

EXPLORING THE EFFICACY OF AN ADMINISTRATIVE INSTITUTION WITH ARBITRATION POWERS IN RESOLVING NIGERIA'S OIL POLLUTION DAMAGE COMPENSATION CONUNDRUM

By

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Abstract

The widespread discontent among Nigeria's oil-producing communities, leading to persistent unrest and agitation fuelled by inadequate and delayed compensation for oil pollution damage, highlights significant shortcomings in the country's legal framework for addressing such issues. This study adopted a multi-method research design, incorporating both traditional legal analysis (doctrinal method) and socio-legal research techniques (non-doctrinal method) to investigate the effectiveness of compensation for oil pollution damage in Nigeria. For the doctrinal aspect, the study relied on information which include relevant international laws, conventions and treaties, local legislation, past and extant Nigeria's Constitution, case law, textbooks, academic publications, law reports, encyclopaedias, law dictionaries and newspaper publications. For the non-doctrinal method of legal research, the study used questionnaire survey as a versatile tool to gather useful and appropriate data/information on the effectiveness of energy industry compensation in some selected oil-producing communities of Bayelsa and Rivers States. The paper, therefore, recommended the development of a legal system of compensation for oil pollution damage that is based on the enactment of comprehensive law for compensation for oil pollution damage and establishment

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of an independent regulatory institution with powers of arbitration, and its own rules of procedure, that will facilitate prompt, adequate and fair resolution of matters of compensation for oil pollution damage.

Key Words: *Compensation, Pollution, Framework, Communities, System.*

1. Introduction

Petroleum exploration, production, transportation, storage, refining and marketing have been ongoing in Nigeria since her discovery of oil in commercial quantity in 1956. For a long period of time, oil business has been playing an important role in the development of the country in terms of national economy and development of infrastructure.¹ It is no longer a secret that a humongous percentage of Nigeria's foreign exchange earnings come from the exploration and production of her crude oil.²

The economic breakthrough and success in the country's oil production have led to an unprecedented upsurge of activities in her petroleum industry. These various activities relating to exploration and production of oil are having considerable impact on her natural environment. Nigeria has a long, persistent, traumatic and devastating oil pollution history, and it is still on-going at different times and places; varying forms and scales.³ There is hardly one month passing that information will not be disseminated on the web site⁴ of the National Oil Spill Detection and Response Agency

¹ M.A. Ajomo, *Oil Law in Nigeria*, (Lagos, Evans Brothers Ltd., 1972) 154.

² M.T. Okorodudu-Fubara, 'The Environmental Issues in the Nigerian Oil and Gas Industry: Pollution Control and Management', Unpublished Paper presentation at a retreat in Calabar, Cross River State of Nigeria for Committees in the House of Representatives vested with oversight responsibilities in the oil and gas industry. 1.

³ Ibid.

⁴ <<https://nosdra.gov.ng>>

(NOSDRA) (which is an agency of the Federal Government) in respect of incidents of oil pollution in Nigeria.

To worsen the matter, Nigeria's system of compensation for oil pollution damage is grossly ineffective, as it rarely resolves matters of compensation to anyone's satisfaction, if at all it offers anything.⁵ A system can only be deemed effective when it is succeeding in respect of the purpose for which it was created.

No law is specifically enacted for compensation for oil pollution damage in Nigeria, but there are some statutes that are usually adopted for it. They include the Oil Pipelines Act (OPA).⁶ Sections 11, 19 and 20 of the Act are, usually, adapted for oil spill losses' indemnification. There is the Minerals and Mining Act (MMA), 2007. Its section 125 (a) is, usually adapted to make a case for relief to oil spill victims. There is, also, the adaptation of the provisions of Land Use Act (LUA)⁷ for the same purpose.

Court, due to its constitutionally endowed powers of adjudication under section 6 and chapter VII of the Constitution, also plays a very important role as regards compensation for oil contamination injury. When there is an incident of oil spill, the affected victim(s) or villager(s) usually raise an alarm. Such alarm may be reported or escalated to the officials of NOSDRA who will, then, conduct a Joint Investigation Visit (JIV), involving the victims of oil spill, representatives of the oil company involved, and some NOSDRA officials.⁸ This Joint Investigation Visit is in line with Regulation 5

⁵ Report: The Nigerian Oil Spill Compensation Regime – Obstacles and Opportunities, *SDN*, Available at stakeholderdemocracy.org, accessed 19 July 2023.

