SUING ACROSS BORDERS: INTERNATIONAL TORT LAW AND NIGERIA OIL POLLUTION LITIGATIONS

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Abstract

This paper is a re-appraisal of the international torts law remedies available to the victims of pollution in the oil and gas industry in Nigeria. Environmental protection in Nigeria is governed by a mix of local regulations and international laws. International torts law *is the legal framework that governs legal disputes between individuals and companies from different countries. Unlike domestic tort law, which handles disputes within a single country, international tort law deals with legal issues where the plaintiff, the defendant, or the harmful act is located in different countries, like domestic tort law. The examination of the role of international tort law and transnational litigation in combating pollution in the oil sector in Nigeria has become necessary because victims often face challenges in seeking redress at home due to weak domestic enforcement, jurisdictional barriers, and the transnational nature of oil operations. In carrying out this research, the doctrinal approach was employed, which exposed the lapses in the local remedies to offer protection to the victims of oil and gas pollution in Nigeria. That is why the paper recommended that the victims of pollution from the oil sector in Nigeria should invoke the international tort law to supplement the local remedies in seeking compensation for their environmental harm.*

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1. INTRODUCTION

This study examined the extent to which international tort law is involved in the protection of the rights of victims of pollution from the oil and gas sector in Nigeria. Nigeria has witnessed, over the years, serious environmental harm from the oil and gas industry. It is an obvious truth that the main source of revenue for the federal government of Nigeria is the oil and gas sector, which is also the main cause of environmental harm to the Nigerian environment and the people. The pollution from the oil and gas industry in Nigeria has caused monumental damage to the environment, lives, and properties of the people, especially in the Niger Delta region of the country.[1]A lot of laws have been put in place to bring the situation under control, but the environmental degradation persists. The local laws are poorly enforced. The increasing pollution, despite many laws put in place for its control, is a matter of urgent concern. Many victims of pollution in Nigeria have become increasingly concerned and perturbed by the persistence of pollution in the oil sector and how multinational oil companies easily get away with the pollution under domestic laws. There is no gainsaying the fact that the devastating injuries done to the victims of oil spillage in Nigeria will be worse if adequate steps are not taken to stop the menace.

Sometimes, the victims of pollution from the oil sector are discouraged from instituting actions in the courts against the giant multinational oil companies, which have overwhelming influence due to the wealth they create for the country. It is quite lovely that the international law of torts has offered the people the desired protections. Unlike the local

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[1] G Amaka Eze & C Ted Eze, 'International Law and the Prevention and Control of Oil and Gas Pollution' (2015) 35 *Journal of Law, Policy and Globalization* 31.

courts that can easily be influenced, the international courts provide an impartial, efficient, and well-resourced forum for complex environmental litigation.[2]They can compel the giant multinational oil companies to recognize and respect not only the domestic and international laws but also their responsibilities to the victims of oil pollution irrespective of whose ox is gored.[3] That is why this paper investigated the influence of tort law in tackling environmental pollution from the oil sector in Nigeria through the provision of adequate remedies to the victims. Having outlined the legal challenges faced by the victims of oil pollution at the domestic level against the multinational oil companies, this study provides a series of examples where the international tort law has offered the victims the desired protections. According to Majekodunmi *et al*;

International tort law has proven to be a crucial rescue mechanism for victims of oil pollution in Nigeria, expanding the scope of liability for multinational corporations beyond their national borders. It has forced a shift towards greater accountability, forcing cleanup and compensation that local legal frameworks often failed to provide.[4]

2. OIL AND GAS INDUSTRY IN NIGERIA

Nigeria is one of the countries of the world that produces oil and gas in very large quantities. For the past 70 years, Nigeria has experienced increased activities in the oil and gas industry, ranging from oil exploration, exploitation, refining, and product marketing operations. The discovery of crude oil and the concomitant exploitation have

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[2] David M Ong, 'International Law for Environmental Protection' (2009) 306-329, *International Law for International Relations* 320.

[3] Peter Cameron, 'Liability for Catastrophic Risk in the Oil and Gas Industry' (2012)6 (207-219) *International Energy Law Review* 211.

[4] Toyin Afolabi Majekodunmi, *et al*, 'Compensation for Oil Pollution Damage in Nigeria: Establishment of an Administrative Institution with Arbitrative Power to the Rescue?' (2024)10 (2) *Journal of Legal Studies* 12.

greatly transformed the country's economy by accounting for over 90% of Nigeria's foreign exchange earnings and 80% of the government's revenue. [5]The production of crude oil alone has increased to over 3 million barrels per day. [6]Nigeria has become a country with one of the most valuable assets and has become the giant of Africa due to the massive wealth from oil and gas reserves. [7]The oil and gas industries are located in the Niger Delta region of the country.

As the oil generates revenue for the government, instead of counting the blessings that accompany such a gift of nature, it is more of a curse to the host communities of the Niger Delta region who bear the burden of the environmental damage resulting from the oil operation activities. The companies promise heaven on earth, pledge to abide by the laws and protect all human rights of the people, including promises to undertake corporate social responsibilities for the benefit of the host communities, but in the end, they never come to fulfillment.[8]Worse still, the companies promise the communities that they would avoid litigation at all costs and use alternative dispute resolution in case of any disputes, but in practice, it is litigation everywhere, with financial muscle of the companies against the poor victims of pollution. That has turned the gift of nature in the region into a curse and doom.

[5] Gamaliel Onosede, 'Environmental Management and Sustainable Development in the Niger Delta' (2000) *Environmental Problems in the Niger Delta* 12.
[6]O Odeyemi & OA Ogunseitan, 'Petroleum Industry and Its Pollution Potential in Nigeria' (1985)2 (3) *Oil and Petrochemical Pollution*227.
[7] O E Agbalagba, *et al,* 'Investigation into the Physio-Chemical Properties and Hydro chemical Processes of Groundwater from Commercial Boreholes in Yenagoa, Bayelsa State, Nigeria' (2011)5 *African Journal of Environmental Science and Technology* 473-481.
[8]Nkem Violet Ochei, *et al,* 'Mechanisms Used by Multinational Oil Companies to Derail Human Rights and Environmental Litigations Arising from the Niger Delta' (2023) *African Journal of Legal Studies* 78.

