



LEGAL ISSUES AND CHALLENGES IN EFFECTIVE ENFORCEMENT AND IMPLEMENTATION OF LAWS ADDRESSING ENVIRONMENTAL POLLUTION IN NIGERIA

Onyeama, Anthony*
Bariyira Simple Kpea-ue**

Abstract

Despite the numerous environmental laws enacted to protect the environment, environmental degradation/pollution has continued unabated. Oil spillage and gas flaring activities are still commonplace in Nigeria, especially in the oil rich Niger Delta. These challenges include amongst others, contamination of air through gas flaring, pollution of source of drinking water and marine transportation through oil spills and leakages, land degradation through indiscriminate disposal of noxious substances on land and destruction of the entire ecosystem which affects source of livelihood and cause diseases. This paper aimed at inquiring into the legal issues and challenges in addressing environmental pollution in Nigeria. Adopting the doctrinal research methodology, it is found that most of the challenges are traceable to anthropogenic activities. It is concluded that absence of adequate legislative action, poor funding, low technological advancement and weak institutions are some of the legal challenges in addressing environmental pollution in Nigeria

Keywords: Environment, Pollution, Environmental Rights.

1.0 Introduction

The environment is so important that a duty is imposed on government to protect, improve and safeguard the water, air and land, forest and wildlife of Nigeria.¹ Environmental pollution has being in existence since man began to live in settlements.² In the earlier days of nomadic hunting communities, the tribal group moved on when food in their current location became depleted and the area around their camp became polluted or soiled. These nomads were a part of a balanced eco-system. As human societies developed, land became cultivated, livestock domesticated, and as permanent settlements became established, environmental pollution began to emerge.³ The problem became more serious as these permanent communities grew into cities. The increase in human population and consumption pattern also led to the increase in wastes generated, thereby creating environmental problems of collection and disposal. In response to waste disposal challenge, various societies developed waste collection and disposal systems that best suited their immediate environments. Most of these

* LL.B(Hons), B.L(Abuja), Legal Practitioner, onyeamaanthony@gmail.com +2348063094886

**Lecturer, Department of Private and Property Law, Faculty of Law, Rivers State University, email: simplestbarry@yahoo.com; +2348068753214.

¹ Constitution of the Federal Republic of Nigeria 1999 Cap C23 Laws of the Federal Republic of Nigeria (LFN) 2004 as amended (CFRN 1999), s 20.

² C Udosen and Others, 'Fifty Years of Oil Exploration in Nigeria: The Paradox of Plenty?' (2009) (8)(2), *Global Journal of Social Sciences* 37.

³ (n 2).



environmental problems are caused by certain anthropogenic activities. This paper discusses the legal issues and challenges in addressing environmental pollution in Nigeria.

2.0 Challenges in Addressing Environmental Pollution in Nigeria

There is no doubt that our generation has witnessed changing scenes in our environment –from a thinning ozone layer, changing weather patterns to devastating tsunamis, acid rain, massive erosion, massive loss of biodiversity, significant treats to and reduction of ecosystem services, horrific atmospheric, ocean, river and land pollution and many others. The most worrisome part of this environmental pollution is the fact that man is at the center of it–pushing the planet beyond its coping capacity.⁴ Thus, some of the legal issues in addressing environmental pollution in Nigeria include:

2.1 Absence of Legislative Action

Environmental laws regulating the environmental pollution can be found in several statutes dealing with different subjects. According to Atsegbua, the Federal Government by the promulgation of the repealed FEPA Act 1988 and the establishment of the Inspectorate and Enforcement Department within the Agency in 1991 laid the foundation for the enforcement of environmental laws in Nigeria.⁵ This marked the beginning of co-ordinated institutional efforts at the National level to regulate and manage the environment.⁶ The neglect or unwillingness of the defunct FEPA to enforce the existing regulation, despite several cases of spills in Nigeria became worrisome. Hence, the need for a new legislative action.