⁶ Cap O7 LFN 2004; and which is, primarily, an Act making provision for licences to be granted for the establishment and maintenance of pipelines which is incidental and supplementary to oilfields and oil mining and for purposes ancillary to such pipelines.

⁷ Cap L5 LFN 2004, sections 29 and 30.

⁸ G.O. Amokaye, *Environmental Law and Practice in Nigeria* (University of Lagos Press, Lagos, 2004), 671.

of NOSDRA's Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation. The objective is to identify the source of the spill, the company responsible for the spill, and severity of the spill's impact, for the purpose of making appropriate response activities/arrangements in form of clean-up or remediation in line with the agency's implementation of the National Oil Spill Contingency Plan, and in line with section 5 of NOSDRA Act.⁹ Its statutory mandate¹⁰ includes not subject of compensation or the undertaking of any activity for the purpose of compensation.

After conducting necessary joint visitation to spill site led by NOSDRA officials, it is for the spill's victim(s) to approach the culpable company for compensation. Where there exists a disagreement between the victim(s) and the energy corporation in relation to settlement or the appropriate amount payable as compensation, such disagreement will be resolved in court as considered just in the circumstance.¹¹ In determining or calculating the appropriate amount payable as compensation, the court is to utilize the aspects of LUA to the extent that they do not run contrary to any provision of OPA, and as though the affected properties were acquired by the President for public use.¹²

2. Purpose of the Paper

It is the aim of this paper to investigate whether the absence of a deliberately designed legal system for compensation for oil pollution damage, and absence of administrative mechanism to implement compensation, contribute primarily to the inadequacy,

⁹ The Joint Investigation Visit is not for the purpose of compensation for oil pollution damage. NOSDRA does not have the statutory mandate in respect of compensation for oil pollution damage. See section 5 (a)-(n) of the National Oil Spill Detection and Response Agency (Establishment) Act.

¹⁰ As contained in its section 5 (a)-(n).

¹¹ Oil Pipelines Act, section 19.

¹² *Ibid*, section 20 (5).

inequity, and delays in providing compensation for oil pollution damage in Nigeria.

3. Methodology

The paper adopted a multi-method research design, incorporating both traditional legal analysis (doctrinal method) and socio-legal research techniques (non-doctrinal method) to investigate the topic. For the doctrinal aspect, the paper relied on primary source of information which include relevant international laws, conventions and treaties, local legislation, past and extant Nigeria`s Constitution, and case law. The paper also relied on information that exist in textbooks, academic publications, law reports, encyclopaedias, law dictionaries and newspaper publications as its secondary source of information.

The paper involved comparing Nigeria`s compensation for oil pollution damage system with those of the International Convention for Civil Liability for Oil Pollution Damage (Civil Liability Convention), and the International Convention on the Establishment of International Fund for Compensation for Oil Pollution Damage (Fund Convention). The comparison became necessary in order to measure the extent of Nigeria`s system consistency or congruence with what is obtainable at international level.

For the non-doctrinal method of legal research, the paper used questionnaire survey to gather useful and appropriate data/information on subject of compensation in some selected oil-producing communities of Bayelsa and Rivers States. Oloibiri, Otuasega, Nembe and Brass communities were selected as sites for administration of questionnaire in Bayelsa State while Ogoni, Onne, Ijaw and Ogu were selected for the same exercise in Rivers State.

The choice of Bayelsa and Rivers states was informed by their significant exposure to oil extraction activities, which have resulted in widespread oil pollution incidents in the area over the years. These states are among the highest oil-producing communities in Nigeria and have documented cases of environmental degradation and oil pollution-related damage. Studying these locations allowed for an in-depth analysis of compensation for individuals in the affected populations.

The questionnaires were administered by engaging informally trained local facilitators familiar with the cultural and social dynamics of the selected communities. This approach was chosen to build trust, ensure accurate understanding of questions, and address any language or dialect barriers. These facilitators were informally trained in administering the survey to maintain consistency and reliability in data collection.

The questionnaires were distributed in key areas frequented by diverse community members. Specifically, they were administered in community centers, market places, schools, and local government offices. This strategy was intended to capture a representative sample of different demographics, including students, market traders, government workers, and other residents.

Key stakeholders were identified based on their direct involvement or impact by oil pollution issues. This included local community leaders and residents living in close proximity to oil extraction sites. The selection was informed by preliminary visits and background research, which helped identify influential community figures and institutions knowledgeable about local oil pollution issues.

