

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

Toyin Afolabi Majekodunmi*

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 adopts a multi-method research design, incorporating both traditional legal analysis (doctrinal method) and socio-legal research techniques (non-doctrinal method) to investigate the effectiveness of compensation for oil pollution damage in Nigeria. For the doctrinal aspect, the study relies on information which include relevant international laws, conventions and treaties, local legislation, past and extant Nigeria's Constitution, case law, textbooks, academic publications, law reports, encyclopedias, law dictionaries and newspaper publications. For the non-doctrinal method of legal research, the study uses questionnaire survey as a versatile tool to gather useful and appropriate data/information on the effectiveness of energy industry compensation in some selected oil-producing communities of Bayelsa and Rivers States. The paper, therefore, suggests the development of a legal system of compensation for oil pollution damage that is based on the enactment of comprehensive law for compensation for oil pollution damage and establishment of an independent regulatory institution with powers of arbitration, and its own rules of procedure, that will facilitate prompt, adequate and fair resolution of matters of compensation for oil pollution damage.

Key Words: compensation, pollution, framework, communities, system

*Lecturer, Department of Jurisprudence and International Law, Faculty of Law, Olabisi Onabanjo University, Ago-Iwoye, Ogun State of Nigeria. E-mail: majekodunmi.toyin@oouagoiwoye.edu.ng, Telephone: 08038930977.

1.1 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 (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

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>>

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.

(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 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

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

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.

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).

3.1. 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, encyclopedias, 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.

4.1. Conceptual Analysis and Theoretical Framework

This paper employs the mechanisms of conceptual analysis and theoretical framework as the foundation on which its structure is established in order to emphasize the need for effective compensation system in the Nigeria's oil industry.

4.1.1. Conceptual Analysis

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

4.1.1.1. 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.

4.1.2. Theoretical Framework

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

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

4.1.2.1. 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.

The theory provides a way to hold individuals and organizations accountable for their actions and to provide compensation to those who have been injured or made to suffer loss.¹⁸ Regarding environmental jurisprudence, the Tort theory is often used to hold polluters responsible for the damage they cause to the environment, the people and communities affected by that damage.

The theory is founded on the principle of due diligence and care, a failure to act with reasonable care, and an injury resulting thereof.¹⁹

The Tort theory is highly relevant to oil pollution control and compensation for damage caused by oil pollution in Nigeria. It provides a framework to hold oil companies accountable for caused environmental pollution.

5.1. Literature Review

Scholars like Ogbuigwe and Fekumo,²⁰ 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 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.

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 Ibid.

¹⁹ W. L. Prosser, 'The Assault Upon the Citadel (Strict liability to the consumer)', [1941], Vol. 44 (6), *Vanderbilt Law Review*, 953-983, 960.

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.

Ogbuigwe,²¹ 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.

Fekumo²² supports the need to make speedy and immediate compensation to victims of oil production activities. Like Ogbuigwe,²³ Tyagi,²⁴ Read²⁵ and Ling Zhu *et al*,²⁶ 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 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.

6.1. 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

²¹ A.K. Ogbuigwe, *Compensation and Liability on Oil Pollution in Nigeria*, (JPPL Publishers, Nigeria, 1985), 105.

²² 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.

²³ Ibid, n. 21.

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

²⁵ A. D. Read, 'Legal and Administrative Control Aspects of Oil Pollution', [1982], Vol. 14, *Petroleum*

Engineering Division, Department of Energy, London, 1133-1157.

²⁶ 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-](http://DOI:cos.odsc:1044:1,73-95,1060/00908320.2012.726839)

[95,1060/00908320.2012.726839](http://DOI:cos.odsc:1044:1,73-95,1060/00908320.2012.726839)>, accessed 28 August, 2023.

the Common Law tort of negligence,²⁷ trespass,²⁸ nuisance²⁹ 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.

7.1. 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.

7.1.1. 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:

²⁷ This is concept of duty, breach and damage thereby suffered by the person to whom the duty is owed.

²⁸ The act of knowingly entering another person's property without permission.

²⁹ 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.

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

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

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

$$W = 0.9423 \cong 0.94$$

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.

7.1.2. 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.

7.2 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 (1.2%)	4 (1.0%)	4 (1.0%)	161 (40.2%)	226 (56.5%)			

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

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

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

H_o : Victims of oil pollution damage are usually compensated fairly and adequately.								
Comm.	Categories of Responses					Statistical Test		
	SA	A	N	D	SD	df	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 (1.2%)	4 (1.0%)	4 (1.0%)	161 (40.2%)	226 (56.5%)			

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

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

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

H_o : National Oil Spill Detection and Response Agency (NOSDRA) are involved in the facilitation of compensation to victims of oil pollution damage.								
Comm.	Categories of Responses					Statistical Test		
	SA	A	N	D	SD	df	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.

