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ARTICLES

National Security Law and Policy Series: Nigeria's Fight against Terrorism and Corruption with Good Governance: Lessons for Developing Countries.

Prof. Bibobra Bello Orubebe

General Legal Framework and Responses to Child Labour Practice in Nigeria: A Focus on Kwara State.

Fatimoh Funsho Abdulrazaq

The Tortuos Liabilities on Environmental Pollution: A Case of Water Pollution in Nigeria.

*Ijaiya Bashir Leke
Abdulrazaq F. F. (mrs)
Afolabi. O. S*

A Review of Income Tax Relief in Nigeria: Rationale and Considerations.

Dr. Abdullahi Mohammed Kontagora

Effect and Enforcability of the Human Rights Decisions of the Ecowas Community Court of Justice in Member States

Benjamin O. Mukoro Esq.

Appraising the Tax Issues in the use of Virtual Currencies in Nigeria

*Josephine A. A. Agbonika Ph.d.
Olokooba S.m. Ph.D
Hassan I. Adebowale*

Protection of the Global Commons: Problems and Prospects

H. C. Okolo Esq.

01 *United Nations Organization and the Quest for World Peace: An Appraisal* 217
Dr. H. Bena Buku

44 *Economic Rationales for Anti-dumping Laws of the World Trade Organisation (WTO) Appraised* 227
Olatoke J.O. (SAN) Ph.D

78 *Transportation Law and Policy: Carriage By Land, Air and Sea. The Imperative of Laytime* 246
Youkere Kemeseifa Ebikefe.

CASES REPORTED

101 *Constitutional Law - The Constitutional Right of a female child to inherit from her late father's estate as guaranteed under section 42&43 of the 1999 constitution of Nigeria (as amended). Where (Owa-Alero) custom conflicts with the ground norm the constitution prevails.*
Helen Amufa & 3 ors V. Peter Ochonogor & 5 ors Customary Court of Appeal (CCA) 267

168 *Criminal Law and Procedure - The Offence of Armed Robbery ingredients of:*
- What prosecution need prove to secure conviction
- What constitutes the veracity test, and if every denial of confessional statement makes such statement unreliable?

State V. Trust Abraham High Court (HC) 286

13

THE TORTUOUS LIABILITIES ON ENVIRONMENTAL POLLUTION: A CASE OF WATER POLLUTION IN NIGERIA.

BY

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Abstract

This paper examines the tortuous liabilities on environmental pollution in Nigeria with particular focus on water pollution. It also discusses the services, functions and values of water, the various meanings of pollution, the causes of water pollution and the effects of such pollution on both the flora and the fauna alike. It further described and examined the tortuous liabilities under the common law viz - Negligence, Nuisance and the doctrine of Res Ipsa Loquitur as well as the rule in Ryland.V. Fletcher. More importantly, it also examined the various legal frameworks on water pollution. Given these legislations, it is suggested inter alia that, the lawmakers must not shy away from legislating on appropriate legislations to avert water pollution, there should be adequate monitoring of the human activities, sensitization of the populace on the need to preserve clean water, adequate compensation to the affected victims of water pollution as well as adequate enforcement of the articulated policy on preservation of clean water environment

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1. Introduction

Unequivocally, the role of man in nature is enormous. This is evidently seen in the self-annihilation men have contended with in virtually destroying all other beautiful creation surrounding them. All other creatures of God have sustained and maintained their intrinsic purity, peace and beauty without any violent destruction to all other creations in nature.. This is not so of human beings, who have virtually polluted the air we breathe, water that we drink and for many other purposes is soiled with spillage, slurry and other toxic substances. Indeed, nature supports the very existence of human on earth. Without these organisms, an existence will be faced with a very serious question mark and life may become worthless. In fact, water is most essential to humans and this explains why it is common say that 'water has no enemy'.

2. Water: Functions, Services and Values

Our material existence is dependent on the use of water. The material value of water is immeasurable as it is safe to say that the existence of mankind depends on preservation of water from being polluted. Water, undoubtedly, serves as a source of food, nutrient and energy not only to human beings but also to animals alike. Indeed, water is a source of producing useful chemicals and drugs as well as many other products and services.