A total of 400 questionnaires were initially distributed to ensure a statistically reliable response rate. However, to account for potential non-responses, an additional 100 questionnaires (making the total to be 500) were distributed. Out of these, 420 completed questionnaires were successfully retrieved, reflecting an 84%

response rate. About 20 of these were incomplete and were later expunged, making a total of 400 questionnaires used for this study. The high retrieval rate was achieved through follow-up visits by local facilitators who encouraged participants to complete and return the questionnaires. The efforts to follow up and engage respondents in familiar community spaces contributed to the successful retrieval rate.

Closed-ended questions, which offer a limited set of response options, were deployed by the questionnaire to elicit responses in the selected sites. The reason for this was to facilitate fast collection of data/information and achieve a high response rate, less bias responses and for ease of analysis of the data/information collected. It was also to ensure that all the respondents to the questionnaires were asked the same set of questions, thereby reducing the possibility of bias.

4. Conceptual Analysis

The paper adopts the concept of compensation to enhance its analysis and arguments

4.1. Compensation

Compensation is a remedy awarded to injured party for the purpose of making good or replacing loss or injury suffered.¹³ In modern industrial age, compensation, as a concept, has assumed international, constitutional and statutory importance as a standard and equitable means for indemnification. In Nigeria, compensation for oil pollution damage is governed by so many statutes including Oil Pipelines Act, Nigerian Minerals and Mining Act, Land Use Act, Petroleum (Drilling and Production) Regulations, and Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations.

¹³ Oil Pipelines Act Cap O7 LFN, Section 11 (5).

5. Theoretical Framework

This paper employs the use of the tort theory to emphasize the need for effective compensation.

5.1 The Tort Theory

Common Law system is the origin of tort theory, and it has, for a long time, been used in many areas of law, including environmental law.¹⁴ The Tort theory is based on the idea that individuals or entities that cause harm to others must compensate for the damage caused. The theory must have been inspired by the biblical injunction which admonishes a man to love his neighbour as himself.¹⁵ Who, then, is a man's neighbour that he has to love as himself? Lord Atkin¹⁶ has an answer to this question in his pronouncement in the celebrated case of *Donoghue v Stevenson*,¹⁷ wherein he stated that one's neighbour is a person who is closely and directly affected by one's acts that one ought, reasonably, to have him in contemplations as being so affected when one is directing his mind to the acts or omissions which are called in question

6. Literature Review

Scholars like Ogbuigwe and Fekumo,¹⁸ are of the opinion that oil pollution is not a necessary or unavoidable phenomenon in oil production if only the oil companies undertake best and sustainable

¹⁴ P. Mitchel, *Theory of Tort*, (Cambridge University Press, UK, 2014), 121.

¹⁵ The Holy Bible, the book of Mark Chapter 13, Verse 31.

¹⁶ James Richard Atkin, Baron Atkin, PC, FBA, commonly known as Dick Atkin, was an Australian-born British judge who served as a Lord of Appeal in ordinary from 1928 until his death in 1944, <<https://www.cambridge.org>> accessed 28 July 2023.

¹⁷ (1932) AC 362 at 597.

¹⁸ J.F. Fekumo, *Civil Liability for Damage Caused by Oil Pollution*. In: J.A. Omotola (Ed.): *Environmental Laws in Nigeria including Compensation*, (University of Lagos Press, Lagos, 1998), 268.

industrial practices. Consequently, oil companies responsible for pollution damage to individuals' property or assets must be held accountable and provide fair, prompt and adequate compensation.

Ogbuigwe,¹⁹ a leading proponent of strict liability for oil pollution damage, argues that the environmental problems generated in Nigeria through oil production are needless, as oil pollution is not a necessary or unavoidable phenomenon of oil production. He advocates a system that will ensure that a negligent oil producing firm is held strictly accountable to whoever suffers damage from it. He insists that an oil firm must be accountable and compensate victims immediately the need arises.

Fekumo²⁰ supports the need to make speedy and immediate compensation to victims of oil production activities. Like Ogbuigwe,²¹ Tyagi,²² Read²³ and Ling Zhu *et al*,²⁴ he advocates strict liability (as against fault-based legal system with requirement of proof of negligence) for the purpose of determining when the need for compensation arises. This, he hinges on the reason that many individuals in Nigeria who fall victim to pollution are poor, and

¹⁹ A.K. Ogbuigwe, *Compensation and Liability on Oil Pollution in Nigeria*, (JPPL Publishers, Nigeria, 1985), 105.

