

**QUEST FOR ADEQUATE COMPENSATION BY OIL PROSPECTING FIRMS
IN THE NIGERIAN OIL INDUSTRY***

Abstract

The paper addressed the phenomenon of compensation occasioned by oil spillage in the process of oil prospecting, exploration as well as transportation. It examined the quantum of compensation that are payable to individuals or communities on the account of damage to the land based on Environmental Impact Assessment. It discovers that Nigeria being so naturally endowed with Black gold, there are no adequate laws on compensation to individuals whose rights have been so violated; where such laws exist, the compensation is not adequate because the prospecting companies in Nigeria have concealed such documents from the Nigerian government hence, the only hope for the affected masses is the law court that reserves the right to address such issues as to assess compensation whether adequate or not. The paper concludes by calling for codified laws that furnishes individuals and communities with current information on the rights of citizens, compensation plans for pollution/spillage as well as adequate sanction that will serve as deterrent to future culprit.

Keywords: Adequate compensation, Oil Industry, Prospecting Firms, Nigeria

1. Introduction

Oil Pollution damages from oil industries have caused loss of lives and properties and also destroyed some ecosystems in Nigeria. In this paper, the quantum of compensation payable to individual or community affected by oil pollution damage will be examined from the statutory provisions and common law provisions and other relevant laws in force. The adequacy or otherwise of the compensations will be examined. It is assumed in this paper that liability on the part of the oil polluter has been established by the oil pollution victim.

2. Pollution of the Environment as a result of Oil Exploration and Exploitation

In Nigeria, multinational companies like Shell Petroleum Development Company of Nigeria (SPDC), Chevron/Texaco and Mobil together with Nigeria National Petroleum Cooperation-NNPC that have been granted various operating licence, by the Federal Government, prospect and drill for oil in specified parts of the country. Section 2 (1) and (2) of Petroleum Act¹ provides that:-

2. (1) Subject to this Act, the Minister may grant:-
 - (a) licence, to be known as an oil prospecting licence to explore for petroleum
 - (b) a licence, to be known as an oil respecting licence, to prospect for petroleum; and
 - (c) a lease, to be known as an oil mining lease, to search for, win, work, carry away and dispose of petroleum
2. (2) A licence or lease under this section may be granted only to:-
 - (a) a citizen of Nigeria, or
 - (b) a company incorporated in Nigeria under the Company and Allied Matters Act or any corresponding law.

It is clear from the provisions above that the licence so granted to each of these companies enable each of them to go into oil exploration, exploitation and drilling. It is important to note that government did not make adequate legal provisions to regulate and control the businesses of these companies during oil exploration and exploitation so as to avoid pollution of the environment where they operate. This lack of effective legal provisions by the government to control the businesses of these companies had empowered them to conduct their businesses in a reckless abandon to the detriment of the areas where they operate. The result is the unprecedented pollution through oil spillage, gas flaring etc. The reckless practices of these companies which have polluted water, land, sea and air in the Niger Delta areas have drawn the attention of some well-meaning Nigerians, Civil Liberties Organization (CLO) and Non-Governmental Organizations (NGOs) in condemnation of such inhuman acts. At this point, the views of some well-meaning Nigerians, Civil liberties organizations and Non-Governmental organizations are highlighted. For example, Idowu² observed that ‘Current research works into the activities of some multinational corporations in third world counties, especially in Nigeria, have revealed issues of environmental degradation particularly in the area of oil exploration and exploitation’. Inam³ noted that ‘A report from the Ministry of Petroleum Resources shows that between 1976 and 1990 there were 2,676 reported cases of

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¹ Cap 350 Laws of the Federation of Nigeria 1990 Vol. XIX

² Idowu, A. A., ‘Environmental Degradation and Human Rights violation’, *Journal of Finance and Investment Law* 1999 Vol. 3 No.1.