Many of the benefits of water accrue to agriculture itself. It is a fact that, almost all agricultural activities depend on water to thrive. The provision of nutrients for the development of improved crop varieties and livestock breeds is important element water provides to agricultural activities. Water also functions for the diversification of agricultural areas ensuring variety ecological services vital for food security, natural resources conservation, economic viability, climate amelioration, cultural preservation and community empowerment.

Andrew & Martins¹ observed that water's functions and services may be divided to four broad categories. First, water may have commercial values in uses as supplement for food, medicine, clothing and tourism. Second, existence value represents the pleasure people derive from simply knowing that a natural resource exists, even if representatives are never actually observed directly. This is a component of aesthetic value that, by definition, cannot be captured in tourism or other commercial measurements. Third, it is sometimes argued that if we are allowed water to be polluted, both the flora and the fauna and other creation will spell the disaster. Then, if we believe that this value is important, then we should act to prevent water from further pollution. Four, there is a moral argument originating ultimately from religious and philosophical convictions, that we have an ethical obligation to preserve water notwithstanding any direct benefits to humans.

Barakat² commenting on the values of water observed that water ensures productive and environmental sustainability. In addition to contributing to environmental sustainability, water helps sustain many production functions both in low external input and high input-output agriculture.

Karl³ observed that not only does water provide a habitat for quite numbers of animals but also provides some waste like leaves, stems and alike for them to feed on. Colonies of microscopic life feed on these particles are in turn eaten by estuarine species such as shrimp, some fish and small crustaceans that serve as forage for birds, predatory fish and eventually people.

¹ Andrew M & Martins L. W 'Patterns of Behaviour in Biodiversity Preservation' (1994) Working Paper No. 1538 The World Bank Policy Research

² Barakat H 'The Date Palmgrove Oasis: The North African Agro-System' In Halladay P & Gilmour D. A (eds) Conserving Biodiversity Outside of Protected Areas, the Role of Traditional Agro-System IUCN & AMA, Gland

³ Karl, G. M 'Environment, Poverty and Economic Growth' (Annual World Conference on Development Economics Washington D. C. 1997)

In fact, the functions, values and services of water to mankind and other creations are inexhaustible this is because the survival of human beings and most of other creations depends solely on pure available water.

3. Pollution: Definition, Causes and Effects

a. Definition

The word pollution has been variously defined and used in different concepts. In one sense, pollution has been defined as:

The introduction by man, directly or indirectly of substances or energy into the environment resulting in such deleterious effects as harm to living resources, hazard to human health, hindrance to marine activities including fishing, impairment of quality for use of sea water and reduction of amenities⁴

In another sense, it has also been defined as:

"Man-made or man aided alteration of chemical, physical, or biological quality of environment to the extent that is detrimental to that environment or beyond acceptable limits and "pollutant" shall be construed accordingly"⁵.

b. Causes of Water Pollution

Undoubtedly, it is humans who should accept full responsibility for the increasing rate of water pollution than any other creations. Other creations as noted earlier have sustained and maintained the intrinsic purity, peace and beauty of all natural resources. Over the years, the causes of water pollution is generally attributed to the activities of industrial companies, who in their bid to consolidate in the production of their products, have in most cases, failed to consider the environment effects their activities would have on the communities.

⁴ Stockholm Declaration United Nations, December A/CONF 48/8 78-79

⁵ Section 8 of the Federal Environmental Protection Act, Cap 131, Laws of the Federation of Nigeria, 1990

Water pollution will thus generally occur as a result of industrial chemicals wastes into water that normally occur as a result of the proceeds of production of finished products. This may eventually flow into the shore of the river, hence water is polluted.

There are also contributions from sources like on and off-shore use explosives at the exploration stage; the radioactive materials at the development stage, produce water and other effluents, deck drainage, sanitary and domestic waters from off-shore facilities.

There is also a human factor resulting from the abject poverty prevalent in the country. Some people especially fishermen in the quest of improving their lots usually pour poisonous substances into the water to increase the numbers of fishes for their consumptions and sales. This, it is observed does not only pollute the water but may also lead to rapid extinction of marine living resources. The discharge of oil into the high sea by vessels as well as collision on the sea between oil carrying vessels no doubt will cause pollution whereby the water is polluted and the marine living resources greatly disturbed.

Ogbuigwe⁶ evidently observed that oil spills or pollution from oil has its detrimental effect on air, land and water. Thus oil pollution affects not only the environment, but also the individual, within the environment.