The oil industry operations have introduced pollutants as liquid discharges and oil spills into the environment. Once it happens, the host communities are affected in many ways – loss of land, health problems, loss of lives, damage to farms, creeks and landed properties, among others. It has been reported that over 14 million barrels of oil have been spilled in the Niger Delta since the oil discovery, with devastating effects on agriculture and the ecosystem.[9]Gas flaring is another environmental problem in the region with a monstrous impact. Flaring of gas is a major source of greenhouse gas emissions and the resultant climate change, but the multinational companies operating in the Niger Delta region flare gases with impunity. In the words of Okayi and Adoga-Ikong;

Gas flaring is another source of environmental pollution in Nigeria. Nigeria is said to have a deposit of 500 trillion cubic feet of gas, but unfortunately, this is wasted by being flared…. Oil companies, instead of using or conserving the gas, tend to burn it, which has caused environmental hazards to the people of Nigeria, especially the people of the oil-producing area. This has caused a lot of health hazards and other environmental problems in the region.[10]

Oil production activities also affect water sources. This is as a result of the release of pollutants by the oil industries into the water at various stages of their operations, either through the discharge of produced water and other effluents such as drilling fluids, cutting and well treatment chemicals, process, wash and drainage water, and cooling

[9] IJ Alinnor & MA Nwachukwu, 'Determination of Total Petroleum Hydrocarbon in Soil and Groundwater Samples in Some Communities in Rivers State, Nigeria' (2013)5 *Journal of Environmental Chemistry and Ecotoxicology* 292-309.
[10]Roland Okayi&Adams J Adoga-Ikong, 'Environmental Pollution Caused by Oil And Gas Activities in Nigeria: The Inability of the Legal and Institutional Framework to Curb the Menace' (2019)3 (6) *American Journal of Humanities and Social Sciences Research* 173.

water, or through spills or blow-outs. In other cases, it may result from oil tanker accidents or bunkering. This harms aquatic life by disrupting reproduction cycles in fish, reducing oxygen and other dissolved gases while accelerating growth of aquatic parasites.

Consequently, various monitoring and control programmes have been formulated and implemented to combat the environmental problems associated with the oil and gas industry in Nigeria. [11]This is in addition to several other control laws, policies and guidelines as well as institutions put in place by the government to combat the pollution in the oil and gas industry. [12]The common law remedies, for instance, have been made available for vindicating the rights of individuals, families and communities that have been affected by oil and gas pollution. Unfortunately, the desired results of these laws and policies are far from sight. Today, the environment is more exposed to oil spillage, gas flaring, pollution of waters, destruction of aquaculture, vegetation and agricultural land, destruction of the atmosphere and the ecosystems in an unprecedented manner. This is compounded by armed conflicts, social unrest, and agitations against environmental degradation in the region. [13]All these have rendered the Niger Delta region of Nigeria uninhabitable.[14]

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[11] David Olueagbemi, 'The Niger Delta Development Commission (NDDC) and the Future of Petroleum Industry in Nigeria' (2001)5 (3) *Modern Practice Journal of Finance and Investment Law, Nigerian and International Quarterly, Comparative Review of law and Practice* 395.

[12] UB Akuru, 'Oil Resource Abundance and Conflict In Nigeria: Beyond Revenue Derivation and Sharing' (2018)53 (6) *Journal of Asian and African Studies* 972.

[13]VO Colonel, *et al*, 'Groundwater Contamination and Effective Ways of Rectification' (2016)1 International Journal of Information Research and Review 1749-1756.

[14] Anyanwu U Cbukwudi, *The Oil Industry and the Nigerian Environment*, 'IAIA12 Conference Proceedings' Energy Future: The Role of Impact Assessment, 32nd Annual Meeting of the International Association for Impact Assessment, 27 May- 1 June 2012, Centro de Congresso da Alfândega, Porto – Portugal,

3. THE LOCAL REMEDIES

The local remedies available to victims of oil pollution in Nigeria are all-encompassing and rooted in the statutory laws, constitutional provisions, and common law, which are geared towards the protection of the interests of the victims of pollution through compensation, damages, clean-up, injunctions, or other criminal sanctions imposed on the perpetrators to deter the intending polluters.[15]While the civil remedies are initiated at the instance of the victims for the purpose of claiming compensation, damages, or injunctions to halt the ongoing wrongful acts, the criminal sanctions are imposed by the state through the enforcement of the criminal statutes. All the environmental statutes in Nigeria are criminal in nature, conferring the exclusive power on the state, *via* the respective enforcement agencies, to arrest and prosecute the offenders. Conviction attracts a fine or imprisonment. An example is section 20(3) of the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007, which provides for a penalty of either a fine or imprisonment upon conviction.

Section 104 of the Petroleum Industry Act of 2021 provides for fines as penalties for gas flaring. Section 245 of the Criminal Code[16]provides for six months' imprisonment without any option of a fine for the crime of fouling water. The Harmful Wastes (Special Criminal Provisions) Act provides for life imprisonment and forfeiture of the vessel or land used in carrying, depositing, or dumping of harmful wastes in water, land or air within the premises of Nigeria.

<https://conferences.iaia.org/2012/pdf/uploadpapers/Final%20>accessed 11 April 2026.

[15] G Eweje, 'Environmental Costs and Responsibilities Resulting from Oil Exploitation in Developing Countries: The Case of the Niger Delta of Nigeria' (2006)69 (1) *Journal of Business Ethics* 27-56.

[16] Cap C38 LFN 2004.