³ Inam, W, ‘Liability for Oil Pollution in Nigeria’, *Modern Journal of Finance and Investment* 1999 Vol. 3 No. 2

oil spillage in the Nigeria Delta. Another independent report by Green Peace indicates that between 1976 and 1991 almost 3,000 separate oil spill, averaging 700 barrels each, occurred in the Nigeria Delta' The Civil Liberties Organization (CLO) in its Annual Report of 1988 at page 205 said that:

According to existing estimate, anything up to two-and-a half million barrels of crude oil have polluted the Niger Delta since exploration first began...Of this, approximately three-quarters is lost to the delicate ecosystem of Africa's largest wet land, containing as it does, the high biodiversity characteristics of extensive swamp and fresh areas with many unique species of plants and animal'.

It is axiomatic therefore that the operations of these oil companies have caused and are still causing degradation of the environment in several ways and at different stages of exploration and exploitation. Explosives and dynamites used by these companies during exploration cause substantial damage to the land, farms, houses and the atmosphere. While chemical used in drilling for oil may form harmful waste and may be buried or emptied into any part of the environment. Having successfully drilled and struck oil gas is flared during processing and spillage may arise due to various reasons, for example vandalization, blow out, accidental rupture of pipe or sabotage. Flaring represents the monstrous forms of oil pollution. These forms of pollution of the environment have drawn the wrath of the people and communities adversely affected to cry out and what followed is upsurge of environmental claims/compensations.

3. Compensation

Compensation theory is based on the principle of restoring the injured party to the position he or she was in before the injury. The sum of money is needed to put the victim of oil pollution damage in the same position as he would have been had he or she not suffered the wrong for which he was now being compensated. Common law rules and statutes govern award of compensation to oil pollution victims. The relevant statutes which provide for compensation for oil pollution damage are: The Oil Pipelines Act 1956 cap 145,⁴ the Petroleum Act 1969 and Petroleum (Drilling and Production) Regulations 1969, Minerals Act,⁵ Federal Environmental Protection Agency Decree⁶

(1) Federal Environmental Protection Agency Act (FEPA) FEPA provides for reparation, restoration, restitution or compensation as may be decided by FEPA from time to time in respect of damages in the case of oil spill resulting in losses to individuals and communities.

Section 21 of the Decree deals with 'spiller's liability' and provides that:

'Except where an owner or operator can prove that a discharge was caused solely by a natural disaster or an act of war or by sabotage, such owner or operator of any vessel or onshore or offshore facility from which the hazardous substance is discharged in violation of section 20 of this Decree, shall in addition to the penalty specified in that section be liable for'

(a) the cost of removal thereof, including any costs which may be incurred by any Government body or agency in the resources or damaged as a result of the discharge; and

(b) Costs of third parties of reparation, restoration restitution or compensation as may be determined by FEPA from time to time.

Section 21(b) extends the liability of the owner or operator to payment of costs to third parties in the form of reparation, restitution, restoration or compensation but this has to be ascertained by FEPA. This restriction hinges the fate of many oil victims of oil pollution on the FEPA and by this restriction many victims may be denied compensation and where any is paid, it is inadequate.⁷ It is important to note that the mandates of FEPA are limited to 'waters of Nigeria' which FEPA defined to mean all water resources in any form viz. inter-state, Federal Capital Zone, territorial waters of Nigeria, the Exclusive Economic Zone and in any other area under the jurisdiction of Nigerian Federal Government. The scope is not wide enough to cover many inter-state rivers, streams and creeks.⁸ Under the Minerals Act, section 77 provides for the payment of compensations which are fair and reasonable to persons who suffer damages due to minerals and mining operations. The provision was applied by the Supreme Court in *Godspower Nweke and Another V. Nigeria Agip Oil Company Ltd*⁹. In that case Plaintiff were forced by the Supreme Court to accept the amount offered by the Defendant as compensation. Under Section 78(1) of the

⁴ Now cap 338 LFN 1990 formerly Cap 145 of 1958

⁵ Cap 226 LFN 19900

⁶ No. 59 of 1992

⁷ Gberesu. J., 'The Concept of Fair and Adequate Compensation in Nigeria Oil Industry' in *Environmental Law and Policy* 1998 ed by Simpson and Fagbohun

⁸ Ekpu. A.O.O., 'Environmental Impact of Oil on water: A Comparative Overview of the Law and Policy in the United State and Nigeria', *Denver Journal of International Law and Policy*, 1995 Vol. 24 No. 1 p 90.