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007,⁷ PIA 2021,⁸ National Oil Spill Detection and Responses Agency (Establishment) Act 2006,⁹ Harmful Waste (Special Criminal Provisions) Act 1988,¹⁰ Climate Change Act 2021,¹¹ Environmental Impact Assessment Act 1991¹² even the Constitution of the federal republic of Nigeria 1999 (as amended) among others were enacted. These statutes have provisions designed to reduce the incidence of oil pollution in Nigeria.¹³ The laws task the licensee or lessee to maintain all apparatus and appliances in use in his operations and all boreholes and wells capable of producing petroleum, his operations in a proper and workman-like manner in accordance with these and other relevant regulations and methods and practices accepted by the Head of Petroleum Inspectorate as good oil field practices. Operators are to take all step practicable: to control the flow and to prevent the escape or avoidance waste of petroleum discovered in or obtained from the relevant areas and to prevent damage to adjoining petroleum bearing strata; except for the purpose of secondary recovery as authorised by the Head of Petroleum Inspectorate to prevent the entrance of water through borehole and wells to petroleum

⁴ A Ogbuigwe, *Our Environment, Our Laws and Our Lives* (1st Monthly Lecture of the faculty of Law, Rivers State University of Science and Technology, Port-Harcourt 2015) 9-10

⁵ L Atsegbua and others, *Environmental Law in Nigeria: Theory and Practice* (Benue: Ambik press 2010) 226.

⁶ (n.2).

⁷ NESREA Act 2007.

⁸ PIA 2021.

⁹ NOSDRA Act 2006.

¹⁰ Cap H165 LFN 2004.

¹¹ CCA 2021.

¹² EIA 1991.

¹³ (n.2).

bearing strata. Others are to prevent the escape of petroleum into any water, wells, spring, stream, river, lake, reservoir, estuary or harbours; and to cause a little damage as possible to the surface of the relevant areas and to trees, crops, buildings, structure and other property thereon.¹⁴ The Regulation further provided that the licensee or lessee shall adopt all practicable precautions, to prevent the pollution of inland waterways, rivers water courses, the territorial waters of Nigeria in the high sea by oil, mud or other fluids or substances which might contaminate the water banks, shore line or which might cause harm or destruction to fresh water or marine life, and where such pollution occurs or has occurred, shall take prompt steps to control and, if possible, end it.¹⁵

The above provisions are worded in very general terms, so much that its enforceability is clearly dependent on the interpretation of terms such as practicable; up-to-date equipment, and prompt steps' none of which is defined in the PIA 2021. According to Omorogbe, it should already be apparent that existing environmental laws are of negligible effect. One major reason is the imprecise wording of so many sections coupled with the use of phrases that lack legal definition... obviously there is need for a clear comprehensive statute regulating oil pollution within the oil industry.¹⁶

The NESREA established under the NESREA Act is charged to monitor and periodically evaluate the overall environmental protection programme and help to enforce environmental protection measure. The Agency has power to seize, search, inspect and arrest. No doubt the Act represent a major step in the right direction. However, oil pollution is specially excluded from the provisions of the Act.¹⁷ The exclusion of the oil and gas sector from the function of the Agency is uncalled for. The oil industry accounts for about 70 percent of environmental pollution in Nigeria. In recognition of this, the National Assembly in 2006 passed the NOSDRA Act 2006 to address the issue of oil pollution in Nigeria.¹⁸

The existing statutory provisions do not adequately cater for individuals/community who suffers the adverse effects of environmental pollution. In many instances, the individual is not compensated for his rights and interests which may be affected by oil pollution.¹⁹ It has become clear that the traditional method of dealing with environmental pollution (that is by having recourse to governmental laws and regulations and/or to tort law remedies), leaves the affected individual without any remedy. The limits of common law tort remedies are well known. These remedies are ill-equipped to effectively deal with the hazardous activities of the oil companies. According McLaren, the Common Law, with its substantive limits apparently tied to the resolution of narrow conflicts between individuals, and the capricious incidence of litigation has seemed to the environmentally sensitive lawyers to be essentially impotent as source of a viable response.²⁰

The remedies provided by the law of tort are incapable of dealing with the technological advancement, which is currently taking place in the oil industry. The torts of negligence, nuisance and the rule in

¹⁴ Petroleum (Drilling and Production Regulations) 1969, reg 36.

¹⁵ *Ibid.*, reg. 25.

¹⁶ Y Omorogbe, 'Regulation of Oil Industry Pollution' in L. Azinge (ed), *Oil Pollution in Nigeria* (Benin: Oiliz Publishers, 1993) 147.

¹⁷ (n 2), 124.

¹⁸ (n 9), ss 5 and 7.

¹⁹ (n.5), 153.

²⁰ J.C.P. McLaren, 'The Common Law Nuisance Actions and the Environmental Battle-Well-Tempered Swords or Broken Reeds?' (Osgoode Hall L. J., 1972) 505 at 507.

