



A CRITIQUE OF THE LEGAL FRAMEWORKS ON THE ADEQUACY OF LAND COMPENSATION FOR OIL POLLUTION IN NIGERIA: FOCUS ON NIGER DELTA REGION OF NIGERIA

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ABSTRACT

The paper examined a critique of the legal frameworks on the adequacy of compensation for oil pollution on land in the Niger Delta region. The paper found out that Niger Delta region has been plagued by longstanding issues surrounding oil exploration and land compensation, stemming from a complex interplay of legal, environmental, and socio-economic factors. The paper adopted the doctrinal method of legal research with primary sources of law derived from case laws and legislation, while the secondary sources of information were distilled from journal articles and internet sources. The paper concluded that despite the existence of laws and policies aimed at addressing compensation grievances, such as the Land Use Act, 1978 and the Petroleum Industry Act, 2021, significant gaps remain in their implementation and enforcement. These gaps have led to disputes over land ownership, inadequate compensation for affected communities, and environmental degradation. The paper recommended amongst others strengthening enforcement, improving transparency, conducting comprehensive impact assessments, enhancing community participation, and implementing alternative dispute resolution.

KEYWORDS: *Compensation, Pollution and Niger Delta*

INTRODUCTION

This paper is a comprehensive analysis that examines the legal landscape surrounding land compensation for oil pollution in Nigeria, with a focus on the Niger Delta region. *Shell Petroleum Development Company of Nigeria Ltd v. Chief Numaride in Alabo-Suka*¹, this case, decided by the Court of Appeal of Nigeria, addressed compensation claims by communities affected by oil spills attributed to Shell Petroleum Development Company. *Chief G.S. Amachree*

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¹ (2005) 11 NWLR (Pt. 937) 551.



&Ors v. ShellPetroleum Development Company of Nigeria Ltd,² in this case, the Nigerian Supreme Court considered compensation claims arising from oil spills in the Niger Delta region. In Nigeria, the Niger Delta region is regarded as home of hydrocarbon reserves,³ it is the core oil and gas producing region, located in the south-south geopolitical zone of Nigeria and in some parts of the south-east and south-west geopolitical zones. The region has an estimated land mass of about 75,000 square kilometres which covers an area of nine (9) of the 36 states in Nigeria.⁴ Also, the Niger Delta region is the richest part of Nigeria in terms of natural resources, with large oil and gas deposits, an extensive forest, good agricultural land and abundant fish resources.⁵ The region has produced over 40 percent of Nigeria's gross domestic product (GDP) with oil accounting for about 95 percent of the total government revenue and approximately 97 percent of its foreign exchange earnings over the past two decades with an estimated daily crude oil produce of roughly 2.0 million barrels and a proven gas reserve base of about 187 million cubic feet.⁶ However, the Niger Delta communities are not ideally benefitting from these proceeds as

² (2000) 6 NWLR (Pt. 660) 506.

³UNDP, 'Niger Delta Human Development Report\ (2006), 15 <<http://www.bebor.org/wp-content/uploads/2012/09/UNDP-Niger-Delta-Human-Development-Report.pdf>> accessed 5 March, 2023.

⁴Niger Delta Regional Development Commission (NDDC), 'Niger Delta Regional Development Masterplan 2006' 49 <<http://www.nddc.gov.ng/NDRMP%chapter%201pdf>> accessed 29 January 2023; Asanebi D H, 'A Concise View of Niger Delta Region of Nigeria: An Interpretation of a Nigerian Historian' (2016) *IRJIMS*, 56, <<http://www.irjims.com>> accessed 29 January 2023.

⁵ D M and O Linden, 'Perception and Reality: Assessing Priorities for Sustainable Development in the Niger Delta [1995] 24 *Ambio* 527.

⁶ E O Weefer, L A Yusuf and H Ijaiya, Recent Developments in Oil and Gas Law in Nigeria: The Role of Law Teachers, *A Paper Presented at the Annual Conference of the Nigeria Law Teachers held in Port Harcourt, Nigeria* from 17th- 20th April 2023.



occupants of these communities faces adverse environmental impact from the exploration and production of oil and gas operations.⁷