⁹ (1976) 9 and 10 SC 101

Minerals Act, compensation to be awarded to oil victim is to be determined by the Local Government Chairman in respect of oil pollution damage.

4. Petroleum Act and Petroleum (Drilling and Production) Regulations

Under the Petroleum (Drilling and Production) Regulations, of 1969, there is direct provision for oil Pollution damage. Section 2 of the Petroleum Act gives the Minister of Petroleum Resources the power to give license for oil exploration, oil prospecting or oil mining to some individuals who are Nigerians as well companies certified and incorporated in Nigeria under the Companies Act, 1968. Section 2 (3) of the Act says that the provision of schedule 1 to that Act shall, in so far as they are applicable, have effect in relation to licenses and leases granted under the section. While paragraph 36 of schedule of the Act is to the effect that any person and or company prospecting for oil and oil-related activities shall *be* liable to pay adequate compensation in the contemporary value for constituting nuisance of surface or to persons deemed as lawful occupants of the licensed or leased lands. In regulation 23 of the Petroleum (Drilling and Production) Regulation 1969 made under section 8 of the Petroleum Act 1969 provides that 'if the licensee or lessee exercises the right conferred by his licence or lease in such a manner as unreasonably to interfere with the exercise of any fishing rights, he shall pay adequate compensation therefore to any person injured by the exercise of those first mentioned rights.

From the above provisions of the Petroleum Act and its Regulations, an oil pollution victim is compensated. Paragraph 36 covers any petroleum operation that results from the grant of a licence or lease that is not specifically covered by any other statute. In *SPDC Co. V. Farah*¹⁰ the Plaintiffs denied that they were paid fair and adequate compensation by the Defendant in 1970. Although both parties were ad idem that compensation had been paid, such was not fair and adequate because it was paid for the crops and economic trees at the time of the damage. No compensation was paid for the damage to the land. For compensation to be fair and adequate all the facts relating to the magnitude of damage to land ought to have been explained and agreed as the basis for gratification. Court of Appeal awarded damages. Also, in *SPDC Nig Ltd. V. Tiebo VII*¹¹ the Court of Appeal confirmed the lower courts awards of N40, 000.00 as special damages and cumulative sum of N5, 600,000.00 awarded as general damages for a 1987 oil spill. Regulation 23 of the Petroleum (Drilling and Production) Regulations provides specifically for water pollution as a result of an oil well blow out, but does not extend to damages to land, so that paragraph 36 of schedule 1 of the Petroleum Act could be fell back to in respect of land. It is obvious from the above that the provisions of the Act deal with quantum of compensation in oil pollution cases as they provide for fair and adequate compensation. Section 31(1) (a) of the 1963 Constitution of the Federal Republic of Nigeria, contains 'reasonable compensation' to be paid to oil pollution victim. In *Odim and other V. SPDC Ltd. & Another*,¹² it was held that the provision of section 31(1) (a) of the 1963 Constitution of the Federal Republic of Nigeria and the Public Lands Acquisition Act¹³ are similar. It has been suggested that the yardstick for compensation is still the marked value of the subject-matter for assessment as much as it is practicable. The Act did not define what is 'fair and adequate compensation'; meaning is based on judicial interpretation.

Section 11(5) (c) of the Oil Pipelines Act 1956 is an important provision for oil pollution damage. Section 15(1) (a) provides as follows:

11(5) The holder of a license shall pay compensation to individuals/communities whose land and or properties in the course of oil exploration has been badly affected, otherwise not in good shape; to be responsible for ill-health caused to any person by his employer/company in the process of carrying out their activities for which they must make good; and to be liable for ill-health/damages caused to any person or group on the occasion of oil spillage either rom pipes or storage tanks.