Another contributor to the water pollution is human population growth. The human family in the mid-19th century had a population of one billion. One and half centuries and five billion people later, humans are beginning to wonder whether they are in danger of exceeding the limit of their resources. Each year, as the human population continues to grow, water is becoming polluted and affected at an alarming rate resulting from the need to urbanize and create shelter for human beings. Hence, marine living resources are displaced and their habitats destroyed as well.

⁶ Ogbuigwe A. E 'Compensation and Liability for Oil Pollution in Nigeria' (1985) Vol. 3 22, Journal of Private and Property Law

The threat to global warming has also been responsible to pollution of water. It is possible that the rise of temperature beyond a normal level affects some marine living resources and thereby affects their survivals. The death of the coral reefs (anchors of much of marine species) has been caused by warm water arising from hot temperature. The rise in sea levels could eliminate a large portion of the world's coastal wetlands, the home of abundant biodiversity.

In Nigeria today, water pollution has evidently claimed human lives. This is evidently clear of the epidemic of contagious diseases resulting from poor drinking water that has been polluted in one way or the other.

c. Effects of Water Pollution

The consequences of water pollution in the recent time sober the mind. This is a scientific, ethical, political and economic issue that is of profound significant to the future of humanity. Water provides the essential basis for many medicines, genetic strains of food crops, and industrial products.

The reason why human should mourn the increasing rate of water pollution is the loss of scientific knowledge that can subsequently be put to the good of the world. The other reasons are just as powerful. Moral concern and aesthetic pleasure are too more. We ought to be worried if we are caring humans, one of many millions of different genetic constellations.

Since the service and functions of water are essential for our survival, it would clearly be prudent to monitor the same in much the same way that we monitor our manufactured capital stocks, such as roads, buildings and machinery. This has not been standard practice, however, and even today such monitoring is not conducted in any systematic way. Instead reliance is often placed in an economy's gross output (crops fisheries forest products) and the prices of these outputs to assess whether the resources base is being depleted. This is a mistake. Agricultural output, for example, can rise even if soils are being mined. The environmental resource base is dynamic and completed, consisting of biological communities that interact with the physical and chemical environment in time and space. Moreover, these interactions are often nonlinear, thus the resources base can

display threshold effects meaning that the flow of services can be interrupted.

It is to be further noted that water pollution not only affects the quantity and quality of the services produced by ecosystems, it also challenges their resilience. An ecosystem's resilience is its capacity to absorb disturbances without undergoing fundamental changes. If a system loses its resilience, even a small perturbation can change it into a wholly new state.

According to Boserup⁷ as population grows, land, water and other natural resources become scarcer relative to labor, and access to market improves. As a result agricultural intensification occurs. Relative prices change and food price increase as demand for food rises. At first, (implicit) wages decline to reflect the increased supply of labour. This process generates the need for new institutions, such as private property rights, which somehow emerge. The new institutions facilitate the adoption of more intensive techniques and greater investment, which increase yields. Rather than deteriorating, the natural resource base improves as it becomes more valuable. Moreover, economics of specialization and of scale associated with the provision of infrastructural and public services (education, health care, portable drinking water and the like) emerge, leading to a greater supply of these services. These improvements promote increases in labour productivity that eventually reverses the initial wage decline induced by population growth.

The effect of water pollution can also be seen from a list of the harmful effects of the atmospheric pollutant on plants and animals and on the inorganic substance as well as all human beings. For instance, the emitted gases into the atmosphere during industrial activities have caused injuries to human health. Also, the concentration of various chemicals in water bodies poses problems to man.

⁷Boserup E *Population and Technological Change: A Study of Long-term Challenge* (University of Chicago Press, Chicago 1981) 286

Van-Ketal⁸ observed that there is a serious environmental stress due to the application of agro-chemicals on a number of human activities. For example, the use of pesticide and gamalin 20 has greatly led to the destruction of aquatic lives such as fish and other marine living resources

Not only this, dirty water due to pollution constitutes as death traps to man. For example, there have been several occasions when outbreaks of epidemic were traced to contaminated water. Unplanned and unregulated development of both surface and ground water resources could also have drastic input on the physical environment hydrological cycle and biodiversity. This development may ultimately lead to the incidence of flooding and health hazards. Pollution generally deteriorates the quality of environment. Such activities include agricultural practice, mining, laying of pipelines among others. This development usually arises from the unplanned actions of events.