The Oil in Navigable Waters Act imposes a fine of two thousand naira upon conviction for the offence of discharging oil from ships into the waters of Nigeria. This is a ridiculous penalty incapable of deterring offenders. The National Oil Spill Detection and Response Agency (NOSDRA) Act, 2006, on its own part, provides for a daily fine of five hundred thousand naira (N500,000.00) for failure of any oil spiller to report the spill to the agency within 24 hours of the incident, while failure to remediate attracts a fine of one million naira (N1,000,000.00).[17] The essence is to serve as a deterrent to the intending perpetrators. Some of the statutes provide for compensation to the victims of pollution or other remedies of restitution or restoration. An instance is section 34(2)(c) of the Climate Change Act of 2021, which makes provision for compensation to any victim directly affected by anti-environmental activities.

In theory, these well-couched provisions reflect the genuine intent of the government of Nigeria to protect its environment in conformity with its constitutional mandate and international obligations. However, the enforcement of and compliance with these provisions are far from reality. [18]An instance is the Criminal Code, which has been in existence in Nigeria since 1916 but without any record of arrest, prosecution, or conviction under section 45 that prohibits fouling water to date. It is worrisome because water pollution from the oil and gas industry has become a daily occurrence in the Niger Delta region of Nigeria. Similarly, other environmental statutes exist as paper tigers due to inadequate or complete lack of enforcement. It is indeed ridiculous that the only enforcement often targets low-income citizens in respect of monthly environmental exercises. Many petty traders and

[17] Section 6(2) & (3).

[18]M Fagbongbe, 'Criminal Penalties for Environmental Protection in Nigeria: A Review of Recent Regulations Introduced by NESREA' (2012) (2) *Journal of Environmental Law* 34-39.

commuters in Nigeria have been summarily convicted by mobile courts for loitering during the exercise. In *Faith Okafor v. Lagos State Government*, [19]the court quashed the conviction of Mrs. Faith Okafor and held that the restriction of movement by the Lagos State Government during the State's monthly compulsory environmental sanitation exercise is a violation of the right to freedom of movement under section 42 of the 1999 Constitution.

Many instances of such arrests and convictions of poor pedestrians by environmental officers in Nigeria abound. The cases are not rooted in oil and gas pollution being the focus of this research, but the divergent approaches in addressing environmental problems amount to environmental injustice, especially against poor Nigerians who are the greatest victims of oil and gas pollution. The general perception is that if similar energy used in the arrest, prosecution, and conviction of poor Nigerians going about their businesses during the monthly environmental sanitation exercise is exerted in the pursuit of the major industrial and corporate polluters in Nigeria, the Nigerian environment would be better for it.[20]It is better to be more robust in the enforcement of environmental laws against oil and gas industry being the major source of massive environmental degradation in Nigeria rather than focusing predominantly on the restriction of the movements of poor Nigerians during the monthly environmental sanitation exercises.

Outside the remedies available in the environmental statutes, civil remedies are also available to victims of pollution from the oil and gas industry. The common law remedies of negligence, trespass to land,

[19] (2017)4 NWLR pt.1556, 341-513.

[20] Brown E Umukoro& Moses O Omozue, 'Prosecuting Environmental Pollution Cases in Nigeria: The Head of a Carmel Passing through the Eye of a Needle' (2024)3 (1) *Journal of Private and Property Law, Redeemers University* 48. See also Theresa Chima Isife, 'Environmental Problems in Nigeria-A Review' (2012)4 (1 & 2) *Sustainable Human Development Review* 31.

nuisance and the rule in *Rylands v. Fletcher*[21]are also readily available to these victims. The victims of oil and gas pollution often institute actions against multinational oil companies under these remedies claiming damages for the destruction of their farms, crops, creeks, fishes, lands, including health-related issues. They also seek equitable remedy of injunction to halt the ongoing pollution activities [22] Just like the statutory remedies, the effectiveness of these civil remedies is eroded by a lot of frustrations ranging from protracted litigations, locus standi, problems of proof, jurisdictions, poverty and high cost of litigations, government's influence, corruption, among others. Many genuine cases were frustrated as a result, and the litigants went home without remedies.

The case of *Amos v. Shell*, [23]for instance, was frustrated because the consent of the Attorney General was not obtained as a precondition for instituting actions that involve the public interest. The case of *Oronto Douglas v. Shell*[24]was frustrated due to want of *locus standi* while *Tiebo v. Shell*[25]failed because the victim could not prove special damages as required by law. Similarly, the case of *Ayadi v Mobil failed* due to failure to establish the quantity and impact of the oil spillage. The case of *Abel Isaiah v. Shell*[26]was frustrated due to want of jurisdiction while the poor victim in the case of *Seismograph Services (Nig) Ltd v Ogbeni*[27]lost because he was unable to procure the services of an expert at the cost of one million naira to prove his case against the company. The case of *Shell Petroleum Development*

[21] (1868) LR 3 HL 330.
[22]Portia Oduro, *et al,* 'Addressing Environmental Justice in Clean Energy Policy: Comparative Case Studies from the United States and Nigeria' (2024)19(2) *Global Journal of Engineering and Technology Advances*, 169-184.
[23](1974) ECSLR 486.
[24] Suit No.CA/L/143/97.
[25] (2005)4 FWLR (pt. 283) 674.
[26] (1997) 6 NWLR (pt. 508) 236.
[27] (1976)4 SC 85.

Company v Ambah[28]was hit by undue delay as it lasted almost 19 years in the courts. A landmark judgment was delivered in the case of *Jonah Gbemre v. Shell Pet. Dev. Co. Nig. Ltd* [29]for over two decades in favor of the victims of pollution, but no enforcement of the judgment to date.[30]From these decisions, it has become obvious that the victims of oil and gas pollution in Nigeria are not sufficiently protected by the national, civil and administrative courts. In other words, the Nigerian legal and institutional mechanisms are largely ineffective in addressing environmental problems.[31]

Consequently, many Nigerian victims of pollution, especially from the oil and gas sector, are compelled to seek relief elsewhere. An instance is the case of *Social and Economic Rights Action Centre (SERAC) & anor v. Nigeria.*[32]determined by the African Commission on Human and People's Rights in favor of the victims of pollution in the Niger Delta region of Nigeria. The case of *Socio-Economic Rights and Accountability Project (SERAP) v. Nigeria*[33]was instituted at the ECOWAS Court of Justice, which held that the government of Nigeria has violated the provisions of the African Charter[34]and its international obligation to protect its citizens from the activities of the multinational