In this case, the amount payable as compensation should satisfy both parties otherwise, the court should determine same as deemed adequate in accordance with part IV of this Act. Section 11(6) of the Act provides that 'For the avoidance of doubt it is hereby declared that the powers granted to the holder of a licence under this Act shall be exercised only subject to provisions of this Act and of any other enactment or rule of law'. Section 19(2) provides: 'If a claim is made under subsection (5) of section 11 the court shall award such compensations it considers just, having regard to environmental Impact Assessment (EIA) on buildings, cash crops and other valuables; any act that constitutes nuisance in the process of exploration and perceived damages to persons/households over the act of negligence on the part of the company in carrying out their activities as well as depreciation suffered in the exercise of the right'. Section 19(3) provides that the extent of loss/damage as well as interest payable for the

¹⁰ Suit No. BHC/31/89 Judgement of Bori High Court of 18/4/91 (Unreported) Rivers State

¹¹ (1995) 3 NWLR (Pt 148) 174-185

¹² (1974) 2 R.S.L.R. 93 at 109

¹³ Cap 167 LFN (1990)

said land will be commensurate to the extent of damage done for which the claimant will be granted over the land or interest Section 19(6) provides that in the instance of a greater award by the court over the amount already offered to the claimant, the claimant shall be responsible for the proceedings otherwise the holder should pay for the cost of the proceedings. It has been observed¹⁴ that the aim of provisions of section 11(5) is to pay compensation and that the paragraphs therein reflect torts in statutory form. Paragraph (a) provides for injurious affection and is similar to nuisance. Paragraph (b) provides for negligence while paragraph(c) provides for strict liability, similar to the rule in *Rylands V. Fletcher*. Another observation is that paragraph (b) and the defences in paragraph (c) provide escape routes for the petroleum operators.¹⁵ This is in conformity with section 25 of the Petroleum (Drilling and Production) Regulations (Supra) in *San Ikpede V. Shell-BP Petroleum Development Company Nigeria Ltd*,¹⁶ the Plaintiffs suffered damages as a result of the escape of crude oil and or chemicals from oil pipelines of the Defendant on to the land of the Plaintiffs, thereby killing all the fish in the fish swamps and ponds, together with raphia palms. They claimed reasonable and adequate compensation; and in the alternative relied on the Rule in *Rylands V. Fletcher* (Supra).

It was held by Ovie-Whisky, J. that oil activities such as the transportation via pipeline consist non-natural usage of the land because on the advent of spillage, the environment (plants and animals) including aquatic lives are destroyed without remedy. Notwithstanding the above finding, the rule was held not to apply because the acts of the defendant fell under the exception of statutory authority, since they had a licence to buy the oil pipes. Nevertheless, they were held liable to pay reasonable and adequate compensation under Section II (5) (c) of the Oil Pipelines Act supra, on the basis of statutory strict liability. Also, in *Chief Peter Onyoh V. Shell BP Petroleum Development Co. Nig. Ltd*¹⁷ the claim was for N50,000.00 (1) for fair and adequate compensation for damage done to Plaintiff's fishing lakes, streams, ponds, farm lands, economic trees for causing the Defendants crude oil, gas and/or chemicals to escape from their pipes under their occupation and control; and (2) for making the water therein unsuitable either for drinking and/or for agricultural purposes caused by the negligence and/or nuisance of the Defendants. It was further alleged that the pollution was a continuing one. The claim was dismissed by the learned trial Judge for want of proof but was allowed on appeal. The Court of Appeal relied on two English Cases decided on negligence, the rule in *Rylands V. Fletcher*, nuisance and trespass to land. As his Lordship Okaigbu, J.C.A. (as he then was) said:

In my view this appeal succeeds and is allowed. The learned trial Judge on a proper evaluation of the evidence before him should have held that there was oil spillage and that the oil had escaped from the Defendants location on to the Plaintiff(s) property to wit Otegwele bush. On the rule in *Rylands V. Fletcher* the Plaintiff(s) do not have to prove negligence and as shown in *Jones V. Llanrwst UDC*¹⁸ ... The claim is maintained without proof of damage.