*Rylands v Fletcher*²¹ have not been of much aid to the victims of oil pollution as well as environmental pollution.²² Government intervention by way of legislation and regulations has also had limited success. In many cases, these laws and regulation are not backed up by effective sanctions or penalties and their wording preclude easy enforcement. For instance, the NOSDRA and NESREA' officers who are given responsibility to control pollution under the laws are ill equipped, inexperienced, and untrained in modern techniques to be able to make useful impact on the prevention of environmental pollution.²³ The trend has continued with the enactment of the PIA 2021 and the Climate Change Act 2021.

The present lacuna in the enforcement of Nigeria's environmental pollution laws has led to further degradation of the environment especially in the oil and gas producing area.

2.2 Funding

The institutions in-charge of the environmental protection are entitled to establish and maintain a fund into which shall be paid and credited the take-off grant from the Federal Government; annual subvention from the Federal Government and five percent of the ecological fund to serve as superfund for the management of major oil spill disasters annually. 0.5 percent operations funds of oil companies for the enforcement of environmental legislation in the petroleum sector and such counter-part funding as may be provided, from time to time by a State or Local Government including loans and grants-in-aid from national, bilateral and multilateral agencies; rents, fees and other internally generated revenues from services provided by the Agencies; and all other sums accruing to the Agencies from time to time.²⁴

The Agencies may also, from time to time, apply the proceeds of the funds to the cost of administration of the Agencies; to the paying of the emoluments, allowances and benefits of members of the Governing Board and for reimbursing members of the Governing Board or of any committee set up by the Governing Board; to the payment of the salaries, fees or other remuneration or allowances, gratuities and pensions, and other benefits payable to the officers and other employees, gratuities of the Agencies, so, however that no payment of any kind under this paragraph (except such as may be expressly authorized by the Agencies) shall be made to any person who is in receipt of emoluments from the Federal or a State Government; for the development and maintenance of any property vested in or owned by the Agencies; and for and in connection with all or any of its functions under the NOSDRA Act.²⁵

The Agencies shall, not later than 30th September in each year, submit through the Minister to the President an estimate of its expenditure and income for the next succeeding year. The Agencies shall keep proper accounts in respect of each year and proper records in relation to those accounts and shall cause its accounts to be audited within six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.²⁶

²¹. (1868) L.R 3H. L.330; Adewale, 'Rylands v. Fletcher and the Nigerian Oil Industry' (1987) (Vol.8 & 9) *J.P.P.L.*, 37.

²². (n.2), 128.

²³. (n.2), 226.

²⁴. (n 9), s 11; (n 4), s 13.

²⁵. (n 9), s 12.

²⁶. *Ibid.*, s 13.

The Agencies shall prepare and submit through the Minister to the Federal Executive Council, not later than six months after the end of each year, a report in such form as he may direct on the activities of the Agencies during the immediate preceding year, and shall include in such report a copy of the audited accounts of the Agencies for the year and the auditor's report on the accounts.²⁷ The Agencies may accept any gift of land, money or other property on such. Terms and conditions, if any, as may be specified by the person or organization making the gift. The Agencies shall accept any gift if the conditions attached by the person or organization making the gift are not inconsistent with the functions of the Agencies.²⁸ The Agencies may, from time to time, borrow by way of overdraft or otherwise such sums as it may require for the performance of its functions under this Act. The Agencies shall not, without the approval of Governing Board, borrow money which exceeds at any time the amount set by the Minister.

Notwithstanding, where the sum to be borrowed is in foreign currency, the Agencies shall not borrow the sum without the prior approval of the Minister.²⁹ The Agencies may, subject to the provisions of this Act and the conditions of any trust created in respect of any property, invest all or any of its funds in any security prescribed by the Trustee Investment Act or in such other securities as may, from time to time, be approved by the Minister. NOSDRA shall submit to the President through the Minister, not later than 30th September each year, its programme of work and estimates of its income and expenditure for the following year. The Council shall keep proper accounts of the Agency and proper records in relation to those accounts. The accounts of the Agency shall be audited, not later than six months, after the end of the year to which it relates, by auditors appointed by the Agency from the list and in accordance with the guidelines supplied by the Auditor-General of the Federation.³⁰

However, fund posed a very big challenge to the agencies in-charged of the protection of the environment against pollution to implement their statutory responsibilities. According Okorodudu-Fubara, for the agencies to meet their obligations and be able to perform their functions effectively, the Agencies must be financially viable.³¹ Lessons from the experience show that Local Governments are devoid of the requisite human and material resources to undertake environmental management as a result of inadequate funding. This however affects effective environmental law enforcement .³²

In Lagos State for example, except for the Lagos Pollution Fund, all revenues from fines go to the Federal Government revenues and not to State Environmental Protection Agency. Without direct gain from enforcement through increased agency revenue, there is still little incentive to pursue enforcement aggressively. Local Government were often staved of funds or could not attract the required high-level manpower, they are therefore under staffed. They could neither attain the sophisticated expensive equipment nor meet the demands of varied responsibilities.