Ijaiya⁹ also observed that women have always relied on the environment for the provision of most of the environmental resources (wood, water, air and soil) for their socio-economic activities. On the contrary, an overexploited environment would always spell doom for women thereby undermining their socio economic activities that in the long run could lead to diseases, reduction in productivity, loss of amenity and poverty. An explanation of this connection indicates that an environment that is well managed and protected would continue to provide the necessary natural resources for women and economic development in general, but when the environment is degraded the welfare of women is reduced by ill health and premature mortality, and an impaired health may lower the

⁸Van-Ketal, M quoted in Kolo R. J & Lamai S. L. 'Degradation of Aquatic Environment by Agro Chemicals in the Middle Belt Nigeria' Proceedings of the Annual Conference of the Environment Protection Society of Nigeria 1997

⁹Ijaiya G. T 'Environment, Poverty and Women: A Perspective on Socio-Economic Forces' In Jimoh, H & Ifabiyi, I P (eds) Contemporary Issues in Environmental Studies, Haytee Publishing Co, Ilorin 1997) 228

productivity of women thus reducing the productivity of many resources used directly or indirectly by women. Given this situation, water is so important to human beings, plant and animals in that it provides all the nutrients needed and required for their survival and existence.

3. The Tortious Liabilities under the Common Law

The general common law rule for the liability of the polluters arising out of water pollution can be seen in the tortious principles of Negligence, Nuisance, Res Ipsa Loquitor and the principle in the case of Rylands. V. Fletcher. Therefore, it is safe to conclude that, the general common law rule is applicable and available to redress the incessant water pollution both under, the municipal and international laws.

a. Negligence

According to Winfield & Jolowicz¹⁰ Negligence as a tort is the breach of a legal duty to take care which results in damage undesired by the defendants to the plaintiff.

Thus its ingredients are:

- i. a legal duty in the part of 'A' in this case the polluter toward 'B' in this case the victim to exercise care in such conduct of 'A' as falls within the scope of the duty;
- ii. The breach of the duty;
- iii. Consequential damage to 'B'

It is to be further noted that the tort of negligence was given universal interpretation in the *locus classicus* case of *Donoghue V. Stevenson*¹¹ where Lord Wright stated thus:

¹⁰Winfield & Jolowicz on Tort (14th ed, Sweet & Maxwell, London 1984) 78

¹¹(1932) A. C. P 562 @ 580

"In strict legal analysis negligence means more than needless or careless conduct, whether in omission or commission, it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing.

In the Nigerian case of Nigeria Bottling Company Ltd. V. Ngonadi¹², the Supreme Court adopted and applied the above stated ratio in expounding liability in the "neighborhood" principle. To successfully maintain an action in negligence, the victim or plaintiff, as the case may be, must establish the ingredients enumerated above. It is not every careless act that a man could be held responsible neither in law nor even for every careless, act that causes damage. He will only be liable in negligence if he is under a legal duty to take care.

Lord Atkin in Donogue's case above stated that it has to be established that the defendant has been careless or negligence in the exercise of his specific legal duty to take care. Evidently, where an action is brought for negligence, a finding by the court that the defendant was not negligence would dispose of the action completely.

For a civil action as a result of water pollution to succeed, the plaintiff would be required to show that, the discharge or escape of poisonous and or industrial waste was the failure to keep a good sewage system and that the resultant pollution damages was forceable. Thus in Atubin & Others .V. Shell B.P. Development Company Nig. Ltd¹³ wherein an action was brought against the defendant by the plaintiff in which they claimed for damages as a result of the escape of crude oil gas from defendant's pipelines destroying fishes in their lakes and farmland. It was held that the plaintiff could not establish that the negligence of the defendant was proximate cause of the damage.