The paper delves into relevant statutes, regulations, and case law to provide clarity on the complex legal issues involved. It also discusses key Nigerian court cases that have dealt with land compensation for oil pollution, providing citations to these cases for further reference⁸. These cases likely include landmark decisions that have shaped the legal interpretation and application of compensation laws in Nigeria's oil-rich region, addressing issues such as environmental degradation, community rights, and corporate liability. The dissertation explores the various laws, regulations, and policies governing land compensation for oil pollution in Nigeria. This includes both national legislation and international conventions that Nigeria is a party to, such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD). Given the significance of oil production in the Niger Delta and the environmental challenges faced by communities in the region, the study narrows its scope to examine how these legal frameworks apply specifically to the Niger Delta context. This region has been disproportionately affected by oil pollution and associated land degradation.⁹

The paper reviews and analyses notable court cases from Nigerian jurisprudence that have dealt with issues related to land compensation for oil pollution. These cases serve as precedents and

⁷ L A Atsegbua, and Others, *Environmental Law in Nigeria, Theory and Practice* (2ndAmbik Press Publishers 2010)94-95.

⁸ *Ibid.*

⁹ L A Atsegbua, and Others, *Environmental Law in Nigeria, Theory and Practice* (2ndAmbik Press Publishers 2010)94-95.



offer insights into how the legal system interprets and applies relevant laws and regulations in real-world scenarios. By examining these elements comprehensively, the study aims to demystify the legal frameworks surrounding land compensation for oil pollution in Nigeria, particularly in the context of the Niger Delta, and provide valuable insights for legal practitioners, policymakers, scholars, and stakeholders involved in environmental protection and resource management.

Nigerian Courts have generally recognized the severe environmental damage caused by oil pollution in Nigeria, particularly in the Niger Delta region¹⁰. This includes pollution of water bodies, destruction of farmlands, and adverse health effects on local communities. State courts have played a crucial role in enforcing the rights of affected communities to compensation for land degradation and loss of livelihood caused by oil pollution. They have upheld the principle that polluters, including oil companies, are liable for the harm caused by their activities and must compensate affected parties accordingly.¹¹ Courts have emphasized the protection of community rights in cases involving oil pollution compensation. This includes the recognition of communal land ownership rights and the need for meaningful consultation and participation of affected communities in decision-making processes related to oil exploration and production activities. Courts have consistently reaffirmed the importance of adherence to environmental laws and regulations in the oil industry. They have held companies accountable for violations of environmental standards and have ordered compensation as a remedy for environmental harm

¹⁰L A Atsegbua, and Others, *Environmental Law in Nigeria, Theory and Practice* (2ndAmbik Press Publishers 2010)94-95.

¹¹ *Ibid.*



caused by such violations. Several landmark cases decided by Nigerian state courts have set important precedents in compensation for oil pollution. These cases have clarified legal principles, established liability frameworks, and provided guidance for future disputes arising from environmental damage caused by oil activities.

CONCEPTUAL CLARIFICATION

a. Land

“Land” typically refers to the surface of the earth, including the soil, minerals beneath the surface, and everything attached to it, such as buildings, trees, and fixtures¹². In legal terms, land encompasses not only the physical surface but also the rights associated with it, including ownership, possession, use, and enjoyment. One prominent case where the Nigerian Court defined land is the case of *Elegbere v. Akinsanya*¹³, in this case, the Nigerian Court defined “The word ‘land’ to includes all physical objects in their natural state, whether attached to the earth, and includes buildings and structures, and other objects which are attached to the earth or permanently fastened to anything attached to the earth.” This definition provides a comprehensive understanding of the term “land” in Nigerian legal contexts, encompassing both the physical surface of the earth and any attached structures or improvements.

b. Compensation

Compensation refers to the payment made by the government or acquiring authority to the owner(s) of land that is compulsorily acquired for public purposes under the provisions of the

¹² A Adekoya, ‘Compulsory Acquisition of Land under the Land Use Act: An Appraisal of the Compensation Provisions [2016] (34) (3) *Journal of Property Investment and Finance* 278-293.

¹³ (1973) 1 All NLR (Pt. 1) 17.



Land Use Act of 1978 or other relevant statutes. Compensation is provided as a form of financial recompense for the loss of land, property rights, and potential income or livelihood resulting from the compulsory acquisition.¹⁴ The Land Use Act and other related laws outline the principles, procedures, and criteria for determining compensation for land that is compulsorily acquired¹⁵.