H_o : Matters of compensation for oil pollution damage end up in court and the court determines whether compensation is payable; the amount payable as compensation, and the appropriate person to receive compensation.								
Comm.	Categories of Responses					Statistical Test		
	SA	A	N	D	SD	df	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.

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

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.

8.1 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. There are international instruments on pollution due to oil, such as the Convention on Civil Liabilities for Oil Pollution Damage (Civil Liability Convention), 1969³⁰ and the Convention on the Establishment of International Fund for Oil Pollution Damage (Fund Convention)

³⁰ The Convention on Civil Liability for Oil Pollution Damage (CLC), 1969, Available at <https://cil.nus.edu.sg/rp/il/pdf/1969%20International%20Convention>, Accessed 5 September, 2023.

1971.³¹ These Conventions cover compensation for all sea-going vessels carrying oil in bulk as cargo and they apply to pollution damage within the waters of countries that are party to them; they are applicable to oil spillage caused by ships while on the high seas.³²

The occurrence of oil spillage under the international regime is a strict liability offence and therefore, there is no need for a victim to prove that the ship-owner is negligent. More importantly, the plaintiff has the opportunity of claiming from ship-owners whose ships caused the oil pollution harm. Where the sum from the ship owner is limited or is insufficient to compensate the victims because of the enormity of the damage; the victims can also recover from the International Oil Spill Compensation Fund (IOPC Fund),³³ which is a fund raised by levies from all persons who have received in the calendar year, more than 150,000 tons of crude oil and heavy fuel oil from a state party to the IOPC Fund and from the contributions received from state contributors.³⁴

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. T

The international regime of compensation is based and governed by two set of conventions, the Civil Liability Convention, and the Fund Convention respectively,³⁵ and which are superintended by the International Maritime Organization (IMO).

³¹ Civil Liability convention and Fund Convention, 1971. It is also important to note that both conventions were amended by two additional protocols in 1972 which came into force in 1996. So, the 1992 protocol has replaced the 1971 convention, Available at www.admiraltylawguide.com, Accessed 5 September, 2023.

³² It is important to note that in 1996, a new international convention was adopted to cover liability and compensation for damage about the carriage of hazardous and noxious substances (HNS) by sea.

³³ M. Jacobsson, 'The International Oil Pollution Compensation Funds and the International Regime of

Compensation for Oil Pollution Damage - Pollution of the Sea - Prevention and Compensation', [2007], Vol.

10 (3), 24.

³⁴ NOSDRA, 'Towards a new Oil Spill Compensation System in Nigeria' [2004], Available https://link.springer.com/chapter/10.1007%2F978-3-540-73396-6_11 2007, Accessed on 27 September, 2023, 137-150, 142.

³⁵ J. M. Barandiaran (2003) *International Oil Pollution Compensation Funds 1971 and 1992*, Turkish Maritime Press, Turkey, p. 3.

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.³⁶

Fund Convention, on its own, is to provide support for the civil liability convention in terms of provision of compensation to claimants where the compensation the one available under civil liability convention is not enough to recompense a claimant. An organisation of the international community known as International Oil Pollution Compensation Funds (IOPCF) was established in 1978 by the Fund convention to provide compensation to those who are injuriously affected by oil pollution from ships or tankers or vessels where compensation available from the ship owners under the Civil Liability Convention is not enough to reasonably recompense for lose or injury suffered.³⁷

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

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

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

For arbitration to apply, the parties to a dispute must agree to arbitrate. The desire of one of the parties to a dispute to enter into arbitration does not foreclose another

³⁶ Ibid.

³⁷ 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.

party's right to go to court. It only comes about when two parties agree to it, either before or after a legal dispute comes up.

For the process to commence, it is the complaining party that will send a notice to the opposing party of his intent to arbitrate a dispute, outlining the basis for the dispute. After that, there is, typically, a period for response from the opposing party. Selection of arbitrators comes after the period of response. This is followed by the hearing of parties by the arbitral panel.

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

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

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

To this extent, when an incident of oil pollution is reported to the National Oil Spill Detection and Response Agency (NOSDRA), NOSDRA will conduct its usual Joint Investigation Visit (JIV) involving the victims of oil spill, representatives 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.

12.1. Findings

The findings of a comprehensive investigation into Nigeria's compensation framework is presented in this section. 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 study has identified some key defective trends, attitudes, and patterns in the current state of the Nigeria's system of compensation.

12.1.1. **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).

12.1.2. **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. It is a conscious effort to create a structured procedure or process that defines rights, responsibilities, and consequences, and provide mechanisms for dispute resolution, enforcement and protection of individual and collective interests. It is set to provide a stable and predictable environment for social and economic interactions, and to promote justice, fairness and order.³⁸

Civil Liability Convention was deliberately adopted by IMO on 29th of November, 1969 to institutionalize a framework for reparation for harm caused by oil pollution from ships.³⁹ 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 a cause

³⁸ M. Friedman and G.M. Hayden, 'What is a Legal System?', [2017], <<https://doi.org/10.1093/acprof:oso/97801904>> accessed 15 September 2023.