¹²N. N. S. C. Vol. 16 (Pt 1) p 753

¹³Suit No. UCH/48/73 Ugheli High Court delivered on 12th November, 1974

From this decision therefore, it appears that the onus of proof is always on the plaintiff to establish the existence of damages through pollution.

b. Nuisance

An actionable nuisance is incapable of exact definition, and it may overlap with some other headings of liability in tort such as negligence or the rule *Rylands.V. Fletcher* (supra). However, nuisance has been defined as “an act or omission that is an inference with, disturbance of or annoyance to a person in the exercise or enjoyment of:

- a. a right of belonging to him as a member of the public, when it is a public nuisance, or
- b. his ownership or occupation of land or of some easement, profit, or other right used or enjoyed in connection with land, when it is a private nuisance.¹⁴

The essence of nuisance is a condition or activity, which unduly interferes with the use or enjoyment of land. In modern parlance nuisance is that breach of law of tort most closely concerned with “protection of the environment”¹⁵. Thus nuisance actions have concerned pollution of water or other noxious substances.

Public nuisance as pointed out is a criminal offence, which is under the realm of public law and state prosecution. In public nuisance while the conduct of the defendant may be unlawful, such is not the case in private nuisance. The conduct of the polluter becomes nuisance when the consequences of his acts are not confined to his own land, but extend to the land of the victim or community and causing physical; damage accordingly.

¹⁴Winfield & Jolowicz (See note 10 above)

¹⁵Clark & Lindsell on Tort (16th ed, Sweet & Maxwell London 1982) 1354

For a victim or plaintiff to successfully maintain an action under nuisance for oil spill affecting the marine living resources and their habitats, the victim who is not suing in a representative capacity, must be able to prove that he has suffered over and above every other person in the community. In *Amos.V.Shell B.P. Limited*¹⁶ the plaintiff could not succeed in an action for nuisance since he could not show how he has suffered more damage above every other member of the public.

c. Res Ipsa Loquitor

As noted earlier, for a plaintiff in this kind of claim to discharge the burden of proof placed upon him, it is usually necessary for the plaintiff to prove specific acts or omissions of the polluter. But where however, the circumstances are such that the court will be prepared to draw an inference against the polluter without hearing detailed evidence of what he did or did not do, the plaintiff may thus successfully plead the doctrine of *res ipsa loquitor*.

Res ipsa loquitor literally means, "The thing speaks for itself". It would come to play where no proof of negligence is required beyond the accident itself, which is such as necessary to involve negligence. It is no more than a rule of evidence, which merely shifts the onus on the defendant.

This doctrine was developed in the case of *Scott.V. London & St. Katherine Dock Company*¹⁷, where Elle C.J. stated thus:

Where the thing is shown to be under the management of the defendant or his servant and the accident is such as in the ordinary course of things do not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendant that the accident arose from want of care.

¹⁶(1974) 4 E. C. S. L. R 486.

¹⁷(1865) Ex. Ch 665

There are two main requirements for the maxim to succeed viz:-

- a. That the thing causing the damage would be under the control of the defendant or his servants; and
- b. That the accident must be such as would not in the ordinary course of things have happened without negligence. The proof of these requirements that the happening
- c. of the accident must be evidence of negligence on the part of the defendant and that the injury or damage should not have happened unless there was want of care.

In *Aliu Bello & Ors. V. A.G. Oyo State*¹⁷, the Supreme Court while examining the provisions of Torts Law of Oyo State applied this principle laid down in the Scott's case (*Supra*).

As rightly observed by Winfield & Jolowicz¹⁸ the intent of the maxim as it were was to shift the onus of proof on the defendant. The inference of negligence raised by the mere fact of the accident may sometimes be irresistible.¹⁹ in the case of *Shell Petroleum Development Co. (Nig) Ltd. V. Amaro*¹⁹, Akintan J.C.A. stated that:

The effect of the application of the maxim is that the onus of proof of negligence, normally placed on the plaintiff, shifts. The defendant is therefore required to establish that there was in fact no negligence on this part.

It would appear in practice however that, the defendant could rightly displace this burden in pollution cases where it could call expert evidence to show that the act causing damage to the plaintiff was not from his negligence. So that, if the defendant could show on the balance of probabilities that the accident was not due to his fault, then the burden again would have shifted to the plaintiff.

¹⁷(1986) 2 N.S.C.C 1257

¹⁸Winfield & Jolowicz (See note 10 above)

¹⁹(2000) 10 N.W.L.R. (Pt.675) 279

d. The Rule in Rylands.V.Fletcher

- The rule in Rylands.V.Fletcher, is one of the few doctrines in the law of torts which has been acclaimed as a rule of strict liability, and one of the major instances in which a man acts at his peril; and is responsible for accidental harm independently of the existence of either wrongly intent or negligence.