Compensation is typically based on the market value of the land, considering factors such as the size, location, use, and development potential of the land, as well as any improvements or structures on the land¹⁶. In addition to the market value of the land, compensation may include additional components such as disturbance allowance, solatium (consolation payment), and rehabilitation or resettlement assistance for affected landowners and communities. The purpose of compensation is to ensure that affected landowners are fairly and adequately compensated for the loss of their land and property rights, thereby mitigating the adverse impacts of compulsory acquisition and promoting social justice and equity.¹⁷ Compensation under Nigerian land law may include market value of the land, compensation is often based on the market value of the land at the time of acquisition, which is determined through valuation processes conducted by qualified surveyors or valuers, value of improvements.

In addition to the value of the land itself, compensation may also include the value of any improvements or structures erected on the land, such as buildings, crops, or other fixtures,

¹⁴ A Adekoya, 'Compulsory Acquisition of Land under the Land Use Act: An Appraisal of the Compensation Provisions [2016] (34) (3) *Journal of Property Investment and Finance* 278-293.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*



disturbance, and relocation costs¹⁸. Landowners may be entitled to compensation for the costs associated with relocating from their land, as well as for any disturbances or inconveniences caused by the acquisition. Loss of livelihood, compensation may also consider the loss of livelihood or economic opportunities resulting from the acquisition, particularly for landowners who rely on the land for agricultural, residential, or commercial purposes, statutory provisions, specific provisions regarding compensation may vary depending on the applicable laws and regulations governing land acquisition in different states or jurisdictions within Nigeria.¹⁹

c. Oil

“Oil” refers to crude oil, which is a naturally occurring, unrefined petroleum product composed of hydrocarbon deposits.²⁰ These deposits are typically found beneath the Earth’s surface and are extracted through drilling processes. Crude oil is a valuable resource used for various purposes, including fuel for transportation, heating, and electricity generation, as well as the production of various petrochemical products²¹. Crude Oil means petroleum, which is in liquid conditions upon production from a reservoir either in its natural state or after the extraction of water, sand or other foreign substance from it, but before it is refined or treated, other than oil extracted by destructive distillation from coal, bituminous shales or other stratified deposits.²² Simply put, Crude oil is a naturally occurring mixture of hydrocarbon compounds that is found in underground reservoirs. It is a major component of the hydrocarbon industry as it plays a crucial

¹⁸ N E Ojukwu-Ogba, ‘Legal and Regulatory Instruments on Environmental Pollution in Nigeria: Much Talk, Less Teeth’ [2006] 8 *International Energy Law and Taxation Review* 201.

¹⁹ N E Ojukwu-Ogba, ‘Legal and Regulatory Instruments on Environmental Pollution in Nigeria: Much Talk, Less Teeth’ [2006] 8 *International Energy Law and Taxation Review* 201

²⁰ A Ogbuigwe, *Legal Issues in the Niger Delta Resource Dilemma a collection of Essays* (2ndedn, Anpez Centre for Environment and Development Port Harcourt, Nigeria 2018) 22.

²¹ *Ibid.*

²² *Ibid*, Interpretation Sch, 257.



role in various hydrocarbon industry operations which includes exploration, production, refining, and distribution.

Crude oil exploration involves the search for underground reservoirs through geological surveys, seismic imaging, and drilling of exploratory wells.²³ While crude oil production involves the discovery of crude oil in the reservoir, production activities which involves drilling production wells to extract the oil from the reservoir and the different techniques such as primary, secondary, and tertiary recovery methods are employed to maximize oil recovery.²⁴ Refining, crude oil undergoes a refining process to transform it into various valuable products such as gasoline, diesel, jet fuel, and lubricants. Refineries use methods, such as distillation, cracking, and reforming to separate and convert the different components of crude oil into usable products.²⁵ And distribution, refined petroleum products are distributed through an extensive network of pipelines, storage facilities, and transportation systems. They are delivered to end-users such as fuel stations, industries, and households.²⁶ Also. Crude oil is a major source of energy production worldwide, it is used for electricity generation, heating, and as well as fuel for transportation vehicles such as automobiles, trucks, ships, and airplanes. Its refined products are crucial for economic development and are fundamental to various industries and serves as a feedstock for the petrochemical industry, where it is used to produce plastics, fertilizers, synthetic fibres, and other materials.²⁷ However, it forms part of the hydrocarbon industry

²³ S. Selley, *Elements of Petroleum Geology* (3rd edn., Academic Press, 2009) 89.

²⁴ R. Ahmed, *Enhanced Oil Recovery: An Introduction* (1st edn., Gulf Professional Publishing, 2011) 32

²⁵ G. Speight, *The Chemistry and Technology of Petroleum* (4th edn., CRC Press, 2014)165.