³⁹ 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.

of action arises in relation to compensation for oil pollution damage,⁴⁰ 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.

12.1.3. 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.⁴¹ 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.⁴² 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.

13.1. 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.

⁴⁰ 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.

⁴¹ See Oil Pipelines Act, section 19 and 20. See Land Use Act, section 29 and 30. See Minerals and Mining Act, section 125 (a).

⁴² Oil Pipelines Act, sections 11 (5), 19 and 20 (5).

14.1. Recommendations

There is the need for Nigeria to take a clue from the international community's establishment of a body like the International Convention on Civil Liability for Compensation for Oil Pollution Damage (Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) which jointly govern subject of compensation for oil pollution damage at the international level without any need for a recourse to court. The two conventions jointly established an International Oil Pollution Compensation Fund (IOPCF) which provides fund to compensate claimants for oil spill damage where the compensation from the shipowner under the Civil Liability convention is inadequate to fully compensate a victim of oil pollution damage.⁴³

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

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

a. Compensation and claims management

This context may take after what is obtainable with the United Nations Compensation Commission wherein a governing council will be provided for the commission by the statute establishing it. The said governing council will be its highest decision-making body and will be responsible for formulating the institution's compensation's rules of procedure to be applied to claims. Such rules of procedure will specify how claims are to be processed and managed in an order that is predictable, certain and not prone to manipulation.⁴⁴

i. Claimants

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

ii. Description types, dimension of injury or pollution suffered

⁴³ 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.

⁴⁴ Such as Decision 10 and Decision 7 formulated by the Governing Council of the United Nations

Compensation Commission. Decision 10 is the provisional rules for claims procedure, while Decision 7

elaborates on categories of claims for environmental damage and depletion of natural resources.

iii. Reception and registration of claim

There may be appointed officers who will receive and review claims for the commission's consideration.⁴⁵

- iv. Different phases of transparent inspection of claim or injury to ascertain credibility of claim.
- v. Official communication with the polluting company by the body.
- vi. Joint assessment of sight of injury for determination of actual cause of pollution and quantum of compensation in a transparent manner.
- vii. Meeting to officially commence amicable assessment and mediation, where necessary with parties preceding payment of compensation.

b. Claims settlement

- i. The authorities of the administrative body should be the point of first resort in event of oil pollution damage. NOSDRA will refer such cases to it, and should have power of arbitration to settle claims and see to payment of compensation between parties.
- ii. The body is to have a governing council which will be its highest decision making and be responsible for formulation, regulation and modification of principles and rules of claim procedure for the body.
- iii. The body should be headed by a director-general who sees to the day to day administration of the body.
- iv. Where the body is faced with question of principle which has not previously been decided or treated by the administrative body, its director-general should require approval of the governing council on the direction to take and in line with the provisions of the statute creating the body.
- v. The administrative body should be able to make provisional payment of compensation to the victim before a claim is finally settled if this is necessary to mitigate undue financial hardship to victims of pollution incidents.⁴⁶
- vi. There should be an obligation on the body to give parties equal treatment.

c. Admissibility of claims for compensation

- i. To be entitled to compensation, pollution damage must result in an actual and quantifiable economic loss. The claimant must be able to

⁴⁵ Under the United Nations Compensation Commission, such officers are referred to as "commissioners". The receive and review claims on behalf of the Commission.

show the amount of his loss or damage by producing accounting records or other appropriate evidence.

- ii. An oil pollution incident should generally give rise to claims for the following types⁴⁷ of pollution damage or others as may from time to time decided by the governing council and in line with statute establishing the body:
- iii. Property damage
- iv. Costs of clean-up operations at sea and on shore
- v. Economic loss by fishermen or those engaged in mariculture⁴⁸
- vi. Economic loss in the tourism sector
- vii. Costs for reinstatement of the environment
- viii. Claims are also to be assessed strictly in accordance with relevant laws, especially the country's environmental impact assessment statute⁴⁹ and other well-established uniform criteria, principle or rules to be formulated by the governing council and such should be published in the body's claim manual assessable to members of the public.

d. How to submit a claim

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

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

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

⁴⁷ International Oil Pollution Compensation Fund Claims Manual, October 2016 Edition, As adopted by the 1992 Fund Assembly in April 1998 and amended, most recently in April 2016 by the 1992 Fund Administrative Council, <https://www.iopcfunds.org/compensation/>, Retrieved on 22nd of August, 2017.

⁴⁸ Mariculture is a specialized branch of aquaculture involving the cultivation of marine organisms for food and other products in the open ocean.

⁴⁹ Such as the Nigeria's extant Environmental Impact Assessment Act, Cap E12, Laws of federation of Nigeria, 2004.