On the specific heads of claim, it was N50, 000.00 as general damages and N100,000.00 was for special damages. The special damages were as follows:-

- (a) Disturbance his rights N50,000.00
 - (b) Marine lives destroyed including fishing materials of various kinds N25,000.00
 - (c) Pollution of farm lands N25,000.00
- Total N100,000.00

No special damage was awarded because none was proved. As for general damages N30,000.00 was awarded for loss of fishing rights, since 'fishing is the main occupation of the Plaintiffs, and any interference with the fishing rights of the community must be viewed very seriously'. The two cases worded above indicated the courts' interpretation of the provisions of the Act either pay or deny the victims of fair and adequate compensation they deserved.

5. Common Law Rules

Most of the claims fought in courts by oil pollution victims were bought under common law because 'the existing statutes and regulations do not confer a right of private action on oil pollution victims'.¹⁹ Common law theories relied, on by oil pollution victims for compensations in courts are negligence, nuisance and the rule in *Rylands V. Fletcher*.

¹⁴ Fakumo, F, 'Compensation for Oil Pollution in Nigeria. A new Agenda for Sustainable Development in *Environmental Law and Policy* 1998 ed by Simpson and Fagbohun P. 343

¹⁵ Fakumo, F. (Supra)

¹⁶ (1973) M.W. S.J. 61

¹⁷ (1982) 12 CA 144 at 154-156

¹⁸ Parker J. in *Jones v. L. Lanrust UDC* (19 11) 1 Ch. 393

¹⁹ Ekpu, A.O.O. (Supra)

Negligence

Where a claimant is able to show to the satisfaction of the court that there exists a duty of care, which has been breached and there is a nexus between the breach and injury suffered,²⁰ the claimant will be entitled to the compensation he seeks. In *Shell BP Petroleum Development Co. Nigeria Ltd. v. Tieho VII and Ors*,²¹ the Plaintiffs based their claims against the Defendants on negligence, the Rule in *Rylands v. Fletcher* and under the provisions of the Oil Pipelines Act. The defendants never denied the occurrence of the spillage which they attributed to corrosion leak. Although, they denied being negligent, the claim was sustained by the learned trial Judge under the negligence and the rule in *Rylands v. Fletcher*. The court awarded N60 millions as general damages. Under this rule, where a claimant is unable to show the absence of the elements of reasonable care on the part of the polluter, the claim will fail. In *Atubin v Shell BP Petroleum Development Company of Nigeria Ltd*,²² in which the Plaintiffs claimed that the Defendant caused oil, gas and chemicals to escape from oil pipes under their control thereby destroying fishes in the lake and their farmland, the court held that the Plaintiffs did not prove that the Defendant was negligent.

Rule in *Rylands v. Fletcher*

The rule is one of strict liability which does not require proof of negligence on the part of the oil pollution victim. Once the Plaintiff has established there was an 'escape' from the polluter's land of anything likely to do mischief, that there was a 'non-natural user' of the land and that the Plaintiff suffered damage as a result of the 'escape' the claim sails through.²³ In *Umudje and Anor. v. Shell BP Petroleum Development Co. Nig. Ltd*,²⁴ the appellant claimed against the respondent the sum of N50,000 as fair and reasonable compensation for the damage done to the farm land, fishing ponds, and fishing lakes. The learned trial judge awarded the appellants the sum of N7,200 as damages. On appeal to the Supreme Court it was held that the appellants were entitled to an award of N6,000.00 for damages account the respondents appellant ponds in Unenurchie land. Also, in *Edhemowe v. Shell BP Petroleum Development Company of Nigeria Ltd*²⁵, the court held the Defendant liable for damage caused to Plaintiff's fish pond by the oil which escaped front the Defendant waste pit, holding that the accumulation of crude oil in a waste pit was a non-natural user of land.