²⁶ A. Attanasi and P. Freeman, *Petroleum and the Environment* (2nd ed., CRC Press, 2004). 215

²⁷ International Energy Agency (IEA), "Oil Market Report" (2022) <<https://www.iea/odr>>accessed on the 6th of July 2023



activities that generates pollutants in the environment, it is therefore opined that technological research should be advanced in its production to reduce the negative effect on the environment.

Furthermore, the extraction, refining, and transportation of oil pose significant environmental risks, including oil spills, gas flaring, and pollution of water sources. These activities have led to widespread environmental degradation in oil-producing regions such as the Niger Delta, adversely affecting ecosystems, biodiversity, and the health of local communities. Despite Nigeria's substantial oil wealth, many communities in oil-producing areas continue to experience poverty, underdevelopment, and socio-economic marginalization²⁸.

The benefits of oil revenue often fail to reach these communities, leading to grievances and social unrest²⁹. The oil industry in Nigeria is plagued by corruption, mismanagement, and lack of transparency in revenue allocation and resource management. Weak governance structures and regulatory enforcement contribute to the misappropriation of oil revenues and hinder efforts to address environmental and socio-economic challenges. Disputes over oil resources and revenue sharing have fuelled conflict and violence in oil-producing regions, exacerbating social tensions and undermining stability. Militant groups, criminal syndicates, and communal conflicts often vie for control over oil assets, leading to insecurity and human rights abuses³⁰.

d. Pollution

²⁸ J M Fraley, 'Re-examining Acts of God' [2010] (27) *Pace Environmental Law Review* 669-672.

²⁹ *Ibid.*

³⁰ *Ibid.*



The term pollution has been identified as human made or human induced alternation of the quality of the environment beyond sustainable levels.³¹ Pollution comes from the root word ‘pollute’. To pollute means to render a substance impure, corrupt or ritualistically unclean³². It also means to defile or contaminate the environment with harmful substances and sounds³³. It has also been defined as the unnatural discharge of harmful substances into the environment.³⁴ The definition of pollution provided by the Organization for Economic Co-operation and Development (OECD) is relatively comprehensive, which defines it as ‘ the introduction by man, directly or indirectly, of substances or energy into the environment resulting in deleterious effects of such a nature as to endanger human health, harm living resources and ecosystems, and impair or interfere with amenities and other legitimate uses of the environment³⁵ Also, ‘pollution’ can be defined as the introduction by man, directly or indirectly of substances or energy into the environment, harmful to living resources, hazardous to human health, a hindrance to marine activities including foiling, impairment of quality and use of water and reduction of amenities.³⁶

ANALYSIS OF LEGAL FRAMEWORKS ON LAND COMPENSATION FOR OIL POLLUTION IN NIGERIA: TORCHLIGHT ON NIGER DELTA REGION

a. Constitution of the Federal Republic of Nigeria, 1999 (as amended)

³¹ NESREA Act s 37.

³² The New Lexicon Weber’s Dictionary of English Language [1991].

³³ B A Garner, *Black’s Law Dictionary* (West Publisher, 2009) 112.

³⁴ C Schwarz, *Chambers Concise Dictionary* (2ndedn, Chambers Harrap Publishers Ltd 2016) 123.

³⁵ OECD, Recommendation for the Implementation of a Regime of Equal Right of Access and Non-Discrimination in Relation to Transformer Pollution C (77) 28 (Final), adopted May 17, 1977.

³⁶ Stockholm Declaration 43/B. 78-79.



Under the Constitution of the Federal Republic of Nigeria, several key sections are relevant to compensation for land affected by oil pollution. Section 20 recognizes the right of every person to an environment that is not harmful to their health and well-being³⁷. It imposes a duty on the government to protect and improve the environment for present and future generations. However, challenges arise in translating this constitutional provision into concrete actions, particularly in the context of compensation for land polluted by oil spills. Despite the constitutional guarantee of environmental rights, affected communities often face difficulties in accessing justice and obtaining adequate compensation for the harm caused to their land and livelihoods³⁸. Furthermore, section 44, this section of the Constitution deals with the right to property. While this constitutional provision affirms the right of affected communities to seek redress for environmental harm through legal means, challenges exist in the Nigerian legal system, including delays in adjudication, lack of legal representation for marginalized communities, and insufficient enforcement of court judgments. Also, this section outlines the powers of the Attorney General of the Federation to institute and undertake criminal proceedings against any person before any court of law in Nigeria in respect of offenses created by or under any Act of the National Assembly. While this provision empowers the government to prosecute individuals or entities responsible for environmental crimes, challenges persist in the effective enforcement of environmental laws and regulations, including those related to compensation for land polluted by oil spills. *Shell Petroleum Development Company of Nigeria Ltd v. Chief*

³⁷ CFRN, 1999.