²⁷. *Ibid.*, s 14.

²⁸. *Ibid.*, s 15.

²⁹. (n 9), s 16.

³⁰. *Ibid.*, s 17.

³¹. M T Okorodudu-Fubara, *Law of Environmental Protection* (Caltop Publications Nigeria Limited, 1998) 71.

³². A Ogbuigwe, 'Report on the Review of Environmental Protection Agency in Enugu State' (Enugu: Anpez Environmental Law Centre Port Harcourt for Enugu State Environmental Protection Agency 1996) 45.

More funds should be allocated by the Government at all levels to enhance the execution of projects geared towards the improvement of the environment. As stated earlier, lessons from the experience show that Local Governments are devoid of the requisite human and material resources to undertake environmental management. These bye laws from the local government are neither well-articulated nor programme instruments designed to protect the environment.

2.3 Low Technology

Technological impact that determines the efficiency and nature of emission reduction has not been emphasized. The apparent physical and human capital makes technological goal by the agencies responsible for the protection of the environment difficult.

Technology is always advancing and improving. Many new technologies are naturally more energy efficient and less polluting than the ones they replace. Sometimes, this is because they were designed with environmental improvement in mind. Usually, however, it is simply the result of using newer and better materials and components. Therefore, pollution-preventing technologies can be found in every area of a product's life cycle. Life cycle analysis (LCA) is needed to determine if a particular technology really pollutes less than its alternatives. LCA is the examination of the environmental impacts of a product, from its origins as raw material through processing and production to use and final disposal. This can be a complex process. For example, fluorescent light bulbs may seem to be less polluting than incandescent light bulbs because they use much less energy. However, they actually use polluting chemicals such as mercury that are not found in incandescent light bulbs. So they use less energy, but more toxic chemicals. The choice of indicators for P2 performance and LCA, such as toxicity or energy efficiency, is important for evaluation.

Some technologies are important for helping other technologies reduce pollution. reduce pollution. For example, process controls such as meters and sensors can make many production processes more efficient and less polluting by providing improved control, which reduces waste and defects. Centrifuges can reduce the amount of solids in wastewaters, thereby reducing water pollution. Catalytic converters on engine exhaust systems can reduce air pollution. There are many such examples of technologies that help other technologies be cleaner. This is important in situations where there is a large investment in an existing technology already installed that cannot be easily or economically replaced with new and cleaner technology. Some technologies are designed specifically for protecting the environment while also improving business performance. For example, recycling technologies can help recover valuable materials from wastes, cutting manufacturing costs, while also preventing pollution. Examples include gene-engineered plants that do not need protection using chemical insecticides and fuel cells for generating electricity. However, it is surprisingly challenging to identify such technologies. Most technologies that stop pollution were usually created to simply reduce costs and save on materials. Technologies designed to prevent pollution usually rely on cost efficiency, rather than pollution prevention, as their main selling point.

However, for the Agencies incharge the environmental protection to address a wide spectrum of environmental protection issues using geosynthetic technologies, must provides dependable geosynthetic composite solutions for environmental soil stabilization, earth retention, and soil erosion



control projects utilizing geotextiles, geogrids, geotubes, earth anchors, walls and slopes, turf reinforcement, revegetation, containment and geomembrane liners, and more.

To this end, the Agencies must acquire new process technologies via acquisition, licensing, in-house Research and Development, collaboration with universities, research institutes and other like-minded corporations in accordance with of section 31 of NOSDRA Act which provides that in the exercise of its functions under this Act, the Agency may demand by requisition from any person or organization, any available equipment, facilities or personnel which may assist in a speedy and effective cleaning and rescue operation during an oil spill disaster.