[28] (1999) 3 NWLR (pt. 593) SC 1.
[29] Suit No. FHC/B/CS/53/05 or (2005) AHRLR 151.
[30] Tosin Ezekiel Ayo, 'Challenges of Enforcing the Polluter Pays Principle as an Environmental Protection Tool in the Nigerian Oil-Producing Community' (2023)10(3) *Journal of Commercial and Property Law*, Nnamdi Azikiwe University Awka 166.
[31] OD Michael & CG Offor, 'Reframing Oil Pollution as a Human Rights Violation and Assessing the Adequacy of Available Legal Redress in Nigeria' (2025)10 (2) *Journal of Law and Global Policy* 132.
[32] (2002) AHRLR 60 CACHPR 2001.
[33] ECW/CCJ/JUD/18/12 (2012).
[34] Article 24 which provides for the rights of the African people to a general satisfactory environment favorable to their development.

oil companies destroying their sources of livelihood.[35] In the words of Ochei *et al;*

As a result of the difficulty in holding the oil companies liable in Nigeria, the oil spill victims decided to sue the parent companies of these oil companies abroad. Recently, there has been an increase in transnational litigations arising from the Niger Delta, which individuals and communities have brought against parent companies in England, the Netherlands, and the US, where most of the parent companies of multinational oil companies operating in Nigeria are based[36].

4 INTERNATIONAL TORTS

International law of torts, also referred to as transnational torts or private international law, means civil wrongful acts that cause injury to people beyond borders. The injury originates from one country but causes damage to lives, properties or the environment of another country or countries which indicates that the parties are based in different jurisdictions.[37]. An instance is the *Trail Smelter Arbitration (United States v. Canada)*[38] where pollution from a Canadian company affected farmers in the United States of America. The case was the foundation of the law that every country should

[35] This judgment conforms to the decision of the American Court of Human Rights in *Velasquez Rodriguez v. Honduras* (IACHR July 19, 1988 Series C. No. 4) which stated that a state should be held liable for breach of its international obligation of protecting the rights of its citizens when it allows perpetrators of harm against the citizens to go unpunished.

[36] Nkem Violet Ochei*, et al*, 'Mechanisms Used by Multinational Oil Companies to Derail Human Rights and Environmental Litigations Arising from the Niger Delta' (2023) *African Journal of Legal Studies* 96. See also Liesbeth Enneking, 'The Future of Foreign Direct Liability? Exploring the International Relevance of the Dutch Shell Nigeria Case' (2014) 10 *Utrecht Law Review* 44–50.

[37] Jennings C Wise, 'Tort at International Law' (1923)17 (2) *American Journal of International Law* 245 – 251.

[38] *16 April 1938 and 11 March 1941, Vol. III pp. 1905-1982.*

control and regulate all the activities within its jurisdiction, and where it fails in this responsibility, the state itself may be held liable because no country is allowed to use its own activities to cause damage to another. That became the foundation of international environmental law to control transboundary pollution.[39]Other environmental disasters on international scale also compelled the international community to cooperate and develop international torts law remedies for victims. In the words of Brunee;

"Within private international law, serious accidents, such as the Torrey Canyon oil spill in the North Sea in 1967, prompted calls for strengthening private tort remedies for transboundary pollution, and issues of compensation and redress were paramount in early international environmental negotiations.[40]"

A country cannot cause environmental damage to another country in the pursuit of its own economic gain, just like what is going on in the Niger Delta region of Nigeria. The courts and international tribunals handling such cross-border disputes have significantly adopted the tort law principles of nuisance, negligence, trespass to land and the rule in *Rylands v. Fletcher* to hold states and corporations accountable for their actions especially when it involves breach of duty of care. In some cases, Non-Governmental Organizations (NGOs) have instituted public interest ligations on behalf of the less privileged especially in the developing countries of the world where the victims of trans-boundary pollution are low-income earners who find it difficult to

[39] DH Dinwoodie, 'The Politics of International Pollution Control: The Trail Smelter Case' (1972)27 (2) *International Journal* 231.

[40] Jutta Brunee, 'Of Sense and Sensibility: Reflections on International Liability Regimes as Tools for Environmental Protection' (2004) 53 *International and Comparative Law quarterly* 351.

access both the domestic and international courts and tribunals.[41]At the end, the judgments are enforced by the national courts.[42]

Unlike the international criminal law which attracts punishment of the offenders through the international criminal law instruments, the victims of the wrongful acts under the international torts are entitled to compensations or other reliefs available in civil litigations. An instance is environmental pollution emanating from one country but causing damage in another country, known as transboundary environmental pollution. The international tort law is used to fill a gap left by the local statutes and treaties thereby allowing private individuals to seek remedy against international tort feasor when international treaties and domestic remedies are not easily available or insufficient. [43]It can be employed to challenge the activities of government or public corporations for overseas violations. Grusic argued that the tort law has, for instance, played a significant role in holding the British government accountable for overseas violation of human rights law by the British owned multinational companies. [44]One major source of international torts law is the decisions of international courts and tribunals which have helped in addressing environmental civil wrongs.

The application of international tort law in the oil and gas industry in Nigeria has been confronted with a lot of domestic challenges which

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[41] Said Mahmoudi, 'Some Private International Law Aspects of Transboundary Environmental Disputes' (1990)59 *NORDIC Journal of International Law* 132.
[42] Michael Anderson, 'Transnational Corporations and Environmental Damage: Is Tort Law the Answer?' (2002) 41 *Washburn Law Journal* 399.
[43] Margaret Hartka, 'The Role of International Law in Domestic Courts: Will the Legal Procrastination End?' (1990)14 (1) *Maryland Journal of International Law* 99.
[44]Ugljesa Grusic, 'How International Tort Law Fills Gaps Tort Law and State Accountability for Overseas Violations of International Human Rights Law and International Humanitarian Law: The UK Perspective' (2021)36 (2)Utrecht Journal of International and European Law 158.

undermine the potency of such remedies. The challenges range from jurisdictions, conflict and choice of law, extraterritorial service of processes, enforcement courts judgments, costs, *locus standi* and the local remedies rule.[45]This is compounded by the fact that many victims of oil and gas pollution are poor and so cannot afford the resources to withstand the multinational oil companies. That gives an edge to the companies against the victims and necessitates the cooperation of the international community to compel the companies.

