



EXAMINING THE ISSUE OF COMPENSATION FOR ENVIRONMENTAL DEGRADATION AND POLLUTION IN NIGERIA*

1.1 INTRODUCTION

Within the past three decades, environmental degradation and pollution of different dimensions have caused a lot of havocs to human lives and properties in Nigeria. The complexity of the problems at present, has made the people, not only to suffer from nursing the various wounds inflicted on them: but to mount persistent pressure on perpetrators of environmental pollution to give such things tangible enough to make up for losses incurred or suffered through their acts. What constitute the concepts of environment, environmental degradation and pollution? In what ways have the people suffered or still suffering from environmental pollution in Nigeria and to what extent are the appropriate authorities tackling the problems of compensations particularly in the Niger Delta areas? According to the World Health Organisation 1974:

“... the environment is considered polluted when it is altered in composition or condition directly or indirectly as a result of activities of man so that it becomes less suitable for some or all of the uses for which it would be suitable in its natural state”.¹

Section 38 of the Federal Environmental Protection Agency Act also defines pollution as:

“man-made or man-aided alteration of chemical, physical or biological quality of the environment to the extent that it is detrimental to that environment or beyond acceptable limits and pollution shall be construed accordingly”².

Gleaned from the above definitions, environmental pollution or damage consists essentially, all forms of destructions of the environment in its ramifications. In Nigeria, many innocuous activities of man like careless dumping of domestic refuse, inauspicious use of aerosol cans of cosmetics



and insecticides, emission of industrial fumes, unauthorized construction of structures, bush burning etc are daily working against healthy environment and seriously inflicting physical and health hazards on the people. Fortunately, environmental right is now an important item under the third generation of human rights³ and particularly in many domestic and international laws; there is a well established right which entitles victims of human rights abuses to compensation for their losses or suffering⁴.

This article starts with some operational definition of an environment, environmental pollution and degradation as well as the concept of compensation. It examines the causes and effects of environmental pollution in Nigeria and how far the issue of compensation is being handled by various individuals and governmental authorities.

2.2 WHAT CONSTITUTES AN ENVIRONMENT?

The Lexicon Webster Dictionary of English Language defines an environment as all the physical, social and cultural factors and conditions influencing the existence or development of an organism or assemblage of organisms⁵.

An environment is also defined elsewhere⁶ as the totality of physical, economic, cultural, aesthetic and social circumstances and factors which surround and affect the quality of peoples' lives. It is the surrounding conditions, influences or forces which affect or modify a living thing or group of living things. Section 38 of the Federal Environmental Protection Agency Act⁷ defines environment as:

“including water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them”.

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It goes without saying that the foundation of life is the environment. It extends beyond the peoples' immediate surroundings. Environment is now a subject of international dimension. Most of the resources on which peoples depend for survival are now being depleted without any adequate consideration for their replacement and conservation. As the number of people who are demanding goods and services that accelerate knowledge and technology



increases, so also, the corresponding growth in industrial production and trade. This has contributed to the evolution of various sources of depletion and pollution. Tourism industry is also fast growing with people now encroaching on cities, countryside and beaches. Thus, the surrounding land, water and air become more diffused and polluted so much that lives become more difficult and even dangerous for plants, soil and other living organisms on which people depend for survival.

This remains a threat for present and future generations. There are some many ways which science has discovered by which the environment is degraded and polluted.

3.3 ENVIRONMENTAL POLLUTION AND DEGRADATION DEFINED

Within the context of this article, environmental pollution and degradation is one, where human being, animals, plants or materials are exposed to contaminants and hazards at such levels and duration that adverse effects occur⁸. The contamination of the environment, which emits from a stationery source includes industrial operations, activities of construction, mining companies, smoke or fumes resulting from combustion or burning, the release of gaseous chemicals in their air as in the use of pesticides in mechanized agriculture. Contaminants of the environment may be in solid or gaseous forms, it could also be organic or inorganic. Some physical, chemical and biological properties also account for environmental contamination⁹.

Two main paradigms dominate the environment-development debate. The first is the traditional or mainstream paradigm which views the poor as environmental destroyers or degraders. It illustrates that a relationship exists between poverty and the environment¹⁰. It also holds that poverty is a major cause and effect of global environmental problems and the poor are both agents and perpetrators as well as victims of environmental degradation.

This was the stance of the Brundtland Report which has been supported by other analysis in what has come to be known as the inseparability of the poverty and environment connection¹¹. The poor are thus regarded as being more likely to resort to activities that can degrade the environment. The hypothesis is that the poor will not make for sustainable development mainly because poor people exploit the environment by depending solely on it, thus intensifies the pressure on the environment and compromises the chances of sustainable development.