²⁰ J.F. Fekumo, *Civil Liability for Damage Caused by Oil Pollution*. In: J.A. Omotola (Ed.): *Environmental Laws in Nigeria including Compensation*, (University of Lagos Press, Lagos, 1998), 268.

²¹ *Ibid*, n. 21.

²² P. C. Tyagi, 'Policy, Law and Implementation of Industrial Wastewater Pollution Control', [1991], Vol. 24 (1), *Wat. Sci. Tech.*, 5-13, 7.

²³ A. D. Read, 'Legal and Administrative Control Aspects of Oil Pollution', [1982], Vol. 14, *Petroleum Engineering Division, Department of Energy*, London, 1133-1157.

²⁴ L. Zhu and B. Dong, 'Compensation for Oil Damage from Ships in China: A Way Toward International Standards, Ocean Development and International Law', [2015], <[http:// DOI:cos.odsc:1044: 1,73-95,1060/00908320.2012.726839](http://DOI:cos.odsc:1044:1,73-95,1060/00908320.2012.726839)>, accessed 28 August, 2023.

should not be bothered with the complex proof of negligence of oil companies before they get compensated for spill damage.

While the views of these two scholars are in agreement with the stance of this paper, this paper further advocates for the establishment of a robust legal framework accompanied by administrative mechanisms to facilitate efficient compensation for oil pollution damage.

7. Compensation for Oil Pollution Damage in Nigeria

In Nigeria, compensation for oil pollution damage is not governed by any known legal system, rather, it is subject to the conventional system of dispute resolution which is, strictly, dependent on court action or litigation to be instituted by the claimant, or in any specialized court or under any special arrangement but in conventional courts, against the polluter, who is usually, an oil company.

The claimant may bring his action under the statutes which are usually an adaptation of the provisions of the Oil Pipelines Act, Nigerian Minerals and Mining Act or the Land Use Act or a combination of all the three. He may, also, bring his action under the Common Law tort of negligence,²⁵ trespass,²⁶ nuisance²⁷ or the rule in *Rylands v Fletcher*, and prove that the defendant is at fault or negligent and that the said fault has resulted to a foreseeable injury or damage to him.

²⁵ This is concept of duty, breach and damage thereby suffered by the person to whom the duty is owed.

²⁶ The act of knowingly entering another person's property without permission.

²⁷ An act or omission which is an interference with, disturbance of, or annoyance to a person in the exercise or enjoyment of a right belonging to him or his ownership or occupation of land.

8. Results of Survey, Data Analysis and Presentation

This section provides the findings from the data analysis, interpretation, and discussion of the questionnaire-based research on whether Nigeria has a consciously established legal system for settling or making a recompense to persons affected by oil pollution damage, and whether the adapted compensation for oil pollution damage mechanism in Nigeria has administrative approach and character.

8.1 Validity Test Using Coefficient of Concordance Technique

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

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

n is the number of individuals or objects being assessed;

m is the number of judgments on likert scale and

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

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

Thus, we compute the coefficient as follows:

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

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

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

$$W = 0.9423 \cong 0.94$$

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

8.2 Test of Reliability Using Kuder-Richardson Estimate

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

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

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

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

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

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

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

$n = 400$, $\sum p_i q_i = 18/23$ and $\sigma_x^2 = 4.676$, hence the computation is done as follows:

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

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

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

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

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

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

8.3 Empirical Results

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

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

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

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

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

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

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

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

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

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

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

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

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

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

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

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

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

chi-squared test where the null hypothesis also confirmed the same immediate statement above.

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

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

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 5 show that majority of the respondents (approximately 93%) disagreed and strongly disagreed to the statement that victims of oil pollution are usually satisfied with the compensation they receive for oil pollution damage through the

court. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

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

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

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 6 show that majority of the respondents (approximately 91%) agreed and strongly agreed to the statement that compensation for oil pollution damage through court action is always delayed and take a long time. This is also supported by the

computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

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

<i>H_o</i> : An administrative body or institution is needed and necessary in order to effectively administer subject of compensation for oil pollution damage.								
Comm.	Categories of Responses					Statistical Test		
	SA	A	N	D	SD	df	χ^2_{cal}	<i>P</i> -value
Brass	23	19	1	1	1	28	24.9749	0.629
Ijaw	21	22	3	0	0			
Nembe	16	30	2	1	1			
Ogoni	19	35	0	0	1			
Ogu	19	33	1	0	1			
Oloibiri	20	24	1	1	3			
Onne	24	26	0	1	1			
Otuasega	15	32	1	0	1			
Total	157 (39.2%)	221 (55.2%)	9 (2.2%)	4 (1.0%)	9 (2.2%)			