5. TRANSNATIONAL TORT LITIGATIONS

As we have stated earlier, there are a lot of challenges associated with domestic actions against multinational oil companies not only in Nigeria but also in other countries of the world. The domestic challenges have spurred a lot of victims into instituting actions against multinational companies in their home countries under the international tort law. [46]That is why there is an incredible increase in the number of such cases in the past few decades. Instances of such litigations include *Akpan v. Shell,*[47]*Kiobel v. Royal Dutch Petroleum,*[48]*Wiwa v. Shell,*[49]*Bowoto v. Chevron Corp,*[50]*Okpabi v. Shell,*[51] *Oguru v Shell,*[52]*Bodo v. Shell,*[53]*Lungowe v Vedanta Resources Plc,*[54]*Connelly v. RTZ Corporation Plc*,[55]*Milieudefensie v.*

[45] Bertram Spector & Anna Korula, 'Problems of Ratifying International Environmental Agreements' (1993) *Global Environmental Change* 379.
[46] Liesbeth FH Enneking, 'The Future of Foreign Direct Liability? Exploring the International Relevance of the Dutch Shell Nigeria Case.' (2014) 10(1) *Utrecht Law Review* 44.
[47]Case No. C/09/337050/HA ZA 09-1580.
[48]569 U.S. 108 (2013).
[49]226 F.3d 88 (2d Cir. 2000).
[50]No. C99-02506SI, 2006 WL 2455752.
[51](2021) UKSC 3.
[52], ECLI:NL:GHDHA:2021:1825.
[53](2014) EWHC 1973 (TCC).
[54](2019) UKSC 20.
[55](1999) C.L.C. 533.

Shell,[56] *Vedanta v. Lungowe*,[57] *Milieudefensie v. Royal Dutch Shell,*[58] among others. As we examine some of the cases, the questions that come to mind is whether there is justification for seeking redress in the home countries of the oil companies considering the stress associated with transnational litigations especially in view of the financial plights of the litigants who are most often victims of oil and gas pollution.

6. AKPAN V. ROYAL DUTCH SHELL

In 2008, Akpan and other Nigerian farmers from Oruma and other nearby communities in the Niger Delta region of Nigeria and friends of the Earth instituted actions in the Dutch Court against the Royal Dutch Shell and its Nigerian subsidiaries seeking compensation for damage they suffered from the oil leakage from the pipelines belonging to Shell in Nigeria which flowed into the farms of the plaintiffs and caused monumental damage to crops, creeks and fishponds and thereby rendered them unfit for any use. The plaintiff submitted further that the purported clean-up by Shell commenced many days after the incident and much damage had been caused to the plaintiffs. They further argued that the defendant was negligent in allowing the spill to occur in the first place and without prompt and adequate clean-up of the sites immediately after the incidents. Therefore, the parent company, Shell Plc, was negligent by allowing its subsidiary in Nigeria to carry out oil exploration and production activities in Nigeria without any care for the environment and the lives and properties of the people within the host communities.

The Dutch Court of Appeal ruled that it has jurisdiction to determine the case and held Shell Petroleum Development Company (Nig.)

[56](2021) ECLT 5337.
[57](2019) UKSC 20**.**
[58] Case Number C/09/571932 / HA ZA 19-379, 26 May 2021.

Limited liable for a breach of duty of care for failure to prevent the oil spillage which affected the plaintiffs and the host communities in several ways.[59]It ordered Shell to pay €15 million compensation to the plaintiffs for the damage they suffered, thereby establishing a precedent upholding Shell's civil liability for pollution against foreign plaintiffs. The Dutch Court also directed Shell to be proactive in forestalling further leakage by installing leak detection equipment in its pipelines. Shell agreed to comply with the judgment.

Another interesting part of the judgment was the rejection by the Dutch Court the argument of Shell that the Dutch NGO has no *locus standi* to institute action or join as a party to a case involving Nigerian farmers who were victims of the Shell's activities in Nigeria. The Court refuted the claim quickly and stated unequivocally that the submission "seems an almost disingenuous argument by the corporate defendants".[60]The decision has been hailed not only as a good precedent on transnational tort litigations but also a blueprint for similar claims before other courts, especially in Nigeria. [61]It also indicates that parent companies can also been summoned and sued in their own home courts by victims of their activities in foreign countries and judgments can be given against them despite whose ox is gored. This is food for thought for Nigerian courts handling oil and gas pollution cases involving poor Nigerians and the multinational oil companies.

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[59]Daniel Bertram, 'Transnational Experts Wanted: Nigerian Oil Spills before the Dutch Courts' (2021)33 (2) *Journal of Environmental Law* 423–435.

[60] Cedric Ryngaert, 'Tort Litigation in Respect of Overseas Violations of Environmental Law Committed by Corporations: Lessons from the *Akpan v Shell* Litigation in the Netherlands' (2013) 8 (2) *McGill Journal of Sustainable Development Law* 249.

[61] See Alison Lu Xu, *Four Farmers' Expedition: A Review of the Shell Case*, 2022 <https://www.researchgate.net/publication/359649127> accessed 17 April 2026.