³⁸CFRN, 1999.



*Numaridein Alabo-Suka*³⁹, this case involved compensation claims by communities affected by oil spills attributed to Shell Petroleum Development Company. The court ruled on the liability of the oil company and the calculation of compensation for the environmental damage and loss of livelihood suffered by the affected communities.

b. National Environmental Standards, Regulations and Enforcement Agency Act, 2007

The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act of 2007 is a key piece of environmental legislation in Nigeria that establishes the NESREA and provides the legal framework for environmental protection, management, and enforcement in the country. While the NESREA Act contains provisions related to compensation for oil pollution on land, there are challenges in its effective implementation.

Furthermore, section 7 (1), this section establishes NESREA as the primary regulatory agency responsible for enforcing environmental standards and regulations in Nigeria. NESREA has the authority to monitor, assess, and regulate activities that may cause environmental pollution, including oil exploration, production, and transportation⁴⁰. Section 20, this section of the NESREA Act prohibits activities that may cause environmental pollution without obtaining an environmental impact assessment (EIA) approval from NESREA⁴¹. Oil companies and other entities engaged in activities that may result in oil pollution on land are required to conduct EIAs to assess the potential environmental impacts of their operations and mitigate any adverse effects. Section 23, this section empowers NESREA to issue environmental compliance certificates to companies and individuals that have complied with environmental regulations and

³⁹ (2005) 11 NWLR (Pt. 937) 551.

⁴⁰ NESREA, 2007.

⁴¹ NESREA, 2007.



standards. Compliance with environmental requirements, including measures to prevent and mitigate oil pollution on land, is a prerequisite for obtaining these certificates, section 25, this section outlines the penalties for non-compliance with the provisions of the NESREA Act and environmental regulations.⁴² Violations of environmental standards, including failure to prevent or mitigate oil pollution on land, may result in fines, imprisonment, or other penalties as prescribed by law. Despite the provisions of the NESREA Act, enforcement of environmental regulations and compliance by oil companies and other polluters remains a challenge. Weak enforcement mechanisms, limited resources, and regulatory capture undermine NESREA's ability to effectively monitor and regulate activities that may cause oil pollution on land. Affected communities often face barriers in accessing justice and obtaining compensation for oil pollution on their land. Legal processes may be lengthy, complex, and costly, and affected communities may lack the resources and capacity to pursue compensation claims against powerful oil companies. The NESREA Act emphasizes the prevention and mitigation of environmental pollution, but challenges remain in ensuring effective remediation of land polluted by oil spills. Cleanup and remediation efforts may be insufficient or delayed, exacerbating the environmental and socio-economic impacts on affected communities. The NESREA Act emphasizes the importance of community participation and consultation in environmental decision-making processes. However, challenges persist in ensuring meaningful engagement of affected communities in the development and implementation of environmental regulations and compensation mechanisms.

c. National Oil Spill, Detection and Response Agency Act, 2006

⁴² NESREA, 2007, s 20-37.



The National Oil Spill Detection and Response Agency (NOSDRA) Act is another important piece of environmental legislation in Nigeria that addresses oil pollution and compensation for land affected by oil spills. While the NOSDRA Act contains provisions related to compensation for oil pollution on land, there are challenges in its effective implementation⁴³.

Furthermore, section 6 (1), this section establishes NOSDRA as the statutory body responsible for coordinating the implementation of the National Oil Spill Contingency Plan (NOSCP) and overseeing oil spill detection, response, and cleanup efforts in Nigeria.⁴⁴ NOSDRA has the mandate to ensure prompt and effective response to oil spills, including assessing the environmental and socio-economic impacts and facilitating compensation for affected parties, section 6 (3), this section empowers NOSDRA to collaborate with relevant stakeholders, including oil companies, regulatory agencies, and affected communities, in preventing, mitigating, and managing oil spills⁴⁵.