2.4 Weak Institutions

Enforcement is the use of legal tools to assist in the compliance with environmental requirements.³³ Hornby and Cowrie defined enforcement as to force people or something to obey the law or make something effective or make something by force.³⁴

The responsibility for the enforcement of federal laws and regulations on the environment is vested on the NESREA³⁵ and other institutions established under the extant laws. NESREA as a body stands to protect the laws relating to air, water, human beings, flora and fauna which are integral parts of human environment and life.³⁶ It is the same NESREA that is excluded by the same NESREA Act thereby ousting it from exercising jurisdiction in petroleum related gas flaring matters.³⁷ Most oil companies engaged in gas flaring which contribute to air pollution but not punished or supervised by the Agency causing environmental pollution as a result of climate change due to the emitting of greenhouse emitting for the atmosphere are not penalized for these harmful activities.³⁸

Also, the neglect or unwillingness of the defunct FEPA to enforce the existing regulation, despite the reported cases of oil spills in Nigeria is sad. There has been no single known case of oil enforcement of the statute against NNPC, now NNPC Ltd which is in joint venture with major oil companies in Nigeria by the defunct FEPA.³⁹ It is difficult for NNPC, now NNPC Ltd which holds at least 60 percent shares in the joint venture with other oil companies to enforce the law against itself when it breaches any provision of the law, or allow any agency to enforce any regulation against it. It is hoped that NOSDRA will live to its statutory responsibility in monitoring the activities of oil companies to avert environmental pollution.

One of the fundamental problem causing the institution in-charge of environmental protection is the Agencies' officers who are given the responsibility to control environmental pollution are ill equipped, inexperienced and untrained in modern techniques to be able to make useful impact on the avoidance of environmental pollution.⁴⁰ For instance, in NESREA, the day-to-day administration is vested in the

³³. (n.2), 214.

³⁴. A.S Hornby, *Oxford Advanced Learner's Dictionary* (9th edn, Braxton Publisher 2015) 508.

³⁵. (n 4).

³⁶. (n.2), 215.

³⁷. (n 6), ss7-8.

³⁸. *Gbenre v Shell Dev. Co. Ltd & Ors* (2005)AHRIR 15.

³⁹. (n 2), 226.

⁴⁰. O. Adewale, (n 18).

Director General/Chief Executive and Management Staff,⁴¹ and the Director General is appointed by the President and Commander in Chief of the Armed Forces for which the Director General is entitled to hold office for four years at the first instance and be further eligible for reappointment for another four years term only on terms and conditions as may be specified by the letter of appointment.⁴² This raised the issue of loyalty of the Director General to his appointor irrespective of the level of damage or degradation suffered by the people. To this extent, once the appointor has any interest in the activities of the oil companies that caused the damage, the matter will end at that point without further action by the institution involved in order to remain in employment.

3.0 Remedies for Environmental Pollution in Nigeria

Remedies available for the breach of environmental rights are;

3.1 Fines

According to the NOSDRA Act, the agency in-charge of environmental protection may establish monitoring stations or networks to locate sources of atmospheric pollution and determine their actual or potential danger.⁴³ A person who violates the regulations made by NOSDRA, commits an offence and shall on conviction, be liable to a fine not exceeding N 200,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N20,000 for every day the offence subsists.⁴⁴ Where an offence is committed by a body corporate, it shall on conviction be liable to a fine not exceeding N2, 000,000 and, an additional fine of N50,000 for every day the offence subsists.⁴⁵

NOSDRA may also, in collaboration with other relevant Agency, embark on programmes for the control of any substance, practice, process or activity which may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, when such effects may reasonably be anticipated to endanger public health or welfare.⁴⁶ Where an offence under subsection (2) of this section is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N2,000,000 and an additional fine of N50,000 for every day the offence subsists.⁴⁷ NOSDRA may further in consultation with appropriate authorities: identify major noise sources, noise criteria and noise control technology; and make regulations on noise, emission, control, abatement, as may be necessary to preserve and maintain public health and welfare.⁴⁸ The Agency shall enforce compliance with existing regulations and recommend programmes to control noise originating from industrial, commercial, domestic, sports, recreational, transportation or other similar activities.⁴⁹ 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 N50,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N5,000 for every day the offence subsists.⁵⁰ Where

⁴¹. (n 9), s 11.

⁴². *Ibid.*, s 11.

⁴³. *Ibid.*, s. 20(2).

⁴⁴. *Ibid.*, s. 20(3).

⁴⁵. (n.9), s. 20(4).

⁴⁶. *Ibid.*, s. 21 (2).

⁴⁷. *Ibid.*, s.21(3).

⁴⁸. *Ibid.*, s 22(1)(a)(b).

⁴⁹. *Ibid.*, s 22(2).

