

## **Comparative and Global Perspectives on Environmental Fund: A Blueprint for the Establishment of Environmental Fund in Nigeria**

**Uwem Udok**

LL.B Hons (Nigeria), B.L (Lagos), LL.M (Lagos), Ph.D (Jos), Cert. CLE (Durban, SA)  
Professor, formally Vice Dean and Head of Department, Private Law, Faculty of Law,  
University of Uyo, Nigeria.

**\*\*Umeojiako Mulumba Chigozie**

LL.M (Uyo), LL.B (ESUT) B.L (Lagos), Ph.D Candidate at the Faculty of Law,  
University of Uyo, Nigeria

**Akwaowo J. Ikott**

LL.B Hons, B.L (Lagos), LL.M in view, Faculty of Law, University of Uyo

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**Citation:** Udok U and Umeojiako M.C., Ikott A.J (2022) Comparative and Global Perspectives on Environmental Fund: A Blueprint for the Establishment of Environmental Fund in Nigeria, *Global Journal of Politics and Law Research*, Vol.10, No.8, pp.90-115

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**ABSTRACT:** *The Nigerian economy has been described as a mono-economy as it relies mainly on the proceeds from crude oil production as the source of revenue to fund government policies and programmes. Exploration and production of crude oil in the country have continued over the years leading to increased activities and growth of the oil industry. The production of oil and gas in the country has had enormous impact on the environment sometimes leading to oil pollution which has adversely affected human lives, plants and animals, social and economic lives of the people living in the affected areas. Findings have shown that though there are laws that protect the environment but these laws do not provide for compensation to victims of oil pollution in the country. Therefore, the victims are left to seek redress in the court of law for remedy, which in most cases, the victims are confronted with a lot of challenges. These challenges make it difficult for the victims to get compensation for loss or damage suffered by them and sometimes, the court awards compensation that is not commensurate with the extent of loss or damage incurred by the victims. Therefore, an alternative measure to ensure that the victims of oil pollution are able to obtain relief becomes a compelling necessity as it is obtainable in other jurisdictions. This work concludes that unless Nigeria adopts the best practice in compensating victims of oil pollution in the oil producing communities, the victims of oil pollution will continue to suffer without adequate compensation or no compensation for the destruction of their means of livelihood. This work, therefore, recommends, the establishment of environmental fund to compensate victims of oil pollutions in Nigeria.*

**KEYWORDS:** global perspectives, environmental fund and blueprint

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## INTRODUCTION

For more than 5 decades now, the Nigerian Economy has been described as a mono-economy as it relies mainly from proceeds from crude oil production as the source of revenue to fund government policies and programmes. Prior to the independence of Nigeria from British colonial rule and shortly after the independence until the 1970s, emphasis was placed on Agriculture as the main stay of the Nigerian economy.<sup>1</sup> This remained so despite the fact that crude oil was discovered in commercial quantities at a town in Oloibiri, in present day Bayelsa State, since the year 1956.<sup>2</sup>

From the year 1970 to date, crude oil production has been constantly on the increase on a regular basis. The discovery of crude oil in Nigeria led to increased production activities in upstream and downstream sectors. And these oil production activities were undertaken majorly by foreign multinational oil companies.<sup>3</sup> There was the need to take control of the economic sector of the country and this started majorly by way of conferring exclusive ownership of oil on the Federal Republic of Nigeria.<sup>4</sup> This was so as the earlier activities of the multinational oil companies were dominated by British companies as part of the remains of British Colonial rule of exploitation of the resources of the colonized territories.

Given the steady rise in exploration and production of oil in Nigeria, there was attendant impact of oil industry operations on environment which occasioned by production, storage, transport and refining processes. “Going by the Nigerian National Petroleum Corporation report relating to the incident of oil spill in Nigeria between 1976 and 1980, Nigeria experienced 784 oil spill incidents. This resulted in the loss of 1,336,875 barrels (56,148,750 American gallons) to the National economy in 1981 alone, a number of 121 incidents or oil spills were reported”<sup>5</sup>.

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**\*Uwem Udok** LL.B Hons (Nigeria), B.L (Lagos), LL.M (Lagos), Ph.D (Jos), Cert. CLE (Durban, SA)  
Professor, formally Vice Dean and Head of Department, Private Law, Faculty of Law, University of Uyo, Nigeria.  
He may be reached at: uwemudok@yahoo.com. GSM: 08024787818.

**\*\*Umeojiako Mulumba Chigozie** LL.M (Uyo), LL.B (ESUT) B.L (Lagos), Ph.D Candidate at the Faculty of Law, University of Uyo. Email: chigozieelvis1@gmail.com G.S.M 08066700669

**\*\*\*Barr. Akwaowo J. Ikott**, LL.B Hons, B.L (Lagos), LL.M in view, Faculty of Law, University of Uyo  
08029605140 Email: akwaikott2000@gmail.com

<sup>1</sup> D. Arowolo, “Fiscal Federalism in Nigeria: Theory and Dimensions” (2011) 2 (2.2) *Afro Asian Journal of Social Sciences*, 14.

<sup>2</sup> O.M Bello and M.A. Olukolajo, “Adequate Compensation as a Tool for Conflict Resolution in Oil Polluted Wetlands of Niger Delta Region of Nigeria” (2016) 3<sup>rd</sup> *Covenant University International Conference on African Development Issues*, 456.

<sup>3</sup> Y. Oke, “Multi- Jurisdictional Evaluation of the Nigerian Oil and Gas (Industry and Content Development) Act, 2010” (2012) 2 (1) *University of Ibadan Law Journal*, 153-154.

<sup>4</sup> Section 1 of the Petroleum Act, 1969; Section 44 (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); *Attorney-General of the Federation v Attorney- General of Abia State and Ors.* (2006) 6 NWLR (Pt. 764) 542-905.

<sup>5</sup> *Ibid*, 86.

The growth of the oil industry, combined with population explosion and the lack of inadequate implementation of environmental regulation, led to substantial damage to Nigeria's environment, especially in the Niger Delta region. Various activities in the oil industry account for the deleterious condition of environment, including oil spillages, gas flaring, and seismic movements causing tremors. Exploration of oil affects different elements of the environment leading to varied consequences.

One of the impact of oil production is the air pollution caused by gas flaring. Gas flaring is the natural process associated with drilling crude oil from the ground, which results from the burning-off of extra gases producing "Sulfur dioxide, Nitrogen dioxides, benzapryenes, toluene, xylene, and hydrogen sulfide".<sup>6</sup> Widespread gas flaring has inflicted untold hardship or damage to human, plants, and animal life. Consequently, agricultural production is drastically reduced as increased atmospheric temperatures, scorch plants and animal in the vicinity of the flares.

Apart from gas flaring, oil spillages become a regular occurrence arising from negligence of oil companies and sabotage by criminal elements in the Niger Delta. The data on oil spills and pollution in Nigeria, especially Niger Delta, is conflicting but very intimidating. For instance, the defunct Department of Petroleum Resources (DPR) estimated that between 1976 and 1996 about 2,369,470 barrels of oil had spilled into the swamps and rivers of the Niger Delta in more than 4647 incidents.<sup>7</sup> This figure is small compared to the report of Amnesty International on the extent of oil spills in the Niger Delta.<sup>8</sup> The resultant degradation of the surrounding environment has caused significant tension between the people and the multinational oil companies because of the extensive pollution of waterways and fishponds leading to the death of fishes and other aquatic life, which affect the livelihood of the communities.<sup>9</sup> One of the most visible consequences of the numerous oil spills has been the loss of the mangrove vegetation due to oil toxicity.<sup>10</sup>

Another effect of oil production is that it caused land pollution. Most activities of oil production that affect marine life also caused land pollution. For instance, it is common to find abandoned oil well in different localities in the Niger Delta, which is a source of pollution to arable land in the

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<sup>6</sup> E. Ukala, "Gas Flaring in Nigeria's Niger Delta: Failed promises and Reviving Community Voices" (2010) 2 *Journal of Energy, Climate and Environment*, 101.

<sup>7</sup> P.C. Nwilo and O.T. Badejo, "Impacts and Management of Oil Spill Pollution Along the Nigerian Coastal Areas" (2019) <https://www.fig.net/resources/publications/figoub/pub36/chapters/chapter-8.pdf>. (Retrieved on 20 November, 2020).

<sup>8</sup> Amnesty International, Bad Information: "Oil Spill Investigation in the Niger Delta" (2013) <https://www.amnestyusa.org/reports/bad-information-oil-spill-investigation-in-the-niger-delta> (Retrieved on 20 November, 2020)

<sup>9</sup> United Nation Environmental Programme, "Environmental Assessment of Ogoniland" (2011) <http://postconflict.unepch/publication/OEA/UNEP-ORA.pdf>. (Retrieved on 20 November, 2020)

<sup>10</sup> N. Takon, "Environmental Damage Arising from operations in Niger Delta of Nigeria: How Not to continually live with their specific impact on pollution and Ecology (2014) 3 *International Journal of Development and sustainability*, 1885-1886.

region. Various pollutants are found at the sites of these wells including drilling wastes, drill cuttings, oily sludge, and other hazardous chemicals. Oil pollution on land mainly affects plants/crop production and animals (flora and fauna), which includes human beings. Crops and drinking water sources are contaminated with heavy metals such as Lead, Zinc and Mercury<sup>11</sup>.

Nigeria has copious laws which seek to eliminate or at least reduce the occurrence of oil pollution from the activities involved in oil production.<sup>12</sup> Most of these laws, do not make provision for payment of compensation of victims of oil pollution and consequently, the victims of oil pollution are left to suffer without any compensation for the destruction of their means of livelihood.

The essence of compensation or damage for the victims of oil pollution is to return the victims to the position they were or they would have been had the pollution not occurred. The perpetrators are usually liable to pay the compensation in such events. To make matters worst, the legislation which make provision for the payment of compensation to victims of oil pollution has not provided for the parameter for the measurement of what will amount to adequate compensation to the victims.<sup>13</sup>

The Petroleum Act only provides that compensation must be fair and adequate.<sup>14</sup> Globally, there are international laws that specifically provide for environmental fund to compensate victims of oil pollution. These international laws contain far-reaching provisions that provide the framework for environment fund to be disbursed to victims of oil pollution. Beside, international laws, there are also some countries that are good examples of countries which have established environmental fund to cater for victims of oil pollution. Unfortunately, Nigeria is yet to key into these best practices in compensating oil pollution.

There is need for a rethink on the issue of compensation for victims of oil pollution as well as management of environmental disasters that are caused by natural factors such as earthquake, erosion and heavy down pour. The solution is to adopt best practices that are devoid of the challenges of access to justice in environmental law. The establishment of environmental fund, therefore becomes inevitable.

This paper will examine how these countries have developed and implemented their legal framework on environmental fund and how Nigeria can key into these best practices to establish her environmental fund to compensate victims of Oil Pollution in Nigeria.

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<sup>11</sup> P.B Engja and I.R. Iruhe, "Oil Induced Environmental Degradation in the Nigeria's Niger Delta: the Multiplier Effects" (2009) 11 *Journal of Sustainable Development of Africa*, 164.

<sup>12</sup> These laws include, *inter-alia*, the following: Petroleum Act, Cap. P10 Law of the Federation of Nigeria (LFN) 2004. Oil in Navigable Water Act, Cap. 06, LFN 2004, Associated Gas Re-Injection Act, Cap A25 LFN 2004 National Oil Spill Detection and Response Agency (Establishment) Act, 2006, Nigerian National Petroleum Corporation Act, Repealed by the PIA, 2021 and Nigerian Maritime Administration and Safety Agency Act. 2007

<sup>13</sup> See the Petroleum Act, Cap P10 Law of the Federation 2004. See also the oil Pipeline Act, Cap 011 Laws of the Federation 2004

<sup>14</sup> See section 37 of the Petroleum Act. Cap P10 Laws of the Federation 2004

## Conceptual Analysis

### Pollution

It is difficult to give a precise definition of the term “Pollution.” Various attempts have been made to define the term “Pollution” by different authors, statutory provisions and dictionaries without any precise and acceptable definition. This paper shall examine some of these attempts made at defining the term “Pollution” and find a common ground for the various definitions. Pollution may be defined as the addition from either natural or man-made resources of any substance to the air, water or land media in such quantities to render that resources unsuitable for specific or established ones.<sup>15</sup> Pollution is also defined as the introduction of pollutants or substances which will create unfavourable imbalance in the constituents of the environment.<sup>16</sup> The first definition although, it appears to be elaborate but it does not relate to the effect of the pollution on human life as it relates only to natural environment of air, water or land. However, the definition is commendable because it refers to pollution as being caused by either natural or man-made factors.

The second definition is rather restrictive and narrow in perspective. It does not give the sources of the pollution neither does it relate pollution to its impact on both the natural, environment and human life.

It is also pertinent to examine some of the statutory definitions of the term “Pollution”. The National Environmental Standards and Regulatory Enforcement Agency (Establishment) Act,<sup>17</sup> defines pollution as “man-made or man aided alterations of chemical, physical or biological quality of the environment beyond acceptable limit.<sup>18</sup> Regrettably, this definition is also very narrow in scope. It is non-inclusive of the natural causes of pollution as it only relates to man-made or man-aided causes of pollution. Pollution can be caused by natural factors such as rain, erosion earthquake and lightning.

Furthermore, the United Nations Convention on Law of the Sea<sup>19</sup> also defines pollution as “the introduction by man, directly or indirectly of substance or energy into the marine environment... which results or is likely to result in deleterious effect as harm to living resources, hazards to human health, hindrance to marine activities including fishing, impairments of quality use of sea water and reduction amenities.<sup>20</sup> Again, this definition is deficient because it relates the effect or impact of pollution to the marine environment only without the mention of the air and land. It is

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<sup>15</sup> A. O. Ifesanya, O. Taiwo and P. Anthony “Air Pollution and its consequences in Nigeria” (2006) 4 (182) International Journal of Social and Policy Issues, 41-52 at 42

<sup>16</sup> *Ibid*

<sup>17</sup> 2007

<sup>18</sup> Section 37 of NESREA

<sup>19</sup> UNCLOS III, 1982

<sup>20</sup> *Ibid* Article 1 (4)

pertinent to state that the impact of pollution can be seen in the air, land and soil. Going further, the definition restricts the causes of pollution to only man-made factors without making reference to natural factors.

Various dictionaries have also attempted to define the term “Pollution” The Blacks Law Dictionary defines pollution as “A thing that corrupts or defiles especially to contaminate the soil, air or water with noxious substances”.<sup>21</sup> The Oxford Advance Learners Dictionary defines pollution as “the process of making air, water, soil etc. dirty; the state of being dirty; substances that makes air, water and soil, etc, dirty... noise/light harmful or annoying level of nose, or of artificial light at night”<sup>22</sup> It is interesting to note that pollution is defined by the oxford dictionary to include harmful or annoying level of noise and light.

The common characteristics of these definitions are the fact that pollution could be caused by man-made, man-aided or natural causes; pollution may have harmful effects in both living and non-living things; pollution could be in the form of air, water, land, soil, noise and light. In the case of noise or light, it must be such that the level of it is harmful or annoying to a person.

### **Oil Pollution**

The Black’s Law Dictionary defines Oil Pollution as “a layer of crude or refined oil covering a larger area of the soil or sea water by a leaking oil tank.”<sup>23</sup> Thus, oil pollution occurs when there is an escape or infiltration of oil as a result of, or in the course of the extraction, storage or transportation of petroleum oil. It occurs as a consequence of human activity in the process of drilling, producing, transporting, refining and storing crude oil or refined products of crude oil. Various sources have been identified which oil pollution emanates with its negative effect or impact on the environment.<sup>24</sup> These are oil spills, gas flares as well as effluent and waste discharges.

In the case of oil spills, since the discovery of oil in Nigeria in 1966, the country has been suffering the negative environmental consequences of oil exploration and exploitation. Between 1976 and 1996, a total of 4647 incident resulted in the spill of approximately 2,369,470 barrels of oil into the environment. Furthermore, between 1997 and 2001, Nigeria has recorded a total number of 2,097 oil spill accidents.<sup>25</sup> Oil spills may be due to release of crude oil from tankers, offshore at farms, drilling rigs and wells, as well as spills of refined petroleum products (such as gasoline,

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<sup>21</sup> B. Garner, Blacks Law Dictionary, (9<sup>th</sup> edn. West Publishes, USA. 2009) P16.

<sup>22</sup> Oxford Advanced Learners Dictionary, International Student’s Version, (8<sup>th</sup> edn. Oxford University Press, London 2010)

<sup>23</sup> B. Garner (N.) 907

<sup>24</sup> E. Adeniyi, Environmental Management and Development (Roseprint Industry Press Ltd, Abeokuta, 2004( 48

<sup>25</sup> O. Atanda, “An Overview of the Legal Framework for Oil Pollution in Nigeria” (2015)

<https://www.researchgate.net/publication/281102181>. Retrieved on 15<sup>th</sup> Jan. 2022)



diesel) and their by-products, heavier fuels used by large ships such as bunker fuel or the spill of any oily refuse or waste oil.<sup>26</sup>

Gas flare is one of the problems associated with crude oil production. Natural or crude oil is a by-product of drilling of crude oil.<sup>27</sup> Gas flaring occurs when the natural or associated gases are burned off during oil drilling process. Thus, in the process of separating the natural or associated gas during the process of extracting crude oil from onshore or offshore wells, the waste or unusual gas is burned off as flared gas. Gas flares are composed of toxic gases such as sulfur dioxide, nitrogen dioxide, benzapryene, toluene, Xylene and hydrogen sulfide.<sup>28</sup> Gas flaring emissions contribute significantly to global warming and harmful to human life and environment.

Effluent and waste discharge are another sources of oil exploration or seismic surveys by oil companies, drill cutting, drilling mud and fluids are used for stimulating production. Besides, certain chemicals are used during seismic operations during oil exploration. In the case of drill cuttings, baryotes and bentonitic clays are dumped on the ground and they prevent local plant growth.<sup>29</sup> There is also the disposal of waste into the sea from oil facilities like rigs and refineries which have direct effect on fish stocks

### **Environmental**

The adjective of the term “Environment” is environmental. The Chambers Concise Dictionary<sup>30</sup> defines environment as “surroundings, external conditions influencing development or growth of people, animals or plants; living or working conditions. The National Environmental Standards and Regulation Enforcement Agency Act<sup>31</sup> defines environment as “including water, air, land and all plants and human beings or animals living therein and the interrelationships which exist among these or any of them.<sup>32</sup> However, there are various definitions of environment given by many authors as well as statutory and judicial authorities. It is important to point out that the

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<sup>26</sup> <https://en.wikipedia.org/wiki/oil> last accessed on April, 2019.

<sup>27</sup> “Extractive Industries and ESCR” (2000)13 A publication of Human Rights and humanitarian Law 43-44

<sup>28</sup> Climate Justice Programme and environmental right action Friends of the earth. A human right environmental and economic monstrosity Available at [http://www.climate.law.org/media/cases/case-documents/Nigeria/gas-flaring-in-nigeria-pdf/hereinafter the climate justice programme](http://www.climate.law.org/media/cases/case-documents/Nigeria/gas-flaring-in-nigeria-pdf/hereinafter%20the%20climate%20justice%20programme). Accessed on 21/12/2021

<sup>29</sup> I. Olujimi, “Environmental Implication of Oil Exploration and Exploitation in the coastal Region of Ondo State” (2011) 4(3) *Journal of Geography and Regional Planning*, 10

<sup>30</sup> Catherine Schwarz et all (ed) Chambers concise Dictionary (Chambers Harrap Publication Ltd, Edinburg 1999) 344

<sup>31</sup> 2007

<sup>32</sup> *Ibid* Section 37

environment<sup>33</sup> can be categorized into four, viz, the physical environment,<sup>34</sup> the social environment,<sup>35</sup> the aesthetic environment<sup>36</sup> and the economic environment<sup>37</sup>

### **Environmental Fund**

The idea of environmental fund is to contribute a certain amount of money to compensate victims of environmental degradation or pollution. The establishment of an environmental fund is to address the impact or effect of oil pollution in the effected oil producing communities in Nigeria.<sup>38</sup> The Environmental fund is proposed to provide remedy to victims of oil pollution pending the length of time wherein the polluter will be made to pay the pollution. This is advantageous as in most situations, the victims die while waiting for the court to order the perpetrators of the oil pollution to pay. The fund can be financed by a levy applied to individuals and corporations dealing with the import and export of oil in the country.<sup>39</sup> The management and distribution of the fund to the victims of oil pollution who are the beneficiaries can be handled by a board of trustee or a governing council as the case may be. At the moment, Nigeria does not have a specific legal framework for the establishment of environmental fund for victims of oil pollution. In other countries like USA, China and Canada, there exist a legal regime for establishment of such fund to compensate victims of oil pollution.

### **Causes of Oil Pollution in Nigeria**

Human activities constitute one of the major causes of oil pollution. These occur during the process of drilling production, transportation, refining and storage of oil or refined products of crude oil. Be that as it may, oil pollution may also be caused by natural factors beyond the control of human beings. It is pertinent to outline the various causes of oil pollution in the oil producing communities in Nigeria.

- i. Accidental discharges in the course of various processes and activities in the exploration, storage and distribution of petroleum products which may be due to equipment failure and malfunctioning, sometimes, it may be due to human error or carelessness or negligence.
- ii. Corrosion due to ageing of pipelines and deterioration lack of or improper maintenance of the equipment to avoid corrosion or deterioration, may also be a contributory factor. Corrosion may cause leakages from the pipelines.
- iii. Sabotage or vandalization by militants, thieves also constitutes a significant reason for oil pollution in the oil producing communities.

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<sup>33</sup> K. Ezeibe, "The Legislative and Institutional Framework of Environmental Protection in the Oil and Gas Sector in Nigeria- A Review (2011) 2 *Nnamdi Asikiwe Journal of International Law and Jurisprudence*, 42

<sup>34</sup> This includes land and climate, vegetation, wildlife, the surrounding land uses and the physical character of an area, infrastructure/public services, air noise and water pollutions

<sup>35</sup> The social environment which includes community facilities and services and the character of communities

<sup>36</sup> The aesthetic environment- science areas vistas, views including architectural character of building.

<sup>37</sup> The economic environment which includes employment, land ownership pattern and land values

<sup>38</sup> J. I Danda, "Developing an Effective Mechanism of oil pollution in the Niger-Delta (Dissertation, World Maritime University, 2000)

<sup>39</sup> E. Anyanova, "Oil Pollution and international Marine Environmental Law" (2015) in *Sustainable Development Authoritative and Leading Edge*, 10



- iv. Blow out/Explosion damage during construction/engineering activities.
- v. Gas flaring into the atmosphere causing emission of volatile hydrocarbon and heavy metals.
- vi. Oil pollution may be caused be an act God beyond human control or prevention. An act of God is caused by unpredictable and unpreventable circumstances such as earthquake, erosion, hurricane, lighting and thunder.

### **Effect of Oil Pollution in Nigeria**

The production of oil and gas in Nigeria has had enormous impact on the Nigerian environment. This in turn has rippling effects on human health, animals, plants and socio-economic life of Nigerians. The fund has the prospect of containing the problems of environmental impact from oil pollution. It does not eliminate oil pollution but can enable effective and timely remedial and compensatory efforts towards the victims of the pollutions.

### **Effects on Human Health**

It is factual that pollution of whatever kind has negative effects on human health. Ndukwe<sup>40</sup> in his work conceives an environment as revolving around man to the extent that whatever happens to the environment automatically affects the physical and mental well-being of humans. He posited thus:

Human beings can be perceived as the central unit in the environment, or as Plato said “man is the measure of all things”. Conceived in this regard, the environment thus becomes that combination of material and social things which conditioned the well-being of people or to put it in another way, the environment is that which affects the quality of life for people and their physical and mental well-being.<sup>41</sup>

A review of the above quotation shows that the environment is vital for the survival of mankind and anything that negatively affects the environment will equally have negative effect on human health and human life. According to Ijaiya and Joseph, “The need for environmental control arises from the fact that it brings improved health and better living conditions”.<sup>42</sup>

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<sup>40</sup> O. U. Ndukwe, “Can Environmental Laws protect the Nigerian Environment” in M.O Unejbu and I. Okoronye (eds.) *Legal Developments in the New World Order. Essays on International, Comparative and Public Law in Honour of Prof. U.O. Umozurike (OON) (Jute Books, Port Harcourt 2009), 449.*

<sup>41</sup> *ibid*

<sup>42</sup> H. Ijaiya and O.T Joseph, “Rethinking Environmental Law Enforcement in Nigeria” (2014)5 *Beijing Law Review*, 307

The overall effects of oil pollution on human health was summarized by Ugochukwu and Ertel<sup>43</sup> by stating as follows: That it affects the respiratory and digestive organs of humans due to the toxicity of the oil substances that are released into the environment. These substances, contaminated the air and also contaminate food and water in the said environment. Thus, the African Commission in the case of *Social and Economic Rights Centre and Anor. The Federal Republic of Nigeria*<sup>44</sup> had no difficulty to finding that the Nigeria Government through the Nigeria National Petroleum Company and Shell Petroleum Development corporation have caused environmental degradation and health problems resulting from the contamination of the environment of the Ogoni people. The Commission went on to hold that the oil consortium had exploited oil reserves in Ogoni land with no regard for the health or environment of the local Communities, disposing toxic wastes into the environment and local water ways in violation of applicable international standards.

Also, that the consortium neglected and failed to maintain its facilities causing numerous avoidable spills in the proximity of villages. The resulting contamination of water, soil and air had serious and long term health impact, including skin infection, gastrointestinal and respiratory ailment, and increased risk of cancers, and neurological and reproductive problems. The Nigeria Government was also held liable for her participation in irresponsible oil development that had poisoned much of the soil and water upon which Ogoni farming and fishing depended. The destruction of farmland, rivers, crops and animals has created malnutrition and starvation among certain Ogoni communities.

The above decision of the African Commission is a comprehensive effect of the health challenges from oil pollution especially as it relates to Niger delta area of Nigeria. Other cases exist wherein the courts have decided that the activities leading to oil production in Nigeria have depleting effects on human health. In the case of *Gbemire v. Shell Petroleum Development Company of Nigeria Ltd and others*<sup>45</sup> the plaintiffs applied to the court to declare that gas flaring is illegal, harmful to their health and environment and therefore constitutes a violation of their right to life as guaranteed and protected by the constitution of the provisions of the African Charter on Human and People's right (Ratification and Enforcement) Act, 2004. The court granted the reliefs sought by the Plaintiffs.

The health effect of oil pollution depends on the type of pollution that results from the said oil pollution. Where the pollution amounts to air pollution, especially from gas flaring in the process of oil production, it can lead to serious respiratory problems. During gas flaring dangerous gas is released into the atmosphere such as sulphur dioxide which can cause a variety of health issues,

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<sup>43</sup> C.N.C. Ugochukwu and J. Ertel, "Negative impacts of oil exploration on Biodiversity Management in the Niger Delta Area of Nigeria" (2008) 26 (2) *Impact Assessment and Project appraisal*, 144.

<sup>44</sup> (2001) Communication 155/96. October 27, 2001.

<sup>45</sup> (unreported) judgment of the Federal High Court, Benin Division of 14 November 2005 in suit No. FHC/B/CS/53/05

especially in vulnerable groups, like asthmatic patients, children, the elderly persons and those with heart or lungs infirmity.<sup>46</sup>

Oil pollution can also result in water pollution and thereby affect the quality of drinking water of the people especially within the area where oil is produced. It also contaminates food and sources of food. It has been noted that inadequate access to clean water causes significant suffering and disease. Also, pollution associated with unsafe water is caused by toxic substances too large to be naturally attenuated by the environment.<sup>47</sup> Constant exposure to toxic compounds found in unsafe water can result in acute toxicities, genetic changes, cancer and birth defects among humans and other living organism.<sup>48</sup>

A study<sup>49</sup> has also found that the health impact from oil pollution includes psychological challenges. This means that in addition to the environmental and physical health consequences of activities related to oil and gas production can equally have profound effect on the psychological health of the people living in the affected areas. It has also been shown that people living in areas affected by oil pollution, especially, oil spills and gas flaring, had elevated levels of anxiety, depression and psychological distress. Income loss and loss of means of livelihood due to spills increased levels of tension, depression, fatigue, anger and confusion,<sup>50</sup> The psychological effects of oil pollution seem to be strongly linked to the economic losses incurred, in the form of loss of income, loss of means of livelihood and job opportunities.<sup>51</sup>

### **Effects on Animals and Plants**

The effect of oil pollution into the environment does not only affect human beings or their health, it also affects animals and plants. The fact that some of these animals and plants may be susceptible to extinction emphasizes the magnitude of the problem.

Fishes have been badly damaged as a result of oil pollution. This has impacted on the economy as well. Many families in the oil producing communities rely on fish in the inland rivers as well as offshore for both income and food. Fish and animals are badly impacted by the persistent oil pollution. According to the United Nations Food and Agriculture Organization, fishing pressure is high, arising from the lack of alternative employment for estuarine communities. Oil pollution

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<sup>46</sup> S. Abdul-Wahab, A. Sappurd, S. Sardar and N. Irfan, "Impacts on Ambient Air Quality due to flaring Activities in one of Oman's Oilfields" (2012)67(1) *Archives of Environmental and Occupational Health*, 4.

<sup>47</sup> . Macer, "Love, the Environment and Bio ethics" (2000) 8 *Journal of Medical Ethics*, 7."

<sup>48</sup> S. Foudan and K. Menas, hyperspectral image Analysis for oil spill mitigation. Paper presented at the 22<sup>nd</sup> Annual conference on Remote sensing held at Singapore on 5-9 November, 2001.

<sup>49</sup> L.M. Grattan, s. Robert, W.T. Mahan, P.K. McLaughlin, Otwell and J.G. Morris, "The Early Psychological impacts of the Deepwater Horizon spill on Florida and Alabama Communities" (2011)119 (6) *Environmental Health Perspectives*, 839

<sup>50</sup> *Ibid*

<sup>51</sup> *Ibid*

further complicates the scenario with the devastation of aquatic life in the area.<sup>52</sup> When oil or oil wastes are discharged into a closed body of water, fishes are directly exposed to pollutants and can die. In a moving body of water, such as a river, fish may be able to move away from the immediate vicinity of oil pollution but fish eggs and larvae cannot escape and frequently die. These can cause major decline in overall stocks. Oil spills and other oil-related pollution have also seriously damaged the Niger Delta's mangroves, which are important breeding area for fish and other aquatic animals.

Oil pollution affect wildlife and vegetation in many ways, such as the dissolution of protective fats on the body surfaces of birds,<sup>53</sup> absorption of petroleum hydrocarbon hydrocarbons through the gills of fish,<sup>54</sup> contamination of wet lands and marshes that are nearly impossible to clean up<sup>55</sup> and poisoning of plants and animals that rely on the ecosystem.<sup>56</sup> In a study conducted by Linden and Palsson,<sup>57</sup> it was shown that oil contamination was substantial in the study area and that surface waters, drinking wells, and river sediments were all contaminated. The study also observed that oil pollution caused extensive damage to mangroves, where vast amounts of vegetation had died. In their conclusion, it was noted thus, "Even if the pollution were to stop, the fact that mangroves and wetlands have been so heavily impacted indicates that a recovery of the affected areas is a matter of many years, perhaps decades."<sup>58</sup>

The overall effects of oil spill on biota and ecosystem health are manifold. Oil interferes with the functioning of various organ systems of plant and animals. It creates environmental conditions unfavourable for life; for example, oil on a water surface forms a layer which prevents oxygen penetration into water bodies, and this in turn leads to suffocation of certain aquatic organisms. Crude oil contains toxic components, which cause outright mortality of plants and animals as well as other sub-lethal damage. Generally, toxicity is dependent on the nature and type of crude oil, the level of oil contamination, the type of environment, and the selective degree of sensitivity of individual organisms.<sup>59</sup>

### **Effects on Social Life**

The effects of oil pollution on social life are huge and include the fact that it has altered the culture and tradition of the people especially in the host communities where oil is produced. It fosters the attitude of individualism amongst the members of the affected community and that is contrary to

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<sup>52</sup> [www.fao.org/fishery/countrysector/FI-CPN](http://www.fao.org/fishery/countrysector/FI-CPN). (Retrieved on 15 January, 2022)

<sup>53</sup> International Tankers Owners Pollution Federation, *Effects of oil pollution on the Marine Environment* (ITOPF, London 2011).

<sup>54</sup> M. Heubeck, K.C.J. Camphuysen, R. Bao, D. Humple, A. Sandoval, B. Cadiou and S. Brager, "Assessing the impact of major oil spills on seabird populations" (2003)46(7) *Marine pollution Bulletin*, 900.

<sup>55</sup> H. R. C Han and S. Baba, *Manual on Guidelines for Rehabilitation of Coastal Forests Damaged by Natural Hazards in the Asia-Pacific Region* (Florida International University Press, Miami, Florida 2009),

<sup>56</sup> O. Linden J. Palsson, "Oil Contamination in Ogoniland, Niger Delta" (2013)42(6)*Ambio*, 685-701

<sup>57</sup> *ibid*

<sup>58</sup> *ibid*

<sup>59</sup> Ugochukwu and Ertel, (n.43), 144.

their communal lifestyles. According to Okonkwo,<sup>60</sup> oil pollution has resulted in the disintegration of custom, traditions and social values, such as respect for the elders of the community. For instance, in Ogoni, Ibeno and Ijaw tradition, elders are given the traditional authority to be custodians of the community and its protectors in times of distress such as during oil spills and other environmental incidents. The traditional system ensures that no single individual have the right to take what belong's to the community for his or her individual self.

However, with the arrival of the oil companies, the level of relationship is created between the oil companies and the elders led by the traditional rulers who most times see their community people as subjects and them as big men because of the largesse and special treatment that are given to them rather than the host community by the oil companies thus alienating them from the people. The result is that in times of distress or oil pollution, most of these community elders consider themselves first and collect monies from the oil companies. In some occasions, they register companies which they present to the oil companies for the award of contracts to carry out clean-up exercise, which they will never do. These attitudes erode the community respect for the status of the elders and result in subsequent conflict between the elders and youths. It breaks down the social harmony that existed within the community and creates discord.<sup>61</sup>

Oil pollution has also led to heightened strife and conflict in the oil producing communities. The level of conflict in the Niger Delta that led to the grant of the presidential Amnesty programme for the militants was caused by the decades of neglect to address the occurrences and consequences of oil pollution in the area.<sup>62</sup> The consequence of oil pollution also results in conflict between communities, individuals, government and had grown as the inhabitants of the Niger Delta area witnessed their land heavily altered by oil companies to make the rich richer while the members of the host community continue to live in resolute in defending their basic human rights and protection of their environment. These resulted in violence with its social consequences. According to Odoemene,<sup>63</sup> such consequence include youth militancy, kidnapping, violence and suppression by the state, intercommunal conflicts, the breakdown of cultural values, increased poverty and reinforced underdevelopment.

Another social impact of oil pollution is that it is found to encourage prostitution, rape and other social vices. Prostitution is a social problem. Hardship caused by oil pollution forced many women into prostitution. It has been observed that many people in the Niger Delta affected by oil pollution and the resultant loss of income and means of livelihood engage in prostitution to pay for their

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<sup>60</sup> E. C. Okonkwo, *Oil spills in Nigeria: Are there social and Economic Impacts?* (Thesis, University of Strathclyde, Glasgow 2000).

<sup>61</sup> *ibid*

<sup>62</sup> *ibid*

<sup>63</sup> G.C. Odoemene, "Crisis management in the oil and gas industry: the Niger Delta Experience" 2013 <http://search.proquest.co/docview/1318019089?accountid=14872> (Retrieved on 20 January, 2022).

education and support their families. And in some occasion, the prostitutes are raped by the people who patronize them.<sup>64</sup>

Another social impact of oil pollution is that it leads to the destruction of cultural areas and the spirituality of the people. One of the most telling effects of oil pollution in this regard is that it has led to the dearth and possible extinction of medicinal plants and herbs that are rooted in traditional medicine and spirituality and have deep spiritual significance to the communities. This degradation is brought about by the fact that most of these herbs and plants are found in sacred grooves, shrines and forests, which have fallen under direct destruction in the course of oil exploitation and the toxicity of oil pollution.<sup>65</sup> The Petroleum (Drilling and production) regulations preclude the exercise of mining license or lease where, *inter alia*, the land is a sacred forest. This provision is not usually obeyed by the multinational oil companies operating in Niger Delta.

Also worthy of inclusion as the social effect of oil pollution is that it has led to community destruction, forced displacements, migration and environmental refugee of the people of the communities where oil is produced and where the pollution majorly takes place.

### **Effects on Economic Life**

The effects of oil pollution on the economic life of the people, especially of the communities where oil and gas is produced, are enormous. The effect of oil pollution includes the loss of means of livelihood and source of income for the people who relied on the immediate environment for these things. Many people living in the Niger Delta are commercial fishermen and farmers. With the effect of oil pollution, fishing, farming and related businesses are affected. Many local economics have been destroyed which had increased poverty rates. It was observed as follows,

Shrimps are highly relished and amongst the leading priced sea foods on the global menu. Nigeria is one of the tropical countries endorsed with shrimp resources. With rich organic deposit arising from there, Niger Delta is the heartland of shrimp and oil production in Nigeria. Having a production capacity of 12,000 metric tons per year, Nigeria's shrimp supply is presently far from captured fisheries which is already affected by the alarming environmental degradation in the Niger Delta due to operational recklessness and environmental negligence.<sup>66</sup>

The above depicts the state of economic conundrum which Nigeria has found itself as a result of the negative effect of oil pollution on the environment. It is therefore noted that the Niger delta region contains one of the highest concentrations of biodiversity on the planet, and supports the abundant flora and fauna, arable terrain that sustains a wide variety of crops, economic trees and more species of fresh water fish than any other ecosystem in West Africa.<sup>67</sup>

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<sup>64</sup> Okonkwo, (n. 60), 17

<sup>65</sup> *ibid.*

<sup>66</sup> C.T. Emjuru, "International Environmental Law and State Responsibility: the Nigeria Delta Experience" (2013) *NIALS International Journal of Legal Studies*, 155.

<sup>67</sup> [www.eia.gov/beta/international/analysis-includes/countries-long/Nigeria.pdf](http://www.eia.gov/beta/international/analysis-includes/countries-long/Nigeria.pdf). (Retrieved on 20 January, 2022).



### **Global Perspectives on Environmental Fund for Oil Pollution**

Global efforts at combating environmental pollution have been the centerpiece in many international fora. The world body, the United Nations has made tremendous strides in ensuring global protection of the environment. Global environmental problem like ozone layer depletion, global warming, hazardous waste dump, oil pollution and earthquake have attracted the attention of the global body and consequently, many conventions have been established by the world body to tackle some of these global environmental problems.

Going further, the protection of the environment also entails the remediation of affected areas ravaged by environmental pollution as well as payment of compensation to the people living in the affected communities whose properties including their means of livelihood have been destroyed by environmental degradation especially oil pollution. Again, there are also conventions or treatise that provide for payment of compensation for oil pollution as well as establishment of environmental fund from which compensation can be paid to victims of oil pollution and for remediation of the affected areas devastated by oil pollution. It is pertinent to briefly examine some of these conventions.

### **International Convention on Civil Liability for Oil Pollution Damage, 1992**

The establishment of this convention could be traced to the events that occurred after the celebrated oil spill case of Torrey Canyon.<sup>68</sup> The British government suffered greatly from the effect of the Torrey Canyon disaster and consequently, the British Government was at the fore-front in the establishment of a framework for the international protection of the marine environment against oil pollution. The then government requested the Inter-governmental Maritime Consultative Organisation (IMCO) to evaluate the problems exposed by the Torrey Canyon disaster and to recommend solutions.<sup>69</sup> Thus a committee and a sub-committee were set up on 1967 to evaluate the legal problems posed by the Torrey Canyon incident. The committee held conference to discuss the legal problems posed by the Torrey Canyon disaster.

The efforts of the committee and conferences resulted in the establishment of the International Convention on Civil Liability for Oil Pollution (CLC) 1969 which came into force on 19<sup>th</sup> June, 1975. There was a subsequent review of the CLC by protocols in 1992 which led to the replacement of the CLC 1969 by 2 distinct conventions to wit: International Convention on Civil Liability for Oil Pollution Damage (CLC), 1992 and the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage 1992.<sup>70</sup>

The CLC 1992 governs the liability of ship owners for oil pollution damage by laying down the principle of strict liability for ship owners and creating a system of compulsory liability insurance.

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<sup>68</sup> V. P. Nanda, “ The Torrey Canyon Disaster: Some Legal Aspect” (1967) 44 (5) *Denver Law Journal*, 400

<sup>69</sup> [www.lawexplores.com/international-convention-on-civil-liability-for-oil-polution-damage-1992-c;e-1992](http://www.lawexplores.com/international-convention-on-civil-liability-for-oil-polution-damage-1992-c;e-1992)  
Retrieved on 10<sup>th</sup> June,, 2022

<sup>70</sup> *Ibid*

Article 1 of the CLC 1992 defines pollution damage as “(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, whenever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken: (b) the cost of preventive measures and further loss or damage caused by preventive measures.

Although the CLC 1992 did not specifically provide for the establishment of a compensation fund for oil pollution damage, it however, clearly, provided a conceptual analysis of the term “pollution damage” and placed liability for pollution damage at the door steps of the polluter. However, the protocol to the convention came to the rescue by specifically providing for an international fund for compensation for oil pollution damage.

### **International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.**

This convention was a supplement to the International Convention on Civil liability for oil Pollution Damage, 1969

Article 2 of the fund convention states thus:

1. An international fund for compensation for pollution damage, to be named “The International oil pollution compensation fund 1992” and hereinafter referred to as “the fund” is hereby established with the following aims:

(a) To provide compensation for pollution to the extent that the protection afforded by the 1992 CLC liability is inadequate.

(b) To give effect to the related purposes set out in this convention

2. The Fund shall in each contracting state be recognized as a legal person capable under the laws of the state of assuming rights and obligations and being a party in legal proceedings before the courts of that state. Each contracting state shall recognize the Director as the legal representative of the fund.

Article 4 of the fund convention provides that the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for damage under the CLC 1992. The significance of this convention is that it provides an alternative source of compensation to the victim other than compensation from the polluter especially where the polluter is unable to satisfy the claims for compensation for the pollution damage.<sup>71</sup> It is pertinent to mention that contributions to the fund are to be made by each

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<sup>71</sup> The fund provides exceptions for payment of compensation where pollution damage is caused by an act of God, war, hostilities, civil war or insurrection or was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a state and used, at the time of the incident only on Government non-commercial services or the Claimant cannot prove that the damage resulted from an incident involving one or more ships. See Article 4 of the convention.

contracting state annually and any amount standing in arrears shall bear interest at a rate determined by the internal regulations of the fund.<sup>72</sup>

### **International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001**

The convention was adopted to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by oil spills, when carried as fuel in ships bunkers. Ship owners must maintain liability insurance and the compulsory insurance requirements of the Bunkers convention applies to ship owners of vessels of 1,000 gross tones or greater. Article 1 of the Convention defines “Bunker oil” as “any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship and any residues of such oil” which definition appears to be similarly to definition under the CLC 1992. Similarly, the bunker convention does not make provision for the establishment of environmental fund for payment of compensation to victims of environmental pollution. However, article 1 of the convention provides for liability of the ship owner for pollution damage caused by any bunker oil originating from his ship. It is important to note that the claim for compensation for pollution damage caused by bunker oil must be done in accordance with the provisions of the Bunker convention.

### **Environmental Fund Regime in selected Jurisdictions**

#### **China**

China has its own problems with oil pollution. The fast development of trade sector and with high rate of pollution, China has high need for oil. The Chinese shipping industry also create more need for oil which is usually transported by sea to China.<sup>73</sup> This therefore raised concerns for oil pollution of the Chinese sea and environment.

China joined the convention related to the oil pollution damage caused by ships such as the CLC 1992, the Fund Convention 1992 and the Bunker Convention 2001. In addition to being signatory to these conventions, China enacted domestic legal system on the issue of civil liability for oil pollution damage caused by ship with many provisions. This was done with the enactment into law of the Marine Environment Protection Law of China of 1982. This law was severally enacted in the years 1999, 2013 and 2016. Importantly, Article 66 of the law provides for the establishment of a fund to claim for compensation for oil pollution damage. It states that a ship shall establish a fund to pay for compensation for oil pollution damage caused by ships, with a general principle that the ship owners and owners of the cargo must be jointly liable for compensation for oil pollution damage caused by ships. The provision also mandates State agencies to develop measures to ensure effective implementation of the establishment of the fund. It also provides for

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<sup>73</sup> *ibid*

the establishment of ship's oil pollution insurance by the state. Specific measures for the implementation of the insurance and compensation fund system will be built by the state council.<sup>74</sup> Article 89 of the law further provides that the polluter shall ensure the clean-up and restoration of the environment from the oil pollution damage and also responsible for the compensation to victims of the pollution. Liability recognized here is strict liability for the polluters. Article 70 of the law states that if ships cause or likely to cause pollution damage to the environment, competent bodies will have the right to use the necessary measures to minimize or avoid pollution damage. This provision incorporates the preventive principle of oil pollution damage in China.

Other laws also provide for the establishment of funds to ensure payment of compensation and restoration of the environment from oil pollution damage. This includes Regulations on Administration of Prevention and Control of ships Pollution to the Marine Environment, 2009 (as amended 2010).<sup>75</sup> This law provides for the prevention, remedy and respond to oil pollution accident when it occurs at the sea under China's jurisdiction. The administrative measures for the collection and use of compensation funds for vessel induced oil pollution Damage 2012 established a Chinese domestic fund for oil pollution. It provides for contribution to the fund by cargo owners and their agents.<sup>76</sup>

### United States

In United States, the Oil Pollution Act of 1990<sup>77</sup> provides, *inter alia*, for liabilities for oil pollution damage and the establishment of fund for the payment of compensation for damages, etcetera.<sup>78</sup> Section 1001 of oil pollution Act defines key terms used in the Act. It defines oil pollution incident to mean any occurrence or series of occurrence having the same origin involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil. It also broadly defines oil to mean oil of any kind or in any form, including, but not limited to petroleum, fuel or, sludge, oil refuse, and oil mixed with wastes other than dredge spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under the laws of the United States.

Section 1002 of the Act creates liability for Oil pollution damage caused by a vessel or a facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or Exclusive Economic Zone (EEZ). Liability here covers liability to pay compensation for damage done to the victims and the removal cost of cleaning up the polluted oil. Section 1003 of the Act provides for defences to liability to include act of God or act of war, etcetera.

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<sup>74</sup> *Ibid*

<sup>75</sup> Chapter 7 of the Regulations 2010

<sup>76</sup> Article 6 of the Administrative measures for the Collection and Use of Compensation funds for Vessel-Induced Oil Pollution Damage 2012.

<sup>77</sup> Oil Pollution Act of 1990, Public Law 101-380, Laws of United States of America.

<sup>78</sup> C. A. Jones, "Compensation for Natural Resources Damage from Oil Spill: a Comparison of USA Law and International Convention (1999) II (i) *International Journal of Environmental and Pollution*, 1.

The Act establishes a Trust Fund to take care of the consequences of oil pollution damage. Section 1013 of the Act provides to the effect that all claims for removal costs or damages shall first be presented to the responsible party or the guarantor of the source of the pollution before its presentation to the fund. The right of subrogation is provided for under section 1015 of the Act. It states thus, "Any person, including the fund, who pays compensation pursuant to this Act to any claimant for removal costs or damage shall be subrogated to all rights, claims and causes of action that the claimant has under any other law." The section further states that the Attorney General shall commence an action on behalf of the fund to recover any compensation paid by the fund to any claimant, including all the cost incurred by the fund for cleanup. Contributions are made periodically to the Fund.

From the above it could be observed that the oil pollution Act of 1990 established a fund for oil pollution damage initially valued at 1 billion dollars. The fund was established by imposing a 5-cent per barrel tax on the receipt of imported crude oil and petroleum products. The implication of the fund as seen from the provisions cited earlier is to place the burden of paying compensation and cost of cleaning up, first on the owner or operator of the vessel or ship which caused the oil pollution damage. Where there is failure to pay by the owner on time or the cost of the damages and clean up exceed the limit of liability of the polluter, the fund takes care in that regard and later take action to get a refund from the polluter.<sup>79</sup> This aligns with polluter pays principle. After analyzing the provisions of the oil pollution Act of 1990 of United States, Ezeibe notes thus, "the United States fund system is definitely better than the Nigerian system and such a regime ought to be replicated and emulated by Nigeria."<sup>80</sup>

### Canada

In Canada, both the CLC 1992 and the Fund Convention 1992 have been applied with specific modifications to suit Canadian situation. Part of these modifications are intended to harmonize these conventions with the provisions of Canadian Municipal Laws. The two conventions are now part of the Canadian Shipping Act 1985 (as amended).<sup>81</sup> However, the law that established a fund for the protection of the environment against oil pollution damage is the Marine Liability Act<sup>82</sup> particularly, part 7 of the law.

Section 91 of the Marine Liability Act defines oil to mean "Oil of any kind or in any form and includes petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes but does not include dredge spoil. It also defines oil pollution damage in relation to a ship to mean "loss of damage outside the ship caused by contamination resulting from the discharge of oil from the ship."

<sup>79</sup> A. P. Oilney, "Oil Pollution Act" in T. F. P. Sullivan (Ed.) *Environmental Law Handbook* (22<sup>nd</sup> edn. Bernan, New York 2014), 357-358.

<sup>80</sup> K. K. Ezeibem "The Legislative and Institutional Framework of Environmental Protection in the Oil and Gas Sector in Nigeria- a Review" (2011) 2 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 69.

<sup>81</sup> Canadian Shipping Act 2001

<sup>82</sup> Marine Liability Act, Laws of Canadian 2001

Section 92(1) of the Marine Liability Act establishes the ship-source oil pollution fund. The fund is to be managed by an administrator to be appointed by the Governor in council and the appointment is renewable.<sup>83</sup> It is worth noting that the Canada's compensation regime is based on the fundamental principle that the shipowner is primarily liable for oil pollution damage caused by the ship- that is, the polluter pays principle.<sup>84</sup> The fund may be accessed in 2 different ways, the choice is that of the claimant to wit: as fund of last resort or as fund of the first resort. As a fund of last resort, the claimant may file a claim against the owner of the ship responsible for oil pollution damage (up to the owner's limit of liability) and can then submit to the fund a claim for compensation for damages or a portion of damages that have not been reimbursed to him. As a fund of first resort, the claimant may submit his claim directly to the fund. The administrator has the obligation of investigating and assessing the claim. If the claim is established, the Administrator of the fund will offer a settlement to the Claimant who will then have 60 days to accept the offer.<sup>85</sup>

From the above analysis, it shows there exist a lot of lessons for Nigeria in the quest to establish environmental fund for protection of the environment against oil pollution damage.

### **Globalizing Environmental Fund for Oil Pollution in Nigeria**

There is no doubt that there have been global efforts in ensuring the protection of the environment against oil pollution as well as significant steps taken to compensate the victims of oil pollution pursuant to the provisions contained in international conventions. In other climes as already discussed in this paper, significant steps have also been taken to establish environmental funds in those countries through the enactment of environmental fund regime to provide for payment of compensation to victims of oil pollution. Nigeria cannot isolate itself from the wind of change blowing in global environmental fund regime.

Nigeria is a signatory to most of these conventions. However, by virtue of section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), merely being a signatory to a treaty does not make it enforceable in Nigeria.<sup>86</sup> It must therefore be domesticated by the enactment of the Nigerian National Assembly. However, Nigeria has actually domesticated some of the treaties to ensure enforceability in Nigeria.<sup>87</sup>

<sup>83</sup> Section 94 (1-3) of the Marine Liability Act of Canada

<sup>84</sup> [https://sopf.gc.ca/?page\\_id=256](https://sopf.gc.ca/?page_id=256). (Retrieved on 25 June, 2022).

<sup>85</sup> *Ibid*

<sup>86</sup> *Eagle Super Pack (Nigeria) Ltd v ACB Plc* (2—6) 10 NWLR (Pt. 1013) 20, *Abacha v Fewehinmi* (2000) 6 NWLR (Pt. 660) 228

<sup>87</sup> Nigeria has domesticated the following international conventions on oil pollution damage

- i. International Convention on Civil Liability for Oil pollution Damage (Ratification and Enforcement) Act 2006.
- ii. International convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Ratification and Enforcement) Act 2006 (as amended).
- iii. Merchant Shipping Act, 2007



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In order to ensure compliance with Nigeria's obligation, the National Standing Committee for Implementation of IOPC Funds and other Related Matters in Nigeria (NSC-IOPC) was set up since May, 2003. It was set up to put in place necessary tools to manage claims from oil pollution and other instruments to ensure Nigeria carries out her obligations towards the 1992 fund convention. An important term of reference was to develop the standard operating procedure for IOPC funds implementation in Nigeria's contributory levy to the IOPC Funds Secretariat. The committee also ensured the payment of compensation to victims of oil pollution damage. However, oil pollution damage incident that can give rise to claims for five types of damage to wit: property damage; cost of clean operations at sea and shore; economic losses by fishermen; economic losses in the tourism sector; cost of reinstatement of the environment. The committee was also expected to file oil receipt report to the IOPC.<sup>88</sup>

An examination of the international treaties on oil pollution fund for compensation of compensation to victims of oil pollution reveals that the said treaties do not really cover oil pollution damage within the riverine area of the oil producing communities in Nigeria. The treaties are mostly concerned with oil pollution damage on international seas and not within the internal waters of Nigeria. Therefore, payment of compensation and remediation of the affected areas are not applicable in respect of oil pollution occurring in the riverine areas of the oil producing communities in Nigeria which actually bear the brunt of oil pollution damage as a result of oil spillages. This therefore brings to fore the compelling necessity for the establishment of an environmental fund to cater for the compensation of victims of oil pollution in the oil producing communities in Nigeria as well as the clean-up of the devastating areas of the oil spills. Nonetheless, the treaties can provide a blueprint for Nigeria to establish an environmental fund for oil pollution damage in Nigeria. Nigeria cannot be left out in the global effort to provide compensation to victims of oil pollution as well as for clean-up of the affected areas. The time is ripe for Nigeria to establish an environmental fund in the semblance of the Education Trust Fund or the Petroleum Trust Fund. The Ecological fund which may however, serve such purpose is regrettably focused on remediation of ecological disasters like erosion menace and other natural disasters.

### **Domestic Legal Regime Establishing A Fund to Address Environmental Challenges in Nigeria**

Arguably, some of the domestic laws on the environmental protection in Nigeria provide for the establishment of a fund to address environmental challenges in Nigeria. However, a critical examination of these laws reveal that they are not specifically enacted to make provision for payment of compensation for oil pollution as well as for the clean-up of the environment where the oil spill has ravaged. It is pertinent to critically examine some of these domestic laws in relation to payment of compensation to victims of oil spills and for remediation of the ravaged areas.

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<sup>88</sup> A. Anagor, "Nigeria Reneges on Oil Receipt Report to IOPC Fund" Business day online of 19<sup>th</sup> May, 2022. <https://www.businessday.ng/maritime/article/nigeria-reneges-onfillin-oil-receipt-to-iopc-fund/> Retrieved on 13<sup>th</sup> June, 2022

### **Ecological Fund Bill 2020**

The Ecological Fund Bill was passed into law by the National Assembly but was vetoed by the President because it would reduce the power of the President over the fund.<sup>89</sup> The Ecological Fund Bill seeks to address the following challenges;<sup>90</sup>

- i. Erosion
- ii. Landslide
- iii. Desertification
- iv. Floods
- v. Oil Spillage
- vi. Drought and
- vii. Any other environmental challenges that may arise in the application of the Fund.

The Ecological Fund Bill though it has not been passed into law, provides for ecological fund to address the challenges of oil spill as contained in section 7(a) (v) of the Bill. Regrettably, the ecological fund as managed by the Ecological Fund office (now known as ecological project office) domiciled in the Office of the Secretary to the Government of the Federation have never been channeled to address the numerous cases of oil spills in the oil producing communities in Nigeria rather it is mainly for tackling the menace of erosion. Besides, the fund does not make provision for payment of compensation to victims of oil spill.

### **Petroleum Industry Act 2021**

The Nigeria President gave assent to the Bill to become an Act on the 16<sup>th</sup> day of August, 2021. It is the main legislation regulating the petroleum industry in Nigeria. It repealed some of the laws in the petroleum industry in Nigeria.<sup>91</sup> It further established new institutions for the control, monitoring and management of the oil and gas sector in Nigeria<sup>92</sup>

The Petroleum Industry Act 2021 provides for the Host community Trust Fund to address environmental challenges in the Host Communities as well as catering for their welfare. However, it is pertinent to state that the Host Community fund is not an environmental fund for payment of compensation to victims of oil pollution but to provide generally for the welfare of Host Communities and address some environmental challenges.

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<sup>89</sup> 2020

<sup>90</sup> U. Maduju and A.A. Ushama, "National Emergency Management Agency (NEMA) and Disaster Management in Nigeria. An Appraisal (2015) 9 *Global Journal of Applied Management and Social Sciences* 57-66

<sup>91</sup> See section 7(a) v

<sup>92</sup> Associated Gas Reinjection Act 1979, Cap A25 Laws of the Federation of Nigeria. 2004 and it's Amendments; Hydrocarbon oil Act No 17 of 1965. Cap H5 LFN 2004; Motor sprints (returns) Act. Cap M20. Laws of the Federation of Nigeria, 2004; Nigeria National Petroleum Corporation (Projects) Act No. 94 of 1993 Cap N124 Laws of the Federation of Nigeria 2004; Nigerian National Petroleum Corporation Act (NNPC) 1977 No. 33, Cap N. 123 Laws of the Federation of Nigeria (as amended); Petroleum Act No. 8 2003; Petroleum Profit Tax Act Cap P13 LFN 2004 and Deep offshore, Section 310 (1) a-h of the petroleum Industry Act, 2021.

### **The Oil Pipelines Act**

The Oil Pipelines Act<sup>93</sup> is also a legal framework for the protection of the environment against oil pollution in Nigeria. The Act adopts a compensatory approach as a remedy to victims of environmental damage, pollution or degradation in the course of exploration, exploitation or refining of crude oil by companies; the Act places a civil liability in a person who owns or is in charge of an oil pipeline.<sup>94</sup> It makes provision for the payment of compensation into a fund to be administered by a person approved by the court on trust for the benefit and advancement of the community.

However, it is only when the court gives approval for such fund to be established and to be administered by a person. This work is advocating for a specific legal framework that will establish an environmental fund to cater for oil pollution and not the type ordered by the court. What happens if the court does not give the approval? The purpose of the fund is not to compensate victims of oil pollution but to provide for the general, social and educational benefit and advancement of the community in question.

### **National Emergency Management Agency (Establishment, Etc) Act.**

Section 1 of the National Emergency Management Agency Act establishes the National Emergency Management Agency (NEMA) as a body corporate which is capable of suing and being sued in a court of law or Tribunal.

The functions of NEMA include the following<sup>95</sup>

- i. Formulate policy on all activities relating to disaster management in Nigeria and co-ordinate the plans and programmes for efficient and effective response to disasters at national level.
- ii. Co-ordinate and facilitate the provision of necessary resources for search and rescue and other types of disaster curtailment activities in response to distress call;
- iii. Disaster emergency relief materials to victims of natural or other disasters and assist in the rehabilitation of the victims where necessary.
- iv. And to liaise with the United Nations Disaster Reduction Organisation or such other international bodies for the reduction of national and other disaster.

The Act establishing NEMA makes provision for the defrayment of expenses and funding of activities of NEMA from a fund to be established through contributions from Ecological office, grants from state, local and international donor.<sup>96</sup> Unfortunately, this fund established under the NEMA Act is not for the purpose of compensating, the oil producing communities for their environmental degradation occasioned by oil pollution. Regrettably, the purpose of the fund is to

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<sup>93</sup> Cap 07, Laws of the Federation of Nigeria. 2004

<sup>94</sup> Cap N3, Laws of the Federation 2004

<sup>95</sup> A. Imosemi and N. Abanjon, "Compensating of oil spill in Nigeria: the more the oil, the more the blood?" (2013) 2 (3) Singaporean Journal of Business Economic and Management Studies, 54

<sup>96</sup> See section 13 (2) of the NEMA Act.

compensate NEMA for the expenses incurred by the agency in the course of the discharge of their statutory functions. Again this work is of the view that this is not a case of environmental fund for oil pollution victims in Nigeria. Hence the need for the establishing such a fund in Nigeria.

A critical examination of the above national legislation, will reveal that the legislation do not establish an environmental fund to cater specifically for the victims of oil pollution in Nigeria in the form of compensation and to address generally environmental challenges in the ravaged areas. Hence the need for the establishment of environmental fund for oil pollution in Nigeria to compensate the victims of oil pollution and for remediation of the environment ravaged by the oil pollution.

#### **Establishment of Environmental Fund for Oil Pollution in Nigeria.**

Findings in this work have revealed that there is no specific legislation in Nigeria that has established an environmental fund for the purpose of payment of compensation to victims of oil pollution. However, there are a few legislation that regulate the oil and gas industry in Nigeria that provide for payment of compensation for environmental degradation but without establishing an environmental fund for that purpose.

Consequently, the victims of oil pollution have to approach the court to seek redress for the losses they have suffered as a result of the pollution. This brings to fore the issue of access to environmental justice which may be hampered by a number of challenges. These challenges sometimes make it difficult for victims of oil pollution who have approached the court to seek redress to obtain judgment in their favour. Sometimes, the court may award judgment in favour of the victims but enforcement of the judgment becomes a problem and consequently, the victims of oil pollution are left without any remedy. In some cases, the compensation awarded by the court to the victims may be grossly inadequate *vis-à-vis* the extent of losses suffered by them.

Therefore, an alternative measure to ensure that the victims of oil pollution are able to obtain relief becomes imperative. An environmental fund will come to the rescue of the victims. Thus, the victims of oil pollution who get little or no compensation for damage to their properties occasioned by oil pollution can heave a sign relief with the availability of environmental fund to be disbursed to them based on the extent of losses suffered by them.

#### **Draft Proposal for Establishment of Environmental Fund in Nigeria**

It has been shown in this work that some jurisdictions have established an environmental fund to compensate their victims of oil pollution. As already stated in this work, Nigeria cannot isolate itself from this wind of change in global environmental fund. Nigeria can establish and improve its environmental fund using the global environmental fund blueprint and tailor it to suit its local exigencies or circumstances.

It is therefore pertinent to set out the following template for the establishment of an environmental fund in Nigeria

##### **i. Establishment of the fund**

The Fund shall be known as “Environmental Fund”

**ii. Agency**

An agency shall be established for the management of the fund

**iii. Governing Council**

A Governing Council shall be set up to exercise control over the affairs of the Agency.

iv. The Governing Council shall have membership drawn from different federal ministries, parastatals as well as members from the oil producing communities and oil companies operating in the oil producing communities.

v. The Governing Council shall be headed by a Chairman to be appointed by the President

**vi. Functions of the Agency**

The functions of the Agency shall be spelt out which shall include, *inter-alia*, custody and collection of environmental fund for the purpose of payment of compensation to victims of oil pollution and for remediation of the affected areas.

**vii. Financial Provision**

The Agency shall establish and maintain a fund with the Central Bank of Nigeria Contributions for the fund shall be drawn from the oil companies, ecological fund office, derivation fund, gifts and grant-in-and from bilateral and multilateral organization.

**viii. Management Administration and Disbursement of the Fund**

The Agency shall administer the fund and disburse the amount in the fund to the victims of oil pollution in the affected areas. The fund shall also be applied for the purpose of restoration and rehabilitation of the affected areas of the oil pollution after due assessment and valuation of damage caused by the oil pollution.

**ix. Payment of Compensation**

Compensation shall only be paid for losses or damage caused to the following

i. Landed property

ii. Farmlands

iii. Fishing boats

iv. Fishing nets

v. Cultural artefacts

vi. Growing crops or harvested crops

vii. Personal chattels

viii. Animal reared like chicken, goats, sheep, rabbits, cows.

Compensation shall not be paid where the loss or damage is caused by natural factors like earthquake, erosion, lightening or thunder or as a result of vandalisation by criminals.

**x. Limitation on Disbursement**

Disbursement shall not be made in respect of any loss or damage, until an assessment of the extent of loss or damage and computation are done by the assessors and a report submitted to the Agency.

Where a victim has already been settled by the polluter whether pursuant to a court judgment in favour of the victim or out of court settlement or through direct negotiation with the polluter without the intervention of the judicial process, disbursement shall not be made to such a victim.

The above represents a template that could be adopted to establish an environmental fund in Nigeria. The template is formulated based on our peculiar circumstances

## CONCLUSION AND RECOMMENDATIONS

The establishment of an environmental fund is given top priority in most developed countries in view of its significant role in assisting victims of oil pollution to get compensation for loss or damage to their means of livelihood. In Nigeria, the existing legislation do not create an environmental fund and in the event of oil pollution, the victims fall back on the court to seek remedy for any loss or damage they have suffered. The judicial system is faced with a number of challenges which in some cases have impeded the victims' access to justice in getting compensation for the loss or damage suffered by them. The victims may not get compensation because of the issue of burden of prove. The court may give judgment in favour of the victims for payment of compensation but it may not be enough to restore the victims to the status quo ante. Environmental fund will come to the aid of the victims since the fund will be disbursed to them. The work has therefore provided a template which is designed based on our peculiar circumstances for the establishment of an environmental fund in Nigeria. In addition, the work makes the following recommendations:

- i. As a matter of urgency, Nigeria should enact a law to establish an environmental fund to compensate victims of oil pollution in the oil producing communities who have for many years suffered untold hardship as a result of the destruction of their means of livelihood caused by oil pollution.
- ii. Government should also look at other option like insurance cover for the people living in the oil producing communities. The insurance policy should cover mostly their properties like buildings, fishing nets, canoes, engine boats, farmlands and personal chattels.
- iii. Our environmental laws should be amended to provide stiffer penalties for oil pollution by oil companies operating in the oil communities.
- iv. Amendment of some of our environmental laws should be done to provide for compensatory regime in respect of environmental pollution by the oil companies.
- v. The regulatory institutions should be well equipped to carry out their statutory functions especially in the areas of monitoring, prevention and control pf environmental hazards
- vi. Government should also consider the establishment of Environmental courts to handle cases of environmental law litigations in the country.