The second paradigm is termed the political economy paradigm propounded by some political economy scholars who, in the first place, have decided to focus their analysis on the ultimate causes of poverty rather than on the poor or on poverty itself. To them, the role of the rich in degrading the environment through inequitable land holdings for example, is important for understanding the issue of the relationship between poverty and environment¹². Some anthropological and sociological researchers who identify themselves with the political economy paradigm have also presented the poor as environmental managers than as environmental degraders. This viewpoint categorises the poor into two: the poor (but not landless), the impoverished and landless. The former categories are viewed as environmental managers and sustainers while the landless have to degrade the environment as a matter of practical survival.

There are also the analysts and researchers of the political economy persuasion who view the poor as positive actors or as environmental activists. This has been highlighted by recent researches into social movements and environmental politics which have shown grassroots organisations playing an active part in the environmental conservation.

In the perspective of the Nigerian situation, the above discussions on the environment development debate can further be examined against the background of the recent World Bank Report¹³ to the effect that every Nigerian, by the world standard, is below the poverty level. Even if by the World Bank standard, all Nigerians are poor, notable socio-economic and political classes still exist among the poor. It is a painful fact that some Nigerians, especially military personnel and civil servants who had been or currently in government are supremely and stinkingly rich. This category of Nigerians have stocked billions of Nigerian money in foreign banks¹⁴. It is this category of people who manipulates the activities of the oil producing companies in Nigeria and so, they are in position to control the economy and political destiny of the country. These people also control enough capital to engage in industrial, mining, agricultural and technological activities which cause more serious environmental problems.

Another relevant view comes from the analyst and researchers of the political economy who argue that the poor are the positive actors or environmental activists. In the perspective of this article, some of the youths and people of Ogoniland in the Niger Delta area of Rivers State, Nigeria, are



regarded as environmental activists. This article agrees in part with the mainstream paradigm that the poor are the victims of environmental degradation who live in wretched area of the country that suffers much ecological damage caused by the activities of the oil companies and other industrialists. These poor people have decided at one time or the other, to claim their right by challenging the Military and civilian governments for neglecting them to suffer environmental pollution and degradation through the activities of their agents.

In Nigeria at present, attention of the government and the people is more directed at the problems of environmental degradation currently being experienced at the oil producing areas in Nigeria. Examples of such problems include; oil pollution, oil spillage and gas flaring through the oil exploration activities of multinational companies like the Shell Petroleum Development Corporation, Mobil, Chevron, Agip, Texaco, Elf etc. The effects of oil spillage and gas flaring have continued to be felt particularly in Edo, Delta, Imo, Rivers, Akwa Ibom and Ondo States of Nigeria. In these States, several acres of land have been damaged owing to the destruction of flora and fauna ecosystems by oil pollution. Water bodies like rivers, streams, springs, wells and while adjoining coastlines have also been polluted so much that fresh drinking water is difficult to come by. Also, gas flaring into the air seriously pollute the air thereby, rendering the environment inhabitable for human beings and other living things which depend on air for survival.

Another category of environmental pollution which the people and government have not been handling seriously and which equally poses serious threat to human beings and other living things in Nigeria can be identified in both mineral and non-mineral producing areas of Nigeria. These are:

3.3.1 Noise Pollution

Noise pollution is the unregulated emission of noise from man, his activities and other various sources to the environment. Long exposure to noise at a high intensity may cause hearing impairment, decreased efficiency, emotional disturbances/psychological disorder and disturbance of sleep¹⁵. Noise pollution arises from two sources – environmental noise and occupational noise. In occupational noise, workers in some industries are often exposed to high level of noise over a long period of time thereby resulting in occupational deafness. To prevent this, workers in such industries must be wearing ear muffs and ear plugs.



3.3.2 Wildlife

Wildlife refers to wild animals whether harmful or not in the forests. Due to mismanagement of our forest resources and indiscriminate killing of these animals, many of them are now virtually extinct or difficult to come by. In other words, many of the Nigeria's forest reserve centres which used to harbour these animals have been depleted by the people. In this way, animal products used in medicine and technology for the benefit of mankind like bones, blood, leather, hair, hooves etc. are no longer easy to find. Such forest reserve centres harbouring wild animals are also very few in Nigeria as tourist centres.

3.3.3 Forestry

Forests are natural environment for commercial trees, plants, herbs, animals, insects, soils and other living things which are of great value to man. Many of the Nigeria's timbers and trees are no longer protected and conserved. On daily basis, trees are being felled indiscriminately without regard to forestry laws. Unregulated destruction of forests in Nigeria through illegal felling and burning has led to the following environmental problems.