⁵⁰. *Ibid.*, s 22(3).



an offence under subsection (3) of this section is committed by a body corporate, it shall on conviction be liable to a fine not exceeding N500, 000 and an additional fine of N10,000 for every day the offence subsists.⁵¹

3.2 Terms of Imprisonment

A person who violates the provisions of the regulations made in respect to the protection of the environment against pollution, commits an offence and shall on conviction, be liable to a fine not exceeding N50, 000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N5, 000 for every day the offence subsists.⁵²

Also, a person who violates the provisions of the regulations made pursuant to subsection (3) of this section which is to the effect that the regulatory body should make regulations on effluent limitations, on existing and new point sources, for the protection of human, animal, marine and plant life, commits an offence and shall on conviction, be liable to a fine not exceeding N200,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment and an additional fine of N5,000 for every day the offence subsists.⁵³

Under the NOSDRA Act, any person or organization that willfully obstructs or impedes the Agency or any person acting under the authority of the Agency in the exercise of any powers or duties under this Act; or without reasonable excuse fails to render assistance or release any available equipment, facility or personnel required for cleaning and rescue operation or other oil spill disaster curtailment activities, or comply with a directive of the Agency, is guilty of an offence and liable on conviction to a fine not exceeding N500,000.00 or imprisonment for a term of 2 years or to both such fine and imprisonment.⁵⁴

3.3 Forfeiture

Compliance refers to the degree to which Nigerian laws and indeed the Nigerian authorities or the regulatory framework recognize, apply, enforce and comply with global statutes or international instruments, conventions, treaties and standards (Multilateral Environmental Agreements {MEAS}) relating to the environment within the Nigerian jurisdiction. Governments at all levels should recognise an effective monitoring and compliance with environmental laws for the various regulatory agencies, civil society groups and private citizens.

An effective monitoring and compliance with environmental laws requires the pro-active disposition of government at all levels, regulatory agencies, civil society groups and private citizens. Where any company operating in the country fails to comply with the regulatory standard, the government at all level should assist the Agencies deal with those companies especially the multinationals to forfeit their equipment for government use.

⁵¹. (n 9), s 22(4).

⁵². *Ibid.*, s. 23(3).

⁵³. *Ibid.*, s 24 (4).

⁵⁴. *Ibid.*, s 31(2).

3.4 Compensation

Compensation is derived from the verb ‘compensate’ which is defined to mean ‘to pay another for services rendered.’⁵⁵ The term is defined also to mean ‘to make an amendatory payment to; recompense for an injury.’⁵⁶ Therefore, compensation is rendered as remuneration or other benefits received in return for services rendered.⁵⁷ It is the payment of damages, or any act ordered by the court to be done by a person who has caused injury to another.⁵⁸ Compensation is a pecuniary remedy that is awarded to an individual or group of individuals who have sustained an injury to replace the loss caused by said injury. It can be referred to as payment or remuneration for work or services performed or for harm suffered. It can also be likened to damages in law. Generally, compensation refers to indemnification. It is the act of making amends in injury or loss caused to another.⁵⁹ It represents damages paid to a party injured by an act of another.⁶⁰

In *Railroad v Deninan*,⁶¹ compensation was defined to mean the equivalent in money which is paid to the owners and occupiers of land compulsorily acquired or injuriously affected by the operations of companies exercising the powers of an eminent domain. Compensation is a fair payment made by the government for property compulsorily acquired usually assessed at the property’s fair market value, so that the owner is not worse-off after the acquisition.⁶² It aims at providing succor to affected property owners and serves to right what would otherwise count as wrong or injury to the property owner.⁶³

Compensation is a constitutional right of every Nigerian citizen whose property is compulsorily acquired, and a breach of it will amount to an infringement on the individual's fundamental rights to own and enjoy the immovable property in Nigeria.⁶⁴

Similarly, the holders of Minerals title are obliged under the Act⁶⁵ to pay compensation to occupiers and land owners for land acquired for petroleum operations upon the presentation and consideration of a valuable report from a government licensed valuer. Compensation in this context is thus the right of landowners or occupiers whose property is affected by the operations or activities of Oil Mining Lease and pipelines construction and so on.

Two rights are established by the above provisions. The right against compulsory acquisition of property except in accordance with the conditions of payment of adequate compensation and the right to challenge the amount of compensation so paid.⁶⁶ The right to compensation is not only a Constitutional

⁵⁵ B.A. Garner(ed), *Blacks Law Dictionary* (8thedn, Thompson West 2004) 301.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ ‘The Law Dictionary’ <<https://thelawdictionary.org/compensation/>> Accessed 26 January 2023.