The rule formulated by Blackburn J. in the above named case provides thus:

The person who for his own purpose brings on his land and collects there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, is prima facie answerable for all the damages which is the natural consequence of this escape.

However, the House of Lords in the same case restricted the scope of the rule in the following terms:

We think that the rule of law is that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape

Before the rule can apply, the plaintiff must prove that there was an escape and that there was a non-natural user of the land. In *Reads. V. Lyons Company Ltd*²¹ Viscount Simon defined "escape" as escape from a place where the defendant has occupation or control over land to a place which is outside occupation or control" and in *Richards.V. Lothian*,²² Lord Moulton defined a natural user to "be some special use bringing with it increased danger to others and must not merely be the ordinary use of the land or such a use as is proper for the general benefits of the community. There is no doubt that from the qualification and application of the rule, the victim of water pollution would appear to have an added burden of proof before the court can find against the defendant.

¹(1947) A. C. 156 @ 168

²(1913) A. C. 263 @ 280

It must be noted that, the rule is not without exceptions. The following exceptions were well considered by the Supreme Court in the above named case, viz

- a. An act of God; the escape was caused by the acts of a stranger;
- b. The act was done as a result of the implied or express consent of the plaintiff; and the provision of a statutory exception to the rule, which applies, directly to him.

Be it noted that, a fundamental issue worthy of note is the fact, that a plaintiff or victim of pollution will successfully maintain an action against the polluter where in his claim he pleads and relies on the various tortious principles so far explained. In other words, if the plea of negligence does not succeed, he may succeed in the pleas of *Re ipsa loquitur* and or the rule in *Rylands.V. Fletcher*

4. Legislative Framework

It is very important at this stage to examine the legislative frameworks, for both civil and tortious liabilities under the municipal and international laws.

a. Municipal Enactments

In Nigeria, there is no comprehensive statutory enactment for the furnishing of remedies for victims of oil pollution and the likes, it needs to be mentioned here, that the Criminal Code provides for criminal liability against the polluters of water. Section 245 of the Code provides thus:

Any person who corrupts or foul the water of any spring, stream, well tank, reservoir so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanor, and is liable to imprisonment for six months

Not only that, there are much other legislation that holds polluters criminally liable all in the guise to minimize pollution. In the words of Ijalaye¹(now emeritus professor of law):

These laws, both criminal and civil, were however, not designed as environmental laws to be found in a single statute book but were rather scattered in the various statute books

¹Ijalaye D. A 'Environmental Law in Nigeria. Proceedings on Environmental Awareness- (Seminar for National Policy Makers, Federal Ministry of Housing and Environment 1982) 59

Therefore, legislations that quickly come to mind are The Petroleum Act 1969 and the Petroleum Drilling and Production Regulations, 1969 which legislations contain provisions to the prevention of pollution of water and the likes arising from oil exploration activities. By the provision of the Act a holder of a pipeline license is therefore obliged to pay compensation to any person who suffers loss or damage caused by the leakage or breakage of an oil pipeline under his control.

However, where the amount of the compensation cannot be agreed upon between the victim and holder of the license, section 18 and 19 of the Act empowers the court to award such compensation as it considers just, having regard to:

- a. the damage done to any building, crops or profitable trees. The disturbance caused by the holder in the exercise of such right
- b. Any damage suffered by any person by reason of any neglect on the part of the holder of such license; and loss (if any) in value of land or interest in land by reason of the exercise of the right aforesaid.
- c.

Specifically, Section 97 of the Act provides that compensation shall be paid for damages done as a result of prospecting mineral operations.

Also, the Oil Pipelines Act of 1956 also provides

The holder of a license shall pay compensation to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage from the pipeline or ancillary installation, for any such damage not otherwise made good.

The Oil in Navigable Waters Decree No. 34 of 1968 also prohibits particular polluting activities and provides penalties including criminal sanctions. There is also the Federal Government Environmental Protection Agency that contains comprehensive provision on the discharge of hazardous substances into the air, water and on land.