- a. Depletion of trees and plants which ought to cover soil surface and act as a factor to preserve its fertility.
- b. Destruction of the flora and fauna of the soil ecosystems.
- c. Destruction of trees and other canopy plants which often provide natural shades and also prevent hazardous tropical winds and tornadoes.
- d. Exposure of the soil surface to the battering effects of direct sunshine, wind and water erosion.
- e. Desert encroachment and desertification in the Northern parts of Nigeria.
- a. Indiscriminate bush burning often result into destruction of lives, houses and other economic trees of value like Cocoa, oil palm, Colanut trees, Orange-trees etc.

3.3.4 Fishery

There are many species of fish whose lives depend on many water bodies for survival. The most important use of fish to man is that it is a veritable source of protein and oil. Most of the water bodies like rivers, streams, creeks which constitute the environment of fish in Nigeria are often subjected to different forms of pollution ranging from indiscriminate dumping



of refuse, wastes and pollutants. In the oil producing areas of Nigeria, oil spillage into adjoining rivers, streams and creeks is responsible for constant loss of lives of many water creatures like fish, crabs, crayfish, toads, frogs etc.

3.3.5 Water

Water pollution in Nigeria is another serious aspect of environmental degradation. Most of the common water bodies are river, streams, springs, wells, creeks, lakes, estuaries, continental shelf and adjoining seas. Water bodies that are more useful to man are those which produce fresh water like rivers, streams, lakes (in some cases), springs and wells. Many of these water bodies which are close to cities and big settlements continue to face the problems of refuse dumping, wastes discharge and other pollutants. In the oil-producing areas, oil spillage into these water bodies has rendered the environment unfit and even hazardous for human use and survival of other useful water creatures.

3.3.6 Refuse Disposal

Refuse can be termed as waste products arising from the physical and biological activities of the people. In particular, a lot of wastes arise daily from the feeding and living habits of human beings. Such wastes may be of different degradable or indegradable characteristics. Since refuse disposal is not being properly managed in Nigeria, we find huge deposits of human wastes at odd places in our cities. A lot of odours and poisonous gases which often emanate from these wastes are serious sources of health hazards like cholera, malaria, guinea worm, diarrhoea, tuberculosis etc for the people.

No doubt, the above cited categories of environmental pollution have caused considerable damage to people's lives and properties, and for which compensation ought to be paid by appropriate authorities.

4.4 THE ISSUE OF COMPENSATION

Environmental degradation from oil exploration and the indiscriminate discharge of domestic and industrial wastes as well as toxic substances could cause irreparable damage to the ecosystem, temporary or permanent incapacitation to individuals, and sometimes unimaginable loss of life. In such cases, criminal prosecution is only one means of achieving justice in such circumstances. Other means of achieving justice include – civil actions such as the use of political process, actions by non-governmental agencies and institutions as well as public education. Whatever the means used, the



objective should be to secure the fullest possible measure of justice for the victims and to hold liable, those responsible for the tragedy.

Compensation is all about making amends for the loss suffered by victims. In making the amends, the victims' loss must be recompensed, lest the compensation becomes inadequate. The three main ways of settling compensation are by negotiation, arbitration and litigation. However, a cardinal guiding principle of compensation claims is that it must be fair, prompt and adequate¹⁶.

The most obvious and immediate aspect of justice to any surviving victims of pollution is relief i.e. relief from their present and future vicissitude. This includes efforts to sustain the victims and help them cope with the harsh new day-to-day realities confronting them. Relief includes the provision of adequate food, health care services, housing and community rehabilitation. Finally, for those who can work, it includes the generation of suitable employment. Realising a just measure of relief is not easily achievable as it is often impregnated with political, economic and social considerations.

Beyond relief is a much more practical and realizable factor of compensation for direct and ancillary losses suffered by the victims. Ideally, compensation must take account not only for the immediate losses of the victims but also as far into the future as the impact of the disaster will continue to afflict the victims. This is probably the contemplation in the expression "adequate compensation" which is sometimes used in some compensation statutes¹⁷.

Many of the statutes which regulate the management of domestic and industrial pollution in Nigeria make provision for the payment of compensation to victims of pollution. But perhaps, the best example of such provision is that contained in Section 21 of the Federal Environmental Protection Agency Act Cap. 131, Laws of the Federation of Nigeria, 1990 as amended by the Federal Environmental Protection Agency Decree No. 59, 1992. The Section provides that the owner of the vessel from which hazardous substance is discharged, shall, in addition to the penalty specified in Section 20, liable for:

- (a) the cost of removal thereof ... and
- (b) costs of third parties in the form of reparation restoration or compensation as may be determined by the agency from time to time.