⁶⁰ *Ibid.*

⁶¹ 10 Min 280 (Gd 2008).

⁶² A. Otubu, ‘The Land Use Act and Compulsory Acquisition without Compensation’ [2016] (7)(4) *The Grivitas Review of Business and Property Law*, 13-21, 14.

⁶³ *Ibid.*

⁶⁴ Constitution of the Federal Republic of Nigeria 1999 Cap C23 LFN 2004 as amended (CFRN 1999) Ss 43 and 44.

⁶⁵ Nigerian Mineral and Mining Act 2007, now NMMA 1999 Cap M12 LFN 2004.s. 107.

⁶⁶ *Obikoya & Sons Ltd v Governor of Lagos State* (1987) 1 NWLR (Pt. 50) 385; *LSPDC v Finance Corporation* (1987) 1 NWLR (Pt. 50) 413 at 467.



right but it is also supported by other statutes. In particular, the Land Use Act 1978,⁶⁷ the PIA 2021⁶⁸ and the Oil Pipeline Act 1956⁶⁹ guarantee the right of surface land users to compensation on the revocation of a right of occupancy for mining, oil pipeline and purposes connected therewith.

The Oil Pipeline Act⁷⁰ provides a lucid legislation on compensation as it affects the Nigerian petroleum industry. Section 11(1)(3)(4) of the OPA authorises the holder of an oil pipeline license to enter upon, take possession or use strip of land specified in the licence and thereon, thereover, thereunder to construct, maintain and operate an oil pipeline. In furtherance of the above, Section 11(5) of the OPA authorises holder of a licence to pay compensation to any one whose land or interest in land is injuriously affected, any person suffering damage by reason of any neglect on the part of any holder or his agents or any person suffering damage due to breakage or leakage from oil pipelines or ancillary installations. Specifically, such compensation could cover buildings, crops, or profitable tress, disturbance, injurious affection and loss in value of the land or interest in land.⁷¹

In the case of *Shell Petroleum Development Company Nigeria Limited v F.B. Farrah*,⁷² the court enumerated the following heads of compensation to be payable by licensees or leasees. They are fair and adequate compensation, disturbance, reinstatement, injurious affected general inconvenience, time of valuation and method (s) of valuation.

Also, though the Nigerian Mineral and Mining Act⁷³ vests the entire property in and control of all minerals in, under or upon any land in Nigeria, rivers, streams, the Exclusive Economic Zone in the Government of the Federation for and on behalf of the people of Nigeria,⁷⁴ same provision does not impede the right to compensation arising from petroleum activities.⁷⁵ In the case of *ELF Nigeria Limited v Opere Sillo*,⁷⁶ the court held that the common right of fishing in tidal waters is recognised and it is not affected by the Mineral Act. Hence, general damages were awarded in favour of the Plaintiffs for loss of fishing rights in the creeks and swamps among other items in the sum of Fourteen Million, Five Hundred and Forty Five Thousand Naira (₦14,545,000).

In the case of *Elf Petroleum v Umah*,⁷⁷ the trial court gave judgment in favour of the respondents and awarded ₦25,000,000.00 (Twenty-Five Million Naira) as damages for the acquisition of the respondents' land by the appellant company for the establishment of a gas plant at Obite. The Court of Appeal dismissed the appellant company's case reiterating the fact that where a property of any Nigerian is compulsorily acquired, such a person is entitled to prompt payment of compensation and where there is a default in that regard, the person is also entitled to approach the courts for redress. It follows

⁶⁷. Cap L1 LFN 2004, s 29(2).

⁶⁸. (n 5).

⁶⁹. Cap 07 LFN 2004 s 11(5).

⁷⁰. *Ibid.*

⁷¹. *Ibid.*, s. 20(2).

⁷². (1995) 3 NWLR (PT. 382) 148.

⁷³. (n 65).

⁷⁴. *Ibid.*, s. 1 (1).

⁷⁵. *ELF Nigeria Limited v Opere Sillo And Anor* (1994) 6 NWLR (Pt. 350) 258.

⁷⁶. *Ibid.*

⁷⁷. LER [2018] SC. 344/2008.

therefore that compensation in this perspective is payable to persons, groups of persons or communities whose lands are compulsorily acquired for public interest and mining purposes and persons, groups of persons or communities who have suffered damages as a result of the mining activities carried out on their land.

