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Challenges of Enforcing the Polluter Pays Principle as an Environmental Protection Tool in the Nigerian Oil-Producing Community

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Abstract
Nigeria's oil-producing community has been ravaged perpetually by the continued deleterious activities of oil exploration and production. The people live daily with the resource curse, lack in the midst of plenty, the mixed feelings of squalor and squander as poverty leaves permanent scowls on the angry and frustrated faces of their inhabitants. One prominent legal mechanism for achieving the environmental restoration of their polluted community is the 'Polluter Pays Principle' that seeks to ensure that the company that occasions the pollution of the environment be made by law to pay for such pollution to the pollution victims and clean-up of the polluted area as a way of compensation and reparation of the polluted environment. This paper takes a cursory look at the internal workings of the consequential principle and the challenges of enforcing it. It concludes that the principle has not been particularly effective as an environmental protection instrument in Nigeria and makes a set of recommendations capable of achieving the environmental protection of Nigeria's oil-producing community.

Keywords: Challenges, Enforcement, Polluter, Niger Delta, Oil, Pollution

1.0 Background
The Nigerian oil and gas industry is a very robust one which primarily thrives in the nation's oil-producing area. The Niger Delta is the oil-producing community of Nigeria. It comprises the following states of Nigeria; Abia, Akwa-Ibom, Bayelsa, Cross River, Delta, Imo, Ondo, Anambra State and Rivers State[1]The first barrel of oil was discovered in the small community of Oloibiri by Shell-BP in the year 1956 after about 50years of exploration by Shell's parent Company Shell D'Arcy Company, a consortium of Royal Dutch and Shell Petroleum[2]which came to Nigeria in 1937. They were joined by British Petroleum in the year 1946 to form Shell-BP and they were granted a concession covering over 357,000 square miles of Nigeria[3].

The Niger Delta region of Nigeria has a reserve of 22.5 billion barrels of crude oil and 124 tcf of natural gas which makes Nigeria the world's tenth largest producer of oil and gas.[4]The Niger Delta Community has an area of about 70,000 square Kilometres,[5] with a population of about 20 million people.[6] Nigeria has an estimated population of about 166.6 million people, nearly one – quarter of sub-Saharan Africa's population, an area of 924,000 square kilometres, a GDP of $US287.8billion and a GNI per capita of $US1200[7]. The oil-producing Niger-Delta region of

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[1] Part 1, Art 2(2) (1) Niger Delta Development Commission Act, No.2, 1999, LFN 2004.

[2] African Mbendi Website: Full Country Profile <http://www.mbendi.co.za/indy/oilg/af/ng/P005.htm> Accessed 18 June 2023.

[3] Yinka Omorogbe, 'The Legal Framework for the Production of Petroleum in Nigeria' [2012] UALR 27.

[4] *Ibid* n (4).

[5] O. Akpobibibo, 'Sustainable Development as a Strategy for Conflict Prevention: The Case of the Niger Delta', <http://www.ogele.org/features Niger Delta.html> Accessed 21 June 2023.

[6] *Ibid* n (1).

[7] Nigeria's Data, Africa Development Bank Group Report.

Nigeria is thus the bedrock of Nigeria's booming oil and gas sector, a sector that provides 30% of the country's Gross Domestic Product, GDP, 95% of her foreign exchange earnings, about 80% of her budgetary revenues, and over 80% of her export commodity.[8]

Since the advent of the first commercial exploration of crude oil in Nigeria, several IOCs have moved to the country to prospect for and produce oil in order to make profit. They include Shell, Mobil, Chevron, Elf and Agip.[9]The Niger Delta Community like most natural resource-fountains all over the world has witnessed a severe dose of the environmental degradation and continuous pollution. It has been plagued since time past by unwholesome underdevelopment and grim poverty.[10] Years of frequent oil spills into the community's water bodies which have no doubt damaged the means of livelihood of the community which is primarily fish farming and equally rendered their streams unsuitable for drinking, the destruction of their lands which are no longer suitable for farming, the forbearance of the inhabitants with the released acid deposits prevalent on continuous gas flaring into their environment.[11]