The case of *Kiobel v. Royal Dutch Petroleum* involved a group of people from Ogoni land in the same Niger Delta region of Nigeria against Royal Dutch Petroleum who claimed that the Royal Dutch Petroleum had aided and abetted the Nigerian government in committing some atrocities which included arbitrary arrest, molestation, detention and other degrading treatment against Ogoni people who protested against the environmental degradation of their land by the oil company. The decision of the UK Supreme Court in *Akpan v. Shell* was at odds with the judgment in *Kiobel v. Royal Dutch Petroleum* because the latter was instituted under the Alien Tort Statute (ATS)[62]of the United States of America which provisions are exclusively reserved for issues that originate from the United States. In other words, ATS does not provide jurisdiction for conduct or violations of international law that occurred outside the shores of the US. Kiobel's case was dismissed by the US Supreme Court on that ground. [63]The Supreme Court further stressed that the courts in the US cannot entertain actions by foreign litigants against any corporation within the territory of the US when the subject of litigation happened in a foreign country. The Court added that even if the activity complained against originated from the United States, the court can only exercise jurisdiction when the claims sufficiently touch and concern the United States territory with "sufficient force".[64]

[62]The ATS is otherwise referred to as Alien Tort Claims Act (ATCA) of 1789, ch. 20, § 9, 1 Stat. 73, 77. See also the case of *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386 (2018) the same US Supreme Court held that foreign claims cannot be instituted under the ATS. The same Court stated in *Sosa v. Alvarez-Machain* (2004) 2d 718; 2004 U.S. LEXIS 4763; 72 U.S.L.W that the ATS applies only to a very narrow set of international law violations.

[63]Lee James McConnell, 'Establishing Liability for Multinational Corporations: Lessons from Akpan Available to Purchase' (2014)56 (2) *International Journal of Law and Management* 102.

[64] Jordan Clark, 'Kiobel's Unintended Consequences: The Emergence of Transnational Litigation in State Court' (2014)41 (2) *Annual Review of Environmental and Natural Resources Law* 263.

Clearly, the decision of the US Supreme Court in Kiobel's case has, with due respect, thrown a lot of scholars into some degree of confusion, especially in respect of the intent of the ATS. [65]This is because the philosophy behind the ATS was to confer power on the US federal courts to exercise jurisdiction over claims filed by aliens for torts committed in violation of law of nations and has been repeatedly invoked for torts and human rights protections since the case of *Filartiga v. Pefia-Irala*. [66]The ATS has been perceived as a potent instrument for the control of the activities of parent companies and their subsidiaries, especially in the oil and gas sector due to extensive human rights abuses and weak enforcement of the laws in the host nations. However, the decisions of the US Supreme Court in certain prominent cases such as *Kiobel v. Royal Dutch and Jesner v. Arab Bank* instituted by aliens for their human rights protection have significantly limited the use of ATS against US based parent corporations thereby subtracting from the potency and intent of that statute. [67]Pitts stated that the interpretation and application of the ATS by the US courts have been marked by inconsistencies leading to confusion and debates among scholars over the scope and jurisdictional limitations of the statute. [68]In his own words;

"For decades, the Alien Tort Statute (ATS) has played a valuable role in human rights litigation in U.S. courts. However, in recent years, the

[65]Marin Larkin, 'From Pirates to Corporations: The Evolving Battleground of the Alien Tort Statute' (2026)16 (1) *Notre Dame Journal of International and Comparative Law* 146.
[66] 630 F.2d 876 (2d Cir. 1980).
[67]William S Dodge**,** 'The Historical Origins of the Alien Tort Statute: A Response to the Originalists' (1996)19 (2) *Hastings International Comparative Law Review*<https://repository.uclawsf.edu/hastings> accessed 18 April 2026.
[68]Alicia Pitts, 'Avoiding the Alien Tort Statute: A Call for Uniformity in State Court Human Rights Litigation Human Rights Litigation' (2018)71 (4) *SMU Law Review* 1209.

U.S. Supreme Court has limited the ATS's effectiveness in a number of respects. In response to these decisions, many scholars have predicted that litigants will begin to evade the restrictive ATS jurisprudence by bringing traditional ATS cases in state courts.[69]*"*

He further restated that such inconsistent handling of the foreign claims will significantly affect the ability of the US government to speak with one voice on foreign affairs matters. [70]The inconsistency is also glaringly exhibited in the case of *MariaAguinda et al, v. Texaco Inc*. (US/Ecuador)[71]where a group of Ecuador citizens instituted a class action under the ATS against Texaco (now Chevron) due to environmental degradation, destruction of water sources and injury on the residents. They alleged serious violations of both international law and common-law torts and sought damages against the company. The US Supreme Court decision in this case was at odds with *Kiobel's case,* which was dismissed because it was wrongly instituted under the ATS that did not provide jurisdiction for actions that originated outside the shores of the United States. The same US Supreme Court dismissed *Aguinda's case* on *forum non conveniens ground* which is a milder language of advising or referring a foreign plaintiff to a court elsewhere considered better disposed to handle the case which is common in transnational tort cases particularly in respect of oil and gas pollution claims.

Why the plaintiffs instituted their action in the US Court in the first place was the fear that they could not obtain justice in their home courts due to complicit government and other poor operational practices. Unfortunately, the same US court looked upon for rescue declined jurisdiction and referred them back to their home courts as

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[69]Ibid.
[70] Ibid, 1207.
[71] 303 F. 3d 470 (2d 534 (S.D.N.Y. 2001).

the more appropriate place for their complaints. The decision was upheld despite the insistence by the plaintiffs that they could not get justice in their home country. There was a general belief that the US Supreme Court decision was mainly influenced by Texaco's argument that the case should be better tried in Ecuadorian courts where the plaintiffs live than in the United States. [72]That is why Patel was of the view that the US decision referring the Ecuadorian plaintiffs back to their home court was a sweeping victory for Texaco. [73]Texaco further argued that as a parent corporation, it should not be held responsible for the activities of its subsidiary based in Ecuador. This is inconsistent with the decision in *Akpan v. Shell,* where the Dutch court exercised jurisdiction and held the parent company responsible for the activities of its subsidiary in Nigeria.