4.0 Environmental Protection in Tanzania

Environmental protection against pollution in Tanzania is regulated by the Merchant Shipping Act 2003.⁷⁸ The MSA 2003 has copious provisions on the prevention of pollution at sea especially as they apply to the operations of tankers, other ships and to offshore installations. The MSA 2003 Act prohibits the discharge of oil or oily mixture within prohibited zones, within Tanzanian waters *en route* from port or place within Tanzania and anywhere at sea within Tanzania waters.⁷⁹ Such discharge of oil is only allowed for the purpose of safety of the ship, saving life at sea or for the protection of ship and cargo in the case of escape or unavoidable leakage of oil where reasonable precautionary measures have been taken to avoid damage.⁸⁰ To prevent pollution, Tanzanian ships shall be fitted with special equipments and comply with stipulated requirements while ensuring that oil rebooks are maintained on board every Tanzanian tanker and ships which uses oil as fuel.

Any owner or ship master that discharges oil or oily mixture into a harbor or into the sea within 100 nautical miles from the coast of Tanzania shall be liable to a prescribed fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.⁸¹ From the letters of the MSA, the liability for the oil pollution, discharge or escape is channeled to the registered owner of the ship and includes a demise charterer and managing owner of the ship, managing agent in respect of a registered ship. Regarding the provisions implementing liability and compensation conventions, some fundamental elements of liability and compensation are not addressed by the MSA. There is no precise provision pertaining to compulsory insurance, the right of victims of pollution damage to bring action direct against the insurer. Limits of liability issues are not precise but rather the ship owner is expected to meet all his obligations under the Act. There is a stringent penalty or fine imposed on any owner or ship master that discharges oil or oily mixture into a harbor or into the sea within 100 nautical miles from the coast of Tanzania. This stringent fine or penalty serves as deterrent to would be violators and ensure compliance with extant laws on environmental protection in Tanzania. This again emphasizes the polluter-pays principle.

5.0 Conclusion/Recommendation

The extant laws on environmental protection, enforcement and implementation in Nigeria appear inadequate to guarantee protection against pollution. Various agencies and institutions responsible for the enforcement and implementation of environmental standards in Nigeria lack the requisite independence, financial viability and transparency to enforce the extant laws. In contra-distinction to the situation in Nigeria where paltry sums are provided under the extant laws for violators of environmental laws, Tanzania provides stringent penalties in form of fines imposed on any owner or shipmaster that discharges oil or oily mixtures into a harbor or into the sea within 100 nautical miles

⁷⁸. Merchant Shipping Act Tanzania No 21 of 2003.

⁷⁹. *Ibid.*, s 369.

⁸⁰. *Ibid.*, s 370.

⁸¹. *Ibid.*, s 177.

from the coast of Tanzania. These measures serve as deterrent to violators and compel compliance with extant laws. Therefore, it recommends that:

1. The provisions of the Section 20 of the 1999 Constitution which imposes a duty on the State to protect and improve the environment and safeguard the water, air and land, forest and the wild life of Nigeria need to be transferred to chapter iv of the constitution in order to make the said justiciable in the light of Section 6(6)(c).
2. Section 6(3) of the NOSDRA Act 2006 which imposes a fine not exceeding #5,000,000 or imprisonment for the term not exceeding 2 years or to both in the event of any failure to clean up oil impacted sites within two weeks of the occurrence of the spill needs to be amended to provide a more stringent penalty that will serve as deterrent and compliance as the case in Tanzania.
3. The regulatory agencies and institutions for the enforcement and implementation of environmental standards in Nigeria need to be restructured to enjoy full independence, financial viability and transparency.
4. The regulatory agencies and institutions for the enforcement and implementation of laws addressing environmental pollution in Nigeria need to be technologically equipped to detect what constitutes chemical substances or toxic wastes under the Harmful Waste (Special Criminal Provisions) Act 1988 before they enter into Nigeria. This will aid forensic examination and data and waste management technologies in Nigeria.
5. The Nigerian judiciary must be ready to rise above reliance on technicality in favour of Multinational Oil Companies and award substantial damages against persons who pollute the environment. This way, the judgments will serve as deterrent to operators.
6. A Special Environmental Court or Tribunal should be established and judges who are experts in enforcement and implementation of environmental matters be appointed to administer all environmental laws. This way, the delay associated with the traditional court litigation would have been defeated in environmental justice achieved.