Challenges of the NOSDRA Act in relation to compensation for oil pollution on land include the NOSDRA Act relies on the National Oil Spill Liability Trust Fund (NOSLTF) to finance oil spill response and compensation activities. However, inadequate funding and delays in contributions from oil companies may limit NOSDRA's ability to effectively respond to oil spills and compensate affected communities. The process of assessing and determining compensation for land affected by oil spills can be complex and time-consuming. Challenges may arise in quantifying the extent of environmental damage, assessing the value of affected land and natural

⁴³ NESREA, 2007, s 3-10.

⁴⁴ *Ibid.*

⁴⁵ (n131) s 6.



resources, and ensuring fair and equitable compensation for affected parties. NOSDRA faces challenges in enforcing compliance with environmental regulations and ensuring timely cleanup and remediation of oil spills. Weak enforcement mechanisms, regulatory gaps, and limited technical capacity may hinder NOSDRA's ability to hold oil companies accountable for environmental harm and ensure adequate compensation for affected communities. Meaningful engagement of affected communities in the compensation process is crucial for ensuring transparency, accountability, and social justice. However, challenges persist in facilitating effective community participation, addressing grievances, and building trust between stakeholders involved in oil spill response and compensation efforts.

d. Land Use Act, 1978

The Land Use Act of 1978 is a significant piece of legislation in Nigeria that governs land ownership, use, and management in the country. While the Land Use Act does not specifically address compensation for oil pollution on land, its provisions have implications for the compensation regime in cases of environmental damage caused by oil spills⁴⁶.

The Governor has the power to grant statutory rights of occupancy (title) to individuals and organizations for specified purposes, subject to the provisions of the Act. The centralized control of land by state governors may limit the ability of affected communities to seek compensation for oil pollution on their land, as they may have limited recourse against powerful oil companies or the state government itself. Section 21 of the Act provides for the revocation of rights of occupancy by the Governor in the public interest, including for overriding public purposes such

⁴⁶ LUA, 1978, s 1-10.



as urban development, agriculture, or mineral exploration. Compensation is required to be paid to the holder of the revoked rights, based on the value of improvements made to the land⁴⁷.

The definition of “public interest” under Section 21 may not explicitly include compensation for environmental damage caused by oil pollution, which may limit the ability of affected communities to seek compensation under this provision, determining the value of improvements made to the land affected by oil pollution may be challenging, particularly if the pollution has rendered the land unusable or significantly diminished its value. Also, section 36 provides for the determination of compensation by the Land Use and Allocation Committee established under the Act. The Committee is tasked with assessing compensation claims arising from the revocation of rights of occupancy by the Governor⁴⁸.

The Land Use and Allocation Committee may lack the technical expertise and resources to assess compensation claims for environmental damage caused by oil pollution effectively. There may be delays in the compensation process, leading to protracted legal disputes and further hardships for affected communities, section 51 grants the Governor the power to make regulations for the purpose of giving effect to the provisions of the Act, including regulations concerning compensation for revoked rights of occupancy. The lack of specific regulations addressing compensation for oil pollution on land may result in uncertainty and inconsistency in the compensation process, making it difficult for affected communities to seek redress for environmental harm.

⁴⁷LUA, 1978, s 9.

⁴⁸(n47)



e. Petroleum Industry Act, 2021

The Petroleum Industry Act (PIA) of 2021 is landmark legislation in Nigeria that overhauls the country's petroleum industry governance framework, including provisions related to oil pollution and environmental management on land⁴⁹. While the PIA introduces several new provisions aimed at enhancing environmental protection and addressing oil pollution, there are challenges associated with its implementation.⁵⁰

The ERF is funded through contributions from oil companies and is used to finance environmental remediation and restoration projects, including cleanup efforts for oil spills on land. The effectiveness of the ERF in addressing oil pollution may be limited by insufficient funding, delays in contributions from oil companies, and competing priorities for environmental remediation projects. There may be challenges in ensuring transparency and accountability in the management and utilization of funds from the ERF, raising concerns about potential mismanagement or diversion of funds. Section 257, this section requires oil companies to prepare and implement Environmental Management Plans (EMPs) to minimize the environmental impact of their operations, including measures to prevent and mitigate oil pollution on land.⁵¹

Furthermore, section 260 empowers the Minister of Petroleum Resources to make regulations for the prevention and control of environmental pollution in the petroleum industry, including

⁴⁹ PIA, 2021.

⁵⁰ PIA, 2021.