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 7 show that majority of the respondents (approximately 94%) agreed and strongly agreed to the statement that an administrative body or institution is needed and necessary in order to effectively administer subject of compensation for oil

pollution damage. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

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

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

The international regime of compensation is based and governed by two set of conventions, the Civil Liability Convention, and the Fund Convention respectively,²⁸ and which are superintended by the International Maritime Organization (IMO). Civil Liability Convention`s principle towards ship owners is not fault based but that of legal responsibility that is strict. The system of the convention also enforces liability insurance, which limitable to the ship`s tonnage.²⁹

Fund Convention, on its own, is to provide support for the civil liability convention in terms of provision of compensation to claimants where the compensation the one available under civil liability convention is not enough to recompense a claimant. An organisation of the international community known as International Oil Pollution Compensation Funds (IOPCF) was established in 1978 by the Fund convention to provide compensation to those who are injuriously affected by oil pollution from ships or tankers or

²⁸ J. M. Barandiaran (2003) *International Oil Pollution Compensation Funds 1971 and 1992*, Turkish Maritime Press, Turkey, p. 3.

²⁹ Ibid.

vessels where compensation available from the ship owners under the Civil Liability Convention is not enough to reasonably recompense for lose or injury suffered.³⁰

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

Unlike what is obtainable under the international best practice of Civil Liability Convention, and the Fund Convention, the current legal arrangement in Nigeria for compensation for oil pollution damage presupposes that court is the ultimate determinant of merit or otherwise of any subject of compensation. There is no establishment of any regulatory or administrative body to strictly establish the veracity of compensation claim, and to undertake action and responsibility for the purpose of processing compensation. Instead, any matter or claim for compensation has to proceed to court.

9.1 Arbitration Model and Compensation for Oil Pollution Damage in Nigeria

Arbitration is one of the models created by the wide spectrum of legal avenues called Alternative Dispute Resolution (ADR) which use means other than court trial to settle disputes. It is a process in

³⁰ M. Gennaro (2004), Oil Pollution Liability and Control under International Maritime Law: Market Incentives as an Alternative to Government Regulation. *Vanderbilt Journal of Transnational Law*, Vol. 37:265, No. 1, p. 265.

which a panel of arbitrators or just one arbitrator sit to resolve a dispute between parties. Its activities are regulated by the Arbitration and Conciliation Act Cap A18, Laws of the Federation of Nigeria 2004 which mandatorily applies to all domestic arbitrations where parties have not chosen another law to govern their proceedings. Some states of the federation have also enacted their own arbitration laws. For example, in Lagos, the Lagos State Arbitration Law 2009 applies to all arbitrations that have not specified another law.

Arbitration process involves many of the same components and characteristics of a courtroom trial such as presentation of argument with evidence; calling on witnesses and subsequent questioning of the witness by the opposing party (cross-examination), and so forth. However, these facets and processes are simplified and hastened up in arbitration so as to make the process quick than the typical courtroom trial. Following the required hearings, an arbitral ruling/award is delivered within a very short and specific period of time; and, depending on the type of arbitration, the ruling of an arbitration is final. There may be options to appeal only where the arbitration exceeded its jurisdiction, the arbitration panel was guilty of misconduct; or the arbitral award was fraudulently procured.

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

To this extent, when an incident of oil pollution is reported to the National Oil Spill Detection and Response Agency (NOSDRA),

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

10. Findings

Through a detailed examination of relevant Nigerian statutes, results of questionnaire administration, analysis and electronic computation, case law, international conventions, legislation of some other oil-producing countries, scholarly literature, computation and analysis of survey, this paper has identified some key defective trends, attitudes, and patterns in the current state of the Nigeria`s system of compensation.

i. Non-alignment with International Best Practice

System of compensation for oil pollution damage in Nigeria is not in alignment with international best practice under the Civil Liability Convention (CLC) and the Fund Convention (FC).

ii. Nigeria Lacks a Deliberate and Well-Conceived Legal System of Compensation for Oil Pollution Damage

A legal system is a deliberately created and established framework that outlines the rules, regulations, and processes for governing a particular activity, organization or situation.³¹ Civil Liability Convention was deliberately adopted by IMO on 29th of November,

³¹ M. Friedman and G.M. Hayden, 'What is a Legal System?', [2017], <<https://doi.org/10.1093/acprof:oso/97801904>> accessed 15 September 2023.