The decision in Akpan's case indicates that Texaco should be responsible for the activities of its subsidiaries in Ecuador, which would have justified the case being heard in New York, where Texaco is domiciled. The decision of the US Supreme Court in *Aguinda's case* compelled the plaintiffs to initiate a new action in Lago Agrio, Ecuador, in the year 2003 after many years of frivolous litigation in the United States. Fortunately, and contrary to expectations, the courts in Ecuador awarded the plaintiffs a 9.5-billion-dollar judgment against Chevron in 2011. Texaco (Chevron) refused to pay, insisting that the judgment was obtained without the expected due process. Notwithstanding other things to the contrary, the *Aguinda's case* was hailed as landmark in transnational environmental litigations, illustrating the importance of holding multinational corporations accountable for foreign operations especially their tortuous acts in the

[72]Judith Kimerling, 'Lessons from the Chevron Ecuador Litigation: The Proposed Intervenors' Perspective' (2013)1 (2) *Stanford Journal of Complex Litigation* 261.
[73] Suraj Patel. 'Delayed Justice: A Case Study of Texaco and the Republic of Ecuador's Operations, Harms, and Possible Redress in the Ecuadorian Amazon' (2012)26 (71) *Tulane Environmental Law Journal* 85.

developing countries of the world.[74]Dhooge referred to the case as "… the world's largest environmental lawsuit … from the most vulnerable rainforest dwellers to the most powerful energy companies on the planet."[75]Patel concluded that;

"The decades-long litigation that followed Texaco's operations in Ecuador has offered little in the way of corrective justice for its plaintiffs. It may, however, prove an effective deterrence by showing oil companies and other multinationals that they may be held to account for human rights and environmental violations even where domestic countries were complicit in nonenforcement of regulations.[76]"

These decisions above are at odds with *Oguru v Shell.*[77] (also referred to as *Milieudefensie et al. v. Royal Dutch Shell* plc)[78]which is another case instituted in Netherlands by Nigerian farmers from Oruma and Goi villages in the Niger Delta region of Nigeria along with the Friends of the Earth Netherlands ((Milieudefensie) against SPDC, the Royal Dutch Shell's subsidiary in Nigeria, for oil spills from its pipelines that caused serious havoc to the farmers. The parent company argued that it was not responsible for the activities of its subsidiary in Nigeria. The argument was rejected by the Hague Court of Appeal, which held that the parent company, Royal Dutch Shell, owed a duty of care to the affected farmers through its control and supervision of the operations of its subsidiary in Nigeria. It stated

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[74] Ibid.

[75]Lucien J Dhooge, 'Aguinda v. Chevron Texaco: Discretionary Grounds for the Non-recognition of Foreign Judgments for Environmental Injury in the United States' *Virginia Environmental Law Journal*<http://www.velj.org/aguinda-v-chevron-texaco.html> accessed 19 April 2026.

[76] Suraj Patel (n 78).

[77]ECLI:NL:GHDHA: 2021:1825

[78](2021) ECLT 5337.

unequivocally that Shell was responsible for the oil spillage and so liable to pay compensation to the victims.

The argument by Shell that the spillage was caused by unknown third parties through bunkering, which exculpated it from liability, was also rejected as it was unable to establish the purported sabotage and so answerable for the pollution. The court ordered Shell to clean up the pollution and to provide an adequate leak detection system on its pipelines to avert further occurrence. In December 2022, Shell agreed to pay the sum of €15 million as compensation to the communities as ordered by the court. The decision has demonstrated that victims of pollution as foreign plaintiffs can institute actions against the parent company at its headquarters no matter the distance from the place of the incident.[79]

8. OKPABI V. SHELL

[79]Eddy Wifa& Titilayo Adebola, *Triumph for Farmers and Fisherfolks: The Hague Court of Appeal finds Shell Liable for Oil Spills in Nigeria*<https://www.abdn.ac.uk/law/blog/triumph-for-farmers>accessed 19 April 2026.*Bodo Community v. Shell Petroleum Development Company (SPDC)*[79]is another case in Nigeria where the victims of oil and gas pollution successfully instituted action in the foreign courts and claimed damages. Two oil spill incidents from Shell caused serious environmental damage to Bodo community in the Niger Delta region. The affected farmers instituted action at the UK High Court. The success of the case was facilitated by joint efforts of the victims, Non-Governmental Organizations (NGOs) such as the Amnesty International, UK Lawyers and Journalists who brought the activities of Shell in the Niger Delta region to a limelight. In 2015, Shell accepted responsibility and agreed to pay the sum of £55 million as compensation and clean-up of the affected areas. While £20 was paid to the community as a group, £35 million was shared among the victims. The community suspended the legal action and reserved the right to continue with the litigation if Shell failed to clean-up the affected areas as promised. See SI Azubuike&O Songi,(2020). A Rights-Based Approach to Oil Spill Investigations: A Case Study of the Bodo Community Oil Spill in Nigeria' (2020)1 (11) *Global Energy Law and Sustainability* 28-54.

This is one of the cases that originated from the Niger Delta region of Nigeria but was decided by the English courts. It was a case of negligence by a parent company which failed to control the activities of its subsidiary company in Nigeria. In this case, more than 40,000 citizens of Ogale and Bille communities in the Niger Delta region of Nigeria instituted actions against the Royal Dutch Shell (RDS) and its subsidiary company in Nigeria, the Shell Petroleum Development Company (SPDC), alleging that their sources of drinking water, creeks, rivers, fishes and farms have been damaged by pollution emanating from the activities of Shell. They further contended that their lives, health, fishing, washing, cooking and recreational activities have been negatively impacted by the activities of Shell. They averred that the parent company, being the Royal Dutch Shell (RDS), owed them a duty of care to control the activities of SPDC, which is the local operator of the oil pipelines in Nigeria. In other words, it was the responsibility of the parent body to regulate the latter's activities through sound health, safety and environmental policies which would have averted the environmental harm caused to the plaintiffs. Failure to do so renders the RDS liable.