⁵¹ PIA, 2021.



regulations concerning oil spill response, cleanup, and compensation.⁵² The effectiveness of regulations made under Section 260 may be hampered by delays in the regulatory process, lack of clarity in regulatory requirements, and inconsistencies in enforcement across different jurisdictions. There may be challenges in ensuring compliance with regulations related to oil spill response, cleanup, and compensation, particularly by smaller or less regulated oil companies operating in remote areas. Section 266 establishes the Environmental Guidelines and Standards for the Petroleum Industry (EGASPIN), which provides standards and guidelines for environmental management and pollution control in the petroleum industry. While EGASPIN sets out environmental standards and guidelines, challenges may arise in ensuring their effective implementation and enforcement. Limited capacity and technical expertise within regulatory agencies may hinder their ability to monitor compliance with EGASPIN and enforce environmental standards effectively.⁵³

f. Nigerian Oil and Gas Industry Content Development Act, 2010

The Nigerian Oil and Gas Industry Content Development Act (NOGICD) of 2010 aims to promote the participation of Nigerian companies in the country's oil and gas industry and foster the development of local content⁵⁴. While the Act primarily focuses on local content requirements, it also contains provisions related to compensation for oil pollution. Here are some key sections of the NOGICD Act relevant to compensation for oil pollution and the challenges associated with its implementation. Section 104 requires operators in the oil and gas industry to

⁵² *Ibid.*

⁵³PIA, 2021.

⁵⁴ NOGICD Act, 2010.



ensure compliance with environmental regulations and standards, including measures to prevent and mitigate oil pollution⁵⁵.

Operators are obligated to adopt best practices in environmental management and pollution control and are subject to penalties for non-compliance. While Section 104 emphasizes the importance of environmental protection and pollution control, challenges may arise in ensuring effective compliance and enforcement by operators. Weak enforcement mechanisms limited regulatory capacity, and regulatory capture may undermine efforts to prevent and mitigate oil pollution. Section 106 provides for the establishment of the Nigerian Content Development and Monitoring Board (NCDMB), which is tasked with overseeing the implementation of local content requirements in the oil and gas industry.⁵⁶Section 107 empowers the NCDMB to establish guidelines and procedures for the implementation of the NOGICD Act, including guidelines on environmental management and pollution control.

g. Niger Delta Development Commission (Establishment) Act, 2000 (as amended)

The Niger Delta Development Commission (NDDC) Act of 2000 established the NDDC with the mandate to facilitate the sustainable development of the Niger Delta region⁵⁷. While the Act primarily focuses on socio-economic development and infrastructure in the Niger Delta, it also contains provisions related to compensation for oil pollution. Section 7(1)(b) mandates the NDDC to execute projects and programs for the sustainable development of the Niger Delta

⁵⁵ *Ibid.* s 7.

⁵⁶ NOGICD Act, 2010.

⁵⁷ NDDC Act, 2000.



region, including projects aimed at addressing environmental degradation and pollution caused by oil exploration and production activities⁵⁸.

While the NDDC is tasked with executing projects to address environmental degradation in the Niger Delta, challenges may arise in prioritizing and implementing projects related to compensation for oil pollution. Limited resources, competing priorities, and bureaucratic inefficiencies may hinder the NDDC's ability to effectively address environmental challenges in the region. Section 7(1)(f) empowers the NDDC to implement measures for the prevention and control of oil spillage and other environmental hazards in the Niger Delta region, including the cleanup and remediation of polluted land and water bodies. While the NDDC is authorized to implement measures for the prevention and control of oil spillage, challenges may arise in coordinating with other stakeholders, including oil companies, regulatory agencies, and affected communities.

h. Oil Pipelines Act, 1998

The Oil Pipelines Act of 1998 regulates the transportation of petroleum products through pipelines in Nigeria. While the Act primarily focuses on pipeline safety and operations, it also contains provisions related to land compensation for oil pipeline construction and maintenance⁵⁹. The Act requires pipeline operators to compensate landowners or occupiers for any damage caused by pipeline operations. While the Act mandates compensation for damage caused by pipeline operations, challenges may arise in ensuring timely and adequate compensation for

⁵⁸NDDC Act, 2000.