1969 to institutionalize a framework for reparation for harm caused by oil pollution from ships.³² In the same vein, the United States of America's Oil Pollution Act (OPA) was, in 1990, deliberately enacted to provide a legislative framework for addressing oil pollution compensation and liability. The Act is, appropriately short-titled "Oil Pollution Liability and Compensation" to clearly reflect the purpose for which it was enacted. The Act has its mechanisms for settling or resolving compensation claims or controversies without taking to court action; and makes a well outlined provisions on how compensation for oil pollution damage is to be carried out. These include the establishment of Oil Spill Liability Trust Fund (OSLTF), which provides a source of fund supplementary compensation, requirement for responsible parties such as ship owners, operators, and facilities to pay for damages and removal costs, procedure for filling claims and seeking compensation, guidelines for determining the amount of compensation, including damages for natural resource damage, economic losses, and personal injuries, mechanisms for settling and resolving claims without necessarily need to file legal action in court.

Reverse is the case in Nigeria where regulatory and statutory structure for addressing compensation for oil pollution damage has no established operation. There is no statute in Nigeria that is specifically enacted to deal with subject of compensation for oil pollution damage. There is, also, no establishment of any regulatory institution to implement any policy or enforce any law on compensation for oil pollution damage. Although, there are some laws like the Oil Pipelines Act, Minerals and Mining Act, and Land Use Act, whose provisions are usually relied upon by litigants when

³² M. Jacobsson, 'Compensation for Oil Pollution Damage Caused by Oil Spills from Ships and the International Oil Pollution Compensation Fund' {1994}, MPB, Vol. 29, 378-384, 378.

a cause of action arises in relation to compensation for oil pollution damage,³³ the laws merely contain some scanty provisions that are, usually, adapted to suit that purpose. They are not primarily enacted for compensation for oil pollution damage.

iii. Nigeria's System of Compensation for Oil Pollution Damage Lacks Administrative Approach or Character

One major characteristic or attribute of the existing system of compensation for oil pollution damage in Nigeria is the absolute reliance on court for resolution of any subject of compensation.³⁴ The court has the prerogative to determine whether compensation is payable by a polluter or not, the value payable as compensation, and the person to whom it is to be paid.³⁵ There is no administrative approach to such subject of compensation. Any compensation claim arising from incident of oil pollution damage remains a decision for the court. No regulatory institution or administrative agency is created to administer such compensation. In addition, Nigeria has no contingency plan or arrangement for determining, monitoring, negotiating or processing of compensation for oil pollution damage. When there is an incident of oil pollution damage, and a disagreement occurs regarding compensation entitlement between the affected party and the responsible oil entity, the only option available to the victim is to seek judicial intervention under existing statutes or under torts.

³³ Cap O7 LFN 2004; and which is, primarily, an Act making provision for licences to be granted for the establishment and maintenance of pipelines which is incidental and supplementary to oilfields and oil mining and for purposes ancillary to such pipelines.

³⁴ See Oil Pipelines Act, section 19 and 20. See Land Use Act, section 29 and 30. See Minerals and Mining Act, section 125 (a).

³⁵ Oil Pipelines Act, sections 11 (5), 19 and 20 (5).

11. Conclusion

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

1. Recommendation

There is the need for Nigeria to take a clue from the international community's establishment of a body like the International Convention on Civil Liability for Compensation for Oil Pollution Damage (Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) which jointly govern subject of compensation for oil pollution damage at the international level without any need for a recourse to court. The two conventions jointly established an International Oil Pollution Compensation Fund (IOPCF) which provides fund to compensate claimants for oil spill damage where the compensation from the

shipowner under the Civil Liability convention is inadequate to fully compensate a victim of oil pollution damage.³⁶

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

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

³⁶ M. Gennaro (2004), Oil Pollution Liability and Control under International Maritime Law: Market Incentives as an Alternative to Government Regulation. *Vanderbilt Journal of Transnational Law*, Vol. 37:265, No. 1, p. 265.