A scholar stated that almost every ecosystem and primal culture that has had the misfortune of being exposed to oil exploration and production has been disrupted and in some instances suffered irreversible ruin. He mentioned the destruction of several mangrove forests, associated extinction of wild life species, the destruction of complex animal communities, indigenous populations and the killing of protesters from both non-oil and host oil companies who are averse to the continued pollution and degradation of their environment as examples of the ills suffered.[12] The Niger Delta region of Nigeria was in fact rated as one of the most polluted communities in the world, with over 2.5 bcf of gas flared daily and over 2,000,000 tonnes of crude oil spilled till date in the community.[13]

The Niger Delta region represents an interesting paradox: an extreme mix of economic prosperity owing to the successful operation and profit-making activities of foreign investors and multinational oil companies which are carrying out oil exploration and production on the one hand and a simultaneous environmental degradation and social decay on the other hand: with repeated incidences of oil spillage, gas flaring, uncontrolled pollution of the marine environment, unbridled violence, environmental injustice, threat to wild life, threat to human life, human rights abuse, absence of basic social amenities, lack of access to potable water, and death of marine fish, the Niger Delta Community is one of the most polluted communities in Africa.[14] According to the CNN, the Niger-Delta is one of the most polluted places on the planet with more than 6800 recorded oil spills, accounting for about 9 million to 13 million barrels of oil spilled.

In times past, oil spillage has been a recurrent problem in the Niger Delta. In the Ogoni Community of Rivers State in the Niger Delta for instance, between 1976 and 1980 alone, it was reported that

<http://www.afdb.org/en/countries/west-africa/Nigeria/html> Accessed 07 July 2023.

[8] Fagbohun, *Ibid* n (1). p 2.

[9] *Ibid* n (4).

[10] World Commission on Dams *Report of Inquiry*: Dams and Development; A New Framework for Decision-Making<http://www.dams.org//docs/report/wcdreport.pdf> Accessed 20 June 2023.

[11] Ajuzie C. Osondu, *Our Common Environment: Understanding the Environment, Law and Policy* (University of Lagos Press 2012).

[12] Fagbohun, *Ibid* n (1) p. 3.

[13] Oil Exploration and Spillage in the Niger Delta of Nigeria <http://www.iiste.org/Journals/index…/1868.html> Accessed 20 June 2023.

[14] Nigerians Angry at Oil Pollution Double Standards- CNN.com <http://www.cnn.com/…/Africa/…/nigerdelta.html> Accessed 28 June 2023.

over 1,336,875 barrels of crude oil was spilled in about 784 incidents.[15] There are several forms of environmental degradation in the Niger Delta ranging from air pollution gas flaring causing ozone layer depletion, thermal pollution (heat emission), sound, noise, land degradation, oil spillage and brigandage.

It is therefore against the grim, excoriating, oblique picture of ruin painted above that this paper will be addressing the challenges of controlling the attendant pollution of the Niger-Delta environment through the application of the Polluter Pays Principle as a compensatory mechanism geared towards the cleansing, reparation and restoration of Nigeria's oil-producing community.

1.1 The History of Oil Exploration in Nigeria's Oil-Producing Community

It is important to trace the historical evolution of Nigeria's oil exploration in order to understand the severity of damage and the consequential challenges of taming the tides of pollution occasioned by oil exploration and production activities in the Niger Delta community. The history of oil production in Nigeria predates the amalgamation of the Northern and Southern Protectorates into a single entity to be named Nigeria in the year 1914; it dates back to 1908, when an affiliate of a German exploration company came into a part of the present day Ondo State of Nigeria to prospect for Bitumen (tar sand). It however wounded up its business activities in Nigeria in the year 1914 after a long and fruitless quest for exploration.[16]

At the discovery of oil field by Shell-BP at Oloibiri in the present day Bayelsa State of Nigeria, the first shipment of crude oil was exported out of Nigeria in the year 1958, when 4,900 barrels per