



*Shell environmental injustice
in Niger delta:
analysis in theory*

Liability and valuation










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EJOLT case studies for liabilities & valuation

EJO	Topic	Method used	Role of EJO	
	The Tana Integrated sugar project KENYA	CBA	Advocacy	
	Oil-related liabilities in Niger Delta NIGERIA	Monetary valuation	Advocacy Court case	
 	Expansion of nuclear power BULGARIA & SLOVENIA	Evaluation of costs and benefits	Arguments in referendum Campaigning	
	Gold mining conflicts TURKEY	Reflections on value and liability	Resistance Court case	

Damage vs Liability

Ecological damage, three categories:

- contamination,
- over-use,
- degradation (structural change in landscape and/or ecosystems)

Paredis et al. 2008.

The Concept of Ecological Debt: its Meaning and Applicability in International Policy

Environmental damage

direct or indirect damage caused to the aquatic environment, flora and fauna and natural habitats protected by the Natura 2000 network, as well as direct or indirect contamination of the soil which could lead to a serious risk to human health

Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage

Damage

injury to natural resources, to real or personal property, loss of subsistence use of natural resources, loss of governmental revenues, loss of profits or earning capacity, and increased cost of additional public services. Damages also includes the cost of assessing these injuries.

Oil Pollution Act of 1990 (33 U.S.C. 2701-2761; 33 U.S.C § 2702(b)(2))

Liability

responsible parties' **obligations** to pay for cleanup costs [of] hazardous substance releases and contamination problems that pose a threat to public health and the environment

CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act (commonly known as Superfund)

Environmental liability

aims at making the causer of environmental damage (the polluter) pay for remedying the damage that he has caused. (...) It applies to environmental damage and the risk of damage resulting from commercial activities, once it is possible to establish a causal link between the damage and the activity in question

Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage

[Pasivo ambiental]

A physical place or material process directly related with the pollution or damage caused (e.g. accumulation of hazardous substances or waste) by a company along its operation phase

Damages caused by oil companies in the Niger Delta

- Sources of evidence
 - Nigerian government
 - Shell's subsidiary in Nigeria (SPDC)
 - Local community members
 - CSOs and international organisations (e.g. UNEP)
- UNEP (2011)'s Environmental Assessment of Ogoniland report
 - “there are, in a significant number of locations, serious threats to human health from contaminated drinking water to concerns over the viability and productivity of ecosystems”
 - Ogoniland's wetlands are “highly degraded” and in need of rehabilitation, threat of “irreversible loss of mangrove habitat in this area”



- Types of damages

Groundwater
contamination
Air pollution
Fish
Crops

Severe health
impacts &
impact in rural
livelihoods



Estimates by UNEP (2011)

Cost estimate for the first five years of restoration in Ogoniland

Item	Cost (USD)
Emergency measures (80% for providing alternative drinking water to communities with contaminated water supply)	63,750,000
Clean-up of land contamination	611,466,100
Clean-up of benzene and MTBE contamination in Nsisioken Ogale	50,000,000
Clean-up of sediments	20,000,000
Restoration of artisanal refining sites	99,452,700
Mangrove restoration and rehabilitation	25,500,000
Surveillance and monitoring	21,468,000
Ogoniland restoration authority operating expenses	44,000,000
Center for excellence in restoration	18,600,000
Alternative employment initiative for those engaged in artisanal refining	10,000,000
Third-party verification and international expert support	48,211,840
Total	1,012,448,640

- Items: clean-up, restoration, monitoring & verification, operating expenses
- If results were extrapolated to the whole Niger delta: USD 42 billion
- Lost of livelihood and health effects not included

Estimates by DeSimone (2012)

Company data and liability estimates

Item	Shell	ExxonMobil	Total	Chevron	Eni
Drilling in Nigeria since (<i>year</i>)	1936	1955	1962	1963	1962
Revenues in 2011 (<i>USD billion</i>)	470.2	467.0	166.6	244.4	110.5
Net income in 2011 (<i>USD billion</i>)	31.2	42.2	12.3	26.9	7.8
Global production (<i>million barrels of oil equivalent/day</i>)	1.173	4.506	2.346	2.673	1.523
Oil and gas production in Nigeria (<i>thousand barrels of oil equivalent/day</i>)	384	350	287	260	154
'Official' oil spill volume in Nigeria (<i>barrels</i>)	21,000	ND	ND	ND	ND
Potential liabilities in Nigeria (<i>USD billion</i>)	4-13	3-7	2-5	2-6	1-3
% of net income	13-42	7-17	16-41	7-22	13-38

Liability estimates:

- potential cleanup, remediation and compensation costs
- liabilities tied to punitive damages **not** considered

Lessons from the case

- Monetary valuation of liabilities is seen as a tool to stop environmental degradation → signal of a damage actually caused
- The monetary quantification of liabilities requires monetary reductionism that necessarily excludes relevant aspects of the damage caused.
Moreover, punitive damages are often set aside.
- For those directly involved, money matters and has a real meaning in terms of their own claims.

Seek of monetary compensation?

- risk to be counterproductive?
- meaningful plans aimed at community self-reliance
(health facilities, schools, agro-ecological developments, alternative energy sources, socio-cultural reinforcement, job opportunities)

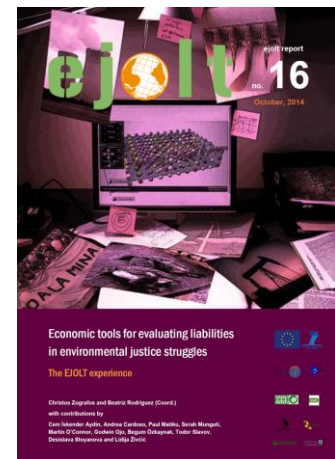
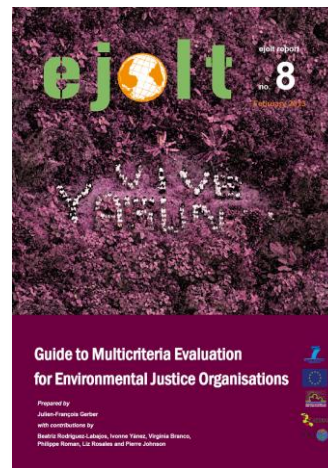
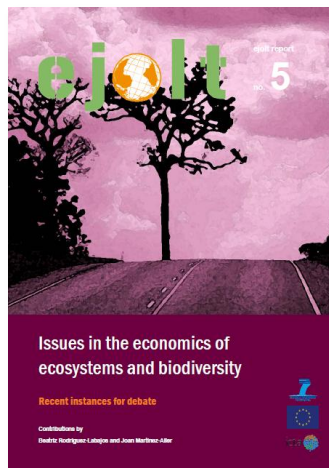
Evaluation tools in EJOLT

- We analyse the experience of EJOs using evaluation methods while pursuing environmental justice.
- In the debate on the use of evaluation tools we elaborate on ...
 - ... which is the relation between environmental justice and socioeconomic evaluation methods?
 - ... which has been the real-world experience of EJOs so far?
- Findings are analysed around three core elements:
 - Context → key relevance of strategic use of methods in contexts of asymmetrical power
 - Tool aspects → proper attention to enabling (e.g. media; court cases) and disabling (e.g. 'technical demobilisation) aspects
 - Conditions → timely evaluations, complementary in broader decision-making processes
- A Decalogue of recommendations is produced, guiding the use of methods before, during and after the evaluation process.

Thank you

Find more in our EJOLT reports

www.ejolt.org/reports



Or **contact us** directly:

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