5.5 CONCLUSION

The issue of environmental protection is observed to have been taken more seriously at the national level to the extent that it is now given a place in the 1999 Constitution of the Federal Republic of Nigeria¹⁸. It is also important to note that by the Rio Declaration of 1992, the issue of environmental protection can no longer be wholly subjected to the jurisdiction of any nation. It is now a matter of international or global concern. Since Nigeria has ratified some of the International Conventions for effective protection of the environment, it is advised that further serious and pragmatic efforts be made to protect this vital heritage of humanity:

It is also observed that, of all aspects of environmental degradation or damage, only oil pollution has received perfunctory attention in Nigeria despite the fact that oil remains the main-stay of the nation's economy. Unfortunately, other forms of pollution which adversely affect air, soil, water, forest, wildlife are equally destructive to human beings and their existence. Hence, governments at all levels, must always pay attention to the prevention of those forms of pollution which appear insignificant to the people.

It is equally disturbing to observe that Nigeria has some fundamental laws against environmental pollution which people disobey and disregard. The government must further intensify its enlightenment campaigns, equip the law enforcement agents and courts of law to make the people succumb to the rule of law.

One peculiar thing to note on the issue of payment of compensation to victims of environmental pollution in Nigeria is that courts of law are always more emphatic on payment of money than reparation and clean-up. It has been observed in most cases, that payment of compensation has always served as a fire-brigade solution which does not provide an enduring solution to the ecological damage inflicted by the pollution or illegal dumping of domestic or industrial wastes. Also, experience has shown that not all victims of pollution are often beneficiaries of such compensation. Again, compensation cases are generally very difficult to prove in courts since much scientific evidence and technical data are often required to establish the real nature of the polluting agent and the causal connection between it and the damaged complained about.

On the issue of environmental degradation in the oil producing areas of Nigeria, apart from stiff and persistent agitations from the people of the



areas, which at times, threaten the peace and stability of Nigeria against government's inability to proffer enduring solutions to the pollution problems caused by oil exploration; it must be known that the need for every State to ensure proper environment is a stipulation of the United Nations Organisation. Thus, the general provisions of the UNEP document titled "Environmental Law, Guidelines and Principles" provide in part that:-

States should either individually or jointly, by appropriate means, take preventive measures against, limit and in so far as possible, reduce pollution and other adverse effects on the environment resulting from offshore exploration and exploitation of hydrocarbons and other minerals, and related activities... To this end, States should therefore, adopt legislative and regulatory measures and provide appropriate machinery in their implementation... such authorization should, in particular, require the operator to: .

- 1.....
- 2.....
3.
4. Rehabilitate, where appropriate, the environment¹⁹.

According to Isuwa Dogo²⁰, two different models have emerged for possible utilization in the enforcement of environmental regulations. These are: the cooperative or conciliatory model and the confrontational method or approach. Cooperative method is often premised on the principle of sustainable relationship between the enforcer and the polluter. Here, mutual respect and trust exist between parties to ensure due compliance with all laws, regulations and standards that are meant for proper environmental protection. On the other hand, the confrontational method involves inconsistent and unsystematic devices or mechanisms for redressing illegal acts of environmental pollution and punishing acts violating relevant environmental laws.

As for the issue of oil pollution in the Niger Delta of Nigeria by the Oil Multinational Companies, lack of good rapport and effective working relationship between governmental institutions like Federal Environmental



Protection Agency, the Niger Delta Development Commission etc. have militated against proper utilization of the existing clean-up policies of different Associations as practised in the United States and Great Britain²¹. The persistent crises in the Niger Delta could be avoided if the cooperative model is often adopted by parties involved and where acts of corruption are checked by parties and authorities responsible for various administrative and executive functions.

Nigerian government is therefore advised to further strengthen its policies, legislative and regulatory measures to put an end to the problems of environmental degradation in the oil producing areas of Nigeria. In this regard, provisions of the controversial On-shore-offshore Dichotomy Bill must be amended to take care of these problems.

Above all, the issue of payment of compensation to victims of environmental pollution in Nigeria should not always be over emphasized as a final solution to the problem. It has been recognised over the years, that in cases of environmental degradation and other illicit acts that inflict injuries on persons, no amount of compensation in monetary and material terms can completely remove the effects of the actions. This proposition is now subsumed in the principle established by the celebrated United States' Supreme Court decision in Aloeboetoe Reparation Case²² known as causa causae est causa causati – meaning “to compel the perpetrator of an illicit act to erase all the consequences produced by his action is completely impossible since that act causes effects that multiplied to a degree that cannot be measured”.

In the light of the above, governments, individuals and all persons must refrain at all times, from all acts capable of causing environmental degradation and pollution in Nigeria. No amount of compensation can completely repair whatever has been damaged once! Prevention is always better than cure.



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