The case is very important as it was geared towards holding both the parent company and its subsidiary liable for the harm caused by the subsidiary in Nigeria. The SPDC is a company registered in Nigeria and so maintains a legal entity separate from the UK-based parent company. That was why the counter argument of the SPDC was that the UK Courts lacked jurisdiction to entertain the case because the parent company did not owe the plaintiffs any duty of care as it does not operate oil pipelines in Nigeria and so not responsible for SPDC's operations. Based on this submission, the first court and the Court of Appeal dismissed the case for want of jurisdiction.[80]The Court of

[80]Ekaterina Aristova, 'Tort Litigation against Transnational Corporations in the English Courts: The Challenge of Jurisdiction' (2018) 14 *Utrecht Law Review* 6.

Appeal's decision was particularly based on the narrow interpretation of corporate veil separation. The two lower courts stated in clear terms that it was not possible for RDS to incur liability in respect of the activities of its subsidiaries in foreign countries. On appeal, the UK Supreme Court allowed the appeal and quashed the judgments of the two lower courts.

While delivering a unanimous judgment in favor of the plaintiffs, the Supreme Court stated unequivocally that the English courts have jurisdiction to determine foreign cases involving the RDS because of its level of control over the subsidiary companies. Based on that high degree of control, the parent company owed a duty of care to the victims of environmental degradation caused by its subsidiary in Nigeria.[81]This decision has gone a long way to remove procedural and jurisdictional barriers to environmental actions instituted against RDS by foreign nationals affected by the activities of its subsidiaries. Therefore, in the absence of effective remedies in the host countries such as Nigeria, victims can easily access the Dutch courts for remedies. The Supreme Court's decision in this case was in conformity with the precedent set in the earlier case of *Osuwu v. Jackson*[82]where the courts, referring to article 4(1) of the Recast Brussels Regulation,[83]held that an action can be instituted by foreign nationals against an English based defendant without jurisdictional barriers. Therefore, even though pollution caused damage in Nigeria, the case can be heard in the United Kingdom based courts.

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[81]Lucas Roorda & Daniel Leader, 'Okpabi v Shell and Four Nigerian Farmers v Shell: Parent Company Liability Back in Court' (2021)6 (2) *Business and Human Rights Journal* 8.

[82]Case C-281/02 [2005] QB 801.

[83] (EU) No 1215/2012. It provides that actions must be instituted in the courts of any of the states of the European Union against defendant's resident within those member states irrespective of their nationality.

The decision in *Okpabi v. Shell* also followed the same UK Supreme Court earlier decision in *Lungowe v. Vedanta* where it clarified that a UK-domiciled parent company can owe a duty of care to foreign residents affected by the activities of its overseas subsidiary. It was a civil claim for negligence brought by 1,826 Zambian villagers in the Chingola city against Vedanta Resources Plc which is a UK incorporated company and its Zambian subsidiary, the Konkola Copper Mines (KCM) Plc, alleging that wastes discharged from copper mine operated by KCM have polluted their water resources and caused much injury to the villagers, their properties and the environment. Similarly, the High Court and the Court of Appeal declined jurisdiction and stated that the plaintiffs were not right in instituting the action in the English Court when the incident took place in Zambia.

On appeal, the UK Supreme Court held that Vedanta, the parent company, owed a duty of care for any extraterritorial torts committed by its subsidiary in its country of domicile. That became the first UK Supreme Court decision holding a parent company liable in its home court for the activities of its subsidiary.[84]This is made possible when the parent company exercises ultimate control and supervision over the subsidiary's policies and activities thereby making it an indirect owner of the subsidiary. Lord Briggs in this Lungowe's case stated that; Parent companies that hold themselves out in public disclosures as overseeing the human rights, environmental, social, or labor standards employed by their subsidiaries assume a duty of care to those harmed by the subsidiary.[85]

[84] See Penelope Bergkamp, *UK Supreme Court Enables Expansive Supply Chain Liability*, 30 April 2019 <https://corporatefinancelab.org/2019/04/30/uk-supreme-court> accessed 18 April 2026.

[85]*Lungowe v. Vedanta Resournces plc*, [2019] UKSC 20. See also Tara Van Ho, 'Vedanta Resources Plc & anor v. Lungowe and Others' (2020)114 (1) *The American Journal of International Law* 110.

9. CONCLUSION

The examination of the roles of the international tort law and the transnational litigations by victims of oil and gas pollution in Nigeria has become necessary. We have observed from the discussions so far that victims of pollution from the oil and gas sector are compelled to institute actions in the home countries of the multinational companies due to frustrations of technicalities, jurisdictions, burden of proof, *locus standi*, protracted litigations, statutory flaws and unwillingness of the government of Nigeria to enforce the laws against the revenue generating companies. When a state fails in its obligation to safeguard the environment and the people, the people are saddled with the responsibility to seek protection elsewhere. That is why formidable attempt was made to ascertain the benefits of actions instituted in the home countries of the parent companies over the local litigations. It is very clear from the cases examined above that foreign courts have become convenient platforms for victims of oil and gas pollution in Nigeria.

Therefore, a victim of oil and gas pollution in Nigeria whose genuine claims have been dismissed in Nigeria without justifications can proceed to the home countries of the parent companies for continued litigations. It is also imperative to draw the attention of litigants to the frustrations of instituting actions under the Alien Tort Statute (ATS) of the United States. Victims of oil and gas pollution in Nigeria must resist the temptation of instituting actions under the ATS. The cases examined so far revealed that aliens who rushed to institute actions under the statute against parent companies domiciled in the United States were frustrated. The confidence in the ATS is fast eroding due to its susceptibility to frustrating legal technicalities.

Finally, some decisions of the foreign courts in respect of cases that originated from Nigeria are lovely and worthy of emulation by the Nigerian judiciary. Such cases include *Akpan v. Shell*, *Okpabi v. Shell*, *Oguru v Shell and Bodo Community v. Shell.* They were delivered despite whose ox was gored. The decisions were at odds with many Nigerian cases examined above such as *Oronto Douglas v. Shell*, *Ambah v. Shell,Abel Isaiah v. Shell*, *Amos v. Shell*, *Seismograph Services v. Ogbeni* and *Tiebo VII v. Shell* where the victims of pollution went home empty handed after many years of fruitless litigations. Our judiciary should take a cue from the foreign courts.