Nuisance

Nuisance is another cause of action available to victims of oil pollution to claim compensations for injuries done to them by the oil polluters. In *Shell PDC (Nig) Ltd. V. Ogbeni*,²⁶ the respondent claimed from the appellants the sum of N1,000 as special and general damages for carrying out oil exploratory exercises which damaged the respondent's building. The learned trial judge awarded N350 as damages. The Supreme Court upheld the appeal, holding that the respondent was not entitled to any damages. Common law remedies, in spite of pockets of successes recorded by Plaintiffs there are still unsure grounds to sow the seed of adequate compensation. In *Shell Petroleum Development Co. (Nig.) Ltd. V. Otoko*²⁷, the claim for the sum of N499,856.00 'being and representing compensation payable by the defendants (appellants herein) for injurious affection to and deprivation of the use of the Andoni River and Creeks as a result of the spillage of crude oil caused by the negligence of the Defendants. In alternative, they claimed for nuisance and a mandatory injunction to restrain the Defendant and its agents from further unlawful Act. The learned trial judge upheld the claim and awarded the Plaintiffs the sum of N491,700.00 under various heads, including N250,000.00 for injurious affection under Section 19(a)-(c) of the Oil Pipelines Act²⁸. The case was basically decided under the rule in *Rylands V. Fletcher*. On appeal to the Court of Appeal, it was allowed and the award of the learned trial judge was set aside, both from the point of view of substantive and procedural law. Even though the statement of the law on the rule of *Rylands V. Fletcher* was upheld, it was damaged by two blows from negligence. Firstly, it was held that *Rylands V. Fletcher* was an aspect of negligence and since the Defendants/Appellants. Mechanical Engineer (DW1) was able to disprove the allegation of non-maintenance of the manifold, negligence was not proved. Secondly, the defence of malicious act of the third party, which itself is intrinsically tied up with negligence was upheld. The outcome of the appeal, no money was claimable as compensation, notwithstanding the enormous damage done to the environment. From the cases considered, the Rule in *Rylands V. Fletcher* is most common law remedy available to victim of oil pollution at

²⁰ *Donoghue v Stevenson* (1932) AC 562

²¹ (1996) 4 NWLR 657

²² Suit No. UCH/48/73 Judgement of Ughelli High Court of 12/11/1974 Unreported Cited b Ekpu A.O.O. (Supra)

²³ Ekpu, A.O.O. (Supra)

²⁴ (1975) 9-11 SC 155

²⁵ Suit No. UHC/12/70 Judgement of the Ughelli High Court of 29/1/1971 Unreported cited by Ekpu, A.O.O.

²⁶ (1976) 4SC 155

²⁷ (1990)6 NWLR (Pt 159) 693

²⁸ Cap 145 of 1958 now S. 20(2) (a)-(c) of Cap 338 of L.F.N of 1990

Common Law. However, the rule has been caught by the foreseeability making it complicated for a victim to claim compensation on it.²⁹

6. Factors Affecting Quantum of Compensation and Principles of Assessment of Compensation

The magnitude of ecological disturbance from oil pollution affects the quantum of compensation payable to oil pollution victim. The factors listed below are usually considered.

- (i) population and the type of the community impacted
- (ii) the size of the crops affected, whether they are seedlings, medium or mature; the amount of money put in their care and the farm gate price of the items
- (iii) the area polluted; whether it is an area of high value of land or not
- (iv) time of the year - whether the pollution occurs in the dry or rainy season
- (v) the fact that pollution at times acts as fertilizer and would thus be to the advantage of the victim in future

Two important methods of assessing compensation are:

'Before and After' Methods

By this method, the value of the items destroyed immediately after the spill is deducted from the value of the same items immediately before the spill occurred. The difference is the injury done to the items and for which the victim is entitled for compensation. The disadvantage of this method is difficulties of getting full and accurate information when spill occurs.