A classical case where a ship owner successfully raised one of the exceptions is the Swedish pollution incident involving the vessel "Tsessis". A Soviet tanker, which in 1977 struck a submerged rock whilst in charge of a pilot within Swedish territorial waters; This ripped a length of its bottom out with resultant spilling of oil and pollution. The rock was not marked on the relevant chart. The question of where faults lay-on the Swedish State or on the ship-found its way on an appeal to the Swedish Supreme Court, which found the state to be at fault, not the ship.

ii. **The Convention on the Protection of the Marine Environment of the Baltic Sea Area**

The Convention on the Protection of the Marine Environment of the Baltic Sea Areas otherwise known as the "Baltic Convention" was the result of the Conference held in Helsinki in 1974 being a treaty signed by countries of the Baltic Sea Area. The Baltic Convention is a regional co-operation characterized by the common desire to save the highly polluted Baltic basin from deteriorating into a more or less dead sea. The Convention lay down that a state considering the permissibility of environmentally harmful activities must take into consideration what nuisance these activities might cause any other contracting state.

Johnson¹ observed that under the Convention, any person who is affected, or may be affected by nuisance deriving from harmful activities originating in a contracting state has the right to challenge the permissibility of such activities before the appropriate court or administrative authority of that state including the question of measures to prevent future damage.

¹Johnson B. O 'The Baltic Convention' (1976) Vol. 25 International and Comparative Law Quarterly

The contracting parties of the Convention were therefore committed to taking all appropriate measure to control and minimize land-based pollution of the marine environment by, in particular, controlling and strictly limiting pollution caused by noxious substances, and materials. The noxious substances, which included oil, are listed in Annex II of the Convention. Like the 1969 convention, exception is made for warships, naval auxiliaries, military aircraft or other ships and aircrafts owed or operated by a state and used for Government non commercial services.

It is to be noted that, while it could be argued that the major provisions of the Baltic Convention is geared towards the prevention of pollution of the Baltic Sea, nevertheless, individual citizens of the member state, that has been directly affected by any oil pollution that may occur, may be able to sustain an action if he proves the negligence of the ship owner or polluter as the case may be. This is premised on the fact that (Regulation 21) allows the state to give assistance to each other for the purposes of investigating violations; or suspected violations, of the provision of the Convention

iii. International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage

The "Fund Convention" as it is called was introduced to provide substantial supplementary compensation to victims of major oil pollution disasters where full or even adequate compensation was not possible out of the sums to which a tanker could limit its own liability under the International Convention on Civil Liability.

The Fund came into force in 1978. The primary objectives of the Fund were to provide:

- a. Compensation for damage resulting from pollution cases where the constituted fund under "CLC" was insufficient to cope;
- b. To provide relief to tanker owners. The Fund which is a legal entity capable of suing and being sued may however not hold where:

- i. The pollution damage result from an act of war, hostilities or any civil war;
- ii. Where the claimant fails to prove the damage resulted from an incident involving one or more ships
- iii. Where the person who suffers damage was contributory cause of the damage as a result of his positive acts or omissions.

5. Conclusion and Recommendations

This paper has thoroughly examined the menaces of pollution and its devastating effects on the community, the values, functions and services of water as one of the natural resources and the remedies available to a victim under both the municipal and the international law.

There is no doubt that the protection and promotion of a sustainable environment for human existence and development should be the concern of both local and international communities. Towards this, policies and laws should be put in place by our lawmakers to ensure greater preservation of environment--- water.

In Nigeria, both the lawmakers and the courts as the custodians of not only peace but also of health must not shy away from dealing with the problems of pollution generally with all the seriousness it requires. Therefore, they must not only monitor the prevention and control of water pollution but must also ensure that those adversely affected are informed and adequately compensated for example government departments, oil companies and individual/corporate defaulters and polluters should be called to book for failure to protect the health of the people, especially in preventing endemic water and air-borne diseases.

It is also submitted that the judges in their consideration of civil claim for damages should be prepared to shift from the traditional common law remedies to a "strict liability principle" where innocent victims would not have to prove the liability of the polluter.

¹Suit No W/89/91 (unreported) delivered on the 26th November, 1973

¹(unreported) B. H.C/2/83

¹(1975) 9-11 S. C 155

¹Ijalaye D. A 'Environmental Law in Nigeria. Proceedings on Environmental Awareness- (Seminar for National Policy Makers, Federal Ministry of Housing and Environment 1982) 59

¹Johnson B. O 'The Baltic Convention' (1976) Vol. 25 International and Comparative Law Quarterly