nigeria (Oil and Gas) Fundamental Right Enforcement Alternative Paper Presented at Nigeria Bar Association Annual Delegate, Conference on 25 August, 2004.

Fekumo, J.F. Civil Liability for Damages cause by Oil Pollution. In Omotola (ed) *Environmental Law in Nigeria including Compensation.* University of Lagos 1998.

Ibidapo-Obe A. Criminal Liability of Damages cause by Oil Pollution. In Omotalo (ed) *Environmental Law in Nigeria including Compensation* University of Lagos 1988.

Ibrahim B. Y. Constrain in Enforcement of *Environmental Law in Kaduna State* ABULJ Vol 11 – 16 1993 – 1996

Ibrahim B.Y. The Frame Work og Environmental Law of Nigeria. A critical Analysis. Journal of Private and Comparative Law Vol. 1 No. 2 2006 ABU Zaria.

Idowu A. A. Examing the Issues of Compensation for Environmental Degradation and Pollution in Nigeria. *Ahmadu Bello University Law Journal* 2003 – 2004 Vol. 21 – 22.

Ikhariale M. the Koko incident, the Environment and the Law in Syllon (ed.) *The Law and the Environment in Nigeria.* Vintage Publishers, Ibadan 1989.

Ilegbune T. O. Legal Regulation of Industry Waste Management. In Ajomo and Adewale (eds) *Environmental Law and Sustainable Development in Nigeria*. NIALS 1994.

NIKI Tobi, Judicial Enforcement of Environmental Law in Nigeria in Ladan (ed) Human Right and the Administration of Justice. Essays in Honour of Justice M. L. Uwais.

Nwokedi G. I. C et al Pollution Chemistry on River Niger and its tributaries characteristics of Industrial Waste Effluent. *Bulletin of Environmental Contamination and Toxicology.* Springer New York 1992.

Nwosu L. E Appropriate Mechanism for Enforcement Claims. *Juriscope 1st Edition* Corporate Design Consult Lagos, 2001

Ogbuigwe A. K. Compensation and Liability for Oil Pollution in Nigeria. Journal of Private and Public Law Vol. 3 1985.

Ogunsawo B. Liability and Compensation for Environmental Damages in Ajomo and Adewale (eds) Environmental Laws and Sustainable Development in Nigeria.

Okadiran O. Appraisal of Environmental Sanitation Edict in Nigeria Syllon (ed) *The Law and the Environment in Nigeria* UI Press Ibadan 1989.

Omaka C. A. Jurisprudence of Polluter Pays Principles and Environmental Criminal Enforcement in Nigeria. In Orji (ed) *Philosphical Legacy on Issues in Nigeria Public Law.* Department of Public Law and Jurisprudence UDU Sokoto 2008.

Osipitan T. Problems of Proof in Environmental Litigation. In Omotola (ed) *Environmental Laws in Nigeria including Compensation.*

Uwais M. L. (Chief Justice) at National Workshop on Development of the Law on Response, Compensation and Liability for Environmental damage in Nigeria held at Sheraton Hotel and Towers Abuja, from 25th – 26th March, 1995 in Tobi (ed) *Uwais Through the Speeches.* Snapps Press Ltd Enugu, 2006.