⁵⁹ Oil Pipelines Act, 1998.



affected landowners or occupiers⁶⁰. Delays in assessing and addressing damage claims, lack of transparency in compensation processes, and insufficient resources for compensation payments may hinder efforts to mitigate the impact of pipeline activities on affected communities. Section 9 empowers the Minister of Petroleum Resources to make regulations for the safe and efficient operation of oil pipelines, including regulations concerning compensation for land acquisition and damage. While penalties are intended to deter non-compliance with the Act, challenges may arise in their enforcement and effectiveness. Inadequate enforcement mechanisms, lenient penalties, and delays in legal proceedings may undermine efforts to hold pipeline operators accountable for violations of compensation requirements and other regulatory obligations in decision-making processes related to pipeline activities.

i. Environmental Impact Assessment Act, 1992

The Environmental Impact Assessment (EIA) is a regulatory process that evaluates the potential environmental effects of proposed projects or activities, including those related to oil exploration, production, and transportation.⁶¹ While EIAs are not governed by a single Act in Nigeria, they are typically required under various environmental laws and regulations. Here are some key aspects of EIAs in relation to land oil pollution compensation and the challenges associated with their implementation. Before undertaking oil-related activities that may impact the environment, such as drilling, pipeline construction, or refinery operations, companies are typically required to conduct an EIA. This process assesses the potential environmental impacts

⁶⁰Oil Pipelines Act, 1998.

⁶¹ EIA Act, 1992.



of the proposed activities and identifies measures to mitigate adverse effects⁶². One challenge is ensuring that oil companies comply with the requirement to conduct EIAs before commencing operations. Some companies may attempt to bypass or minimize the EIA process, leading to inadequate assessment of environmental risks and potential harm to land and communities.

j. Evidence Act, 2011

The Evidence Act of 2011 governs the rules of evidence in legal proceedings in Nigeria. While the Act does not specifically address land compensation for oil pollution, it provides the framework for presenting evidence and establishing claims related to compensation in court.⁶³ Section 1 outlines the purpose of the Evidence Act, which is to provide rules for the admissibility and presentation of evidence in legal proceedings. The Act applies to all judicial proceedings in Nigerian courts, including cases related to land compensation for oil pollution. One challenge is interpreting the provisions of the Evidence Act in the context of compensation claims for oil pollution on land. The Act may not explicitly address the unique challenges and complexities associated with environmental damage and compensation claims, requiring careful interpretation by courts and legal practitioners. Section 52 deals with documentary evidence and provides rules for the admissibility of documents in court proceedings. Documents relevant to land compensation for oil pollution, such as environmental impact assessments, pollution reports, and land ownership records, may be admitted as evidence in court.⁶⁴

⁶²EIA Act, 1992.

⁶³ Evidence Act, 2011.

⁶⁴Evidence Act, 2011.



CONCLUSION

The appraisal of legal frameworks for oil land compensation in the Niger Delta region of Nigeria reveals a complex landscape marked by inadequate legislation, poor enforcement, and widespread environmental degradation. Despite efforts to address grievances through various laws and policies, such as the Land Use Act and the Petroleum Industry Act, 2021, significant challenges persist, including disputes over land ownership, insufficient compensation with affected communities. To ensure equitable compensation and sustainable development in the region, there is a pressing need for strong enforcement mechanisms, transparent processes, and genuine engagement with local stakeholders. Additionally, incorporating principles of environmental justice and community participation into the legal frameworks can help address the root causes of conflict and foster more inclusive and sustainable approaches to oil land compensation in the Niger Delta.

RECOMMENDATIONS

1. **Strengthen Enforcement Mechanisms**

Enhancement of the enforcement of existing laws and regulations to ensure that oil companies comply with compensation requirements. This may involve establishing dedicated regulatory bodies with the authority to monitor and enforce compliance.

2. **Improve Transparency and Accountability**



Promotion of transparency and accountability in the compensation process by requiring oil companies' practices. Establish mechanisms for affected communities to report grievance and hold companies accountable for any violations.

3. Conduct Comprehensive Participation

Prior to oil exploration and production activities, conduct comprehensive environmental and social impact assessments to identify potential risks and ensure that affected communities are adequately compensated for any adverse impacts on their land, livelihoods, and health.

4. Enhance Community Participation

Facilitate meaningful consultation and participation of affected communities in decision making processes related to oil and land compensation.

5. Implement Alternative Dispute Resolution Mechanisms

Establish ADR mechanisms, such as mediation and arbitration, to resolve compensation disputes in a timely and culturally appropriate manner. By implementing these recommendations, policymakers and stakeholders can work towards improving the legal frameworks towards improving the legal frameworks for oil and compensation in the Niger Delta region, ultimately promoting greater equity, justice, and sustainable development for all stakeholders involved.