Investment Method

This method involves deducting the net expenses which ought to have been made during a given period of time from the gross income; and the difference is the amount payable as compensation. The unit rates established by the Federal/State Governments may be used to determine the amount payable as compensation to oil pollution victim who has suffered permanent impairment e.g. of crops and fish ponds.³⁰ Paragraph 36 of schedule of the Petroleum Act and Regulation 23 of the Petroleum (Drilling and Production) Regulations listed economic trees, structures affixed to the land, fishing rights, shrines, and venerable objects as some of the items for assessment for compensation. Compensation for injurious affection and disturbances of the surface rights of the claimant are included. It is instructive to note that the various legislations discussed above stress injurious affection and disturbance as both temporary and permanent damages that lead to loss of use of the items concerned (injurious affection) and the loss of business or trade (disturbance) that arise from oil pollution. That is, compensation that result from pollution that affects the surface rights which had been enjoyed despite the acquisition of the land in various operations.³¹

7. Determination of Compensation under the various Legislations, Courts and Oil Companies

The principles for assessing compensation for oil pollution are injurious affection and disturbance

Injurious Affection

Injurious affection means some anticipated depreciation in the value of the land as a result of statutory power or operations flowing from the exercise of such power. To succeed in a claim for injurious affection proof of loss of income of the subject matter of the claim to be affected is Imperative. In *Farah V. Shall Petroleum Development Co. (Nig) Ltd*³² the trial judge concluded after adducing evidence by both parties that the Plaintiffs have lost the use of their farm, for a period of 21 years. This is consistence with compensation for injurious affection award by Supreme Court in the case of *National Electronic Power Authority V Amusa and Another*³³ where the land in question was rendered useless by powerful transmission lines laid by N.E.P.A. as a result of which the Claimant incurred a loss of use of the land. In the circumstance, the Supreme Court held that the land was injuriously affected, and qualified for compensation. Injurious affection could be claimed as a common law right of the Claimant because its exclusion in paragraph 36 of the first schedule to the petroleum Act is not stated in clear and unmistakable forms according to Fakumo, F.³⁴

²⁹ Uduehi, G.O., *Public lands Acquisition and compensation practice in Nigeria* (1987). John West Publication, Ikeja P. 119 cited by Omolola J. in *Environmental Laws in Nigeria* (Supra)

³⁰ Omotola, J. A., 'Quantum of Compensation for oil pollution', in *Environmental Laws in Nigeria* ed. By Omotola, J. A. published by Faculty of Law, University of Lagos 1990 1st edition PP 290-299

³¹ Omotola, J. A. (Supra)

³² (Supra)

³³ (1976) 12 SC 99 at 122

³⁴ Fakumo, F. (Supra)

Disturbance

In the case of disturbance, the subject-matter of the claim is usually 'Loss of business or trade'. It is depreciation in land value or depreciation in an interest or right in or over land consequent upon the exercise of statutory powers of operations of them. In a claim in disturbance the claimant has to prove loss resulting from the disturbance. In Farah's case (supra) the learned trial judge said that; 'The loss of income or profit that the Plaintiffs are claiming is that their land which is an arable agricultural land has been decertified and that the Defendants took possession of the land that they were going to rehabilitate it which they have not done up till now and that they have lost the use of their farm land for a period of 21 years'. The above extract agreed with the decision of the Supreme Court in *Williams V. Kamson*³⁵ where Ademola CJN (as he then was) at pp406-407, said that 'a claimant who is to be compensated for disturbance has to prove loss resulting from that disturbance. The disturbance consists in the alteration of something that would otherwise have continued. Claims for disturbance and injurious affection are common law rights of the claimant which cannot be taken away by statute except the intention to exclude them have been so stated in clear and unmistakable terms.³⁶

8. Amount of Compensation Claimable in Practice

The amount of compensation claimable in practice is not fixed. It is based on open market value of what is to be claimed after the Court has ascertained by credible evidence that the claimant has established his claim. In *Ikpede v. SPDC (Nig) Ltd*³⁷ the Plaintiffs case against the Defendants was for the sum of £7,500 (N15,000.00) being reasonable and adequate compensation suffered by the Plaintiff and members of his family, as a result of the escape of crude oil and or chemicals from oil pipes of the Defendants owing solely to the negligence of the Defendants, their servants and or agents at the Defendants' Kokori Delivery Line near Eriemu Locations 3 in the Plaintiff's Fish Swamp known and called 'Eweride' Fish Swamp. And in the alternative, the Plaintiff relied on the Rule in *Rylands v. Flesher* 'as regards the duty of care owed by the Defendants to the Plaintiff'. The particulars of claim which were set out in paragraph 12 of the statement of claim were as follows:

Particular of damage

- (a) Yield from the 15 large and 5 medium size fish ponds which have been conserved for 3 years Prior to the damage £475 = N9,000.00
 - (b) 500 young raffia palms at £ (200) each £2,000 = 1,000.00
 - (c) Loss of fishing rights £2,000 N5,000.00
- Total £7,500 N 15,000.00

At the end of evidence by the parties, the court awarded the Plaintiff N5,100.00 out of the N15,000.00 claimed, as item reasonable and adequate of 500 young raffia palm trees, belonging to him and his family from the leaking oil pipeline of the Defendants on the swamp belonging to the Plaintiff and his family.

9. Texaco Oil Blow-Out Valuation Report January 1980³⁸

This valuation Report from the Texaco Oil Blow-out, 1980 (otherwise known as Funiwa), it has been suggested³⁹ should serve as guide to the various parties involved in claiming for oil pollution compensation. The report provided valuation of disturbance and injurious affection on specific items like rice (economic crop), fishing rights etc. In the Texaco Oil-Well Blow-Out a total of about N554,494,658.00 compensation was paid covering disturbance and injurious affection in respect of widespread water pollution.

10. Constrains against Oil Pollution Compensation

Several constrains mitigate against the ability of oil pollution victim(s) claim compensation(s) from our courts. Some of these reasons are:

- (i) Proof of damages
Most pollution cases fail during full trial because many Plaintiffs are unable to prove damages recoverable
- (ii) Inexperience on the part some legal practitioners as to the applicable law to apply
- (iii) In some cases, those who sued are not the proper persons to do so
- (iv) defence of sabotage usually raised by oil polluter companies
- (v) Lack of financial power to pursue such cases to logical conclusion where appeal becomes necessary

³⁵ (1968) 1 All N. L. R. 339

³⁶ *Williams v Kamson* (Supra)

³⁷ (1973) M.W.S.J. 61

³⁸ Omotola, J. A. (Supra)

³⁹ Omotola, J. A. (Supra)

- (vi) Statute of limitation. By provisions of the NNPC Act claims against the company and its subsidiary company must be instituted within a period of one year from when the cause of action arose made possible after giving precaution notice.⁴⁰
- (vii) Reluctance of some oil companies to pay compensations. Recently, Wabara decried Shell's failure to pay \$1.5 billion compensation to the aborigines of Bayelsa, ordered by National Assembly.⁴¹

11. Conclusion and Recommendations

The paper has examined the compensation payable to oil pollution victim (s) by oil polluters. It is observed that the various statutes in place in Nigeria which regulate oil pollution do not give right of action to the victim(s). Consequently, claimants rely on law of negligence, nuisance, and the Rule in *Rylands V. Fletcher*.⁴² Often, these common law rules have not been too useful because of the problem of proof which is not easy to discharge by the claimants. Also, in few cases where claimants were successful, apart from award in Farah case which was described by the counsel to the Plaintiffs as 'a momentous in history (the) oil industries awards are inadequate'.⁴³ It is suggested that most of the existing laws which deal with oil pollution be amended to give a right of action to victim(s) of oil Pollution against oil polluter(s) and the common law rules aforementioned be modified to meet a changing society.⁴⁴ Lastly, stricter sanctions be imposed on multinational oil companies by our Government to check environmental degradation in the country.

⁴⁰Akpomudjere, A. (2003) 'Environmental claims resulting from Oil Exploration and Exploitation in Nigeria' Being a paper presented at the N. B. A. Annual Conference Holding at Enugu, Enugu State on 27/08/03. PP 1-18

⁴¹*The Guardian* Wed. Nov. 17, 2004 Pg 3.

⁴²Ekpu, A.O.O. (Supra)

⁴³*Scismograh Service (Nig.) Ltd v. Ogbeni* (Supra); *SPDC Co. Nig. Ltd v Otoko and ors.* (Supra)

⁴⁴Ekpu, A.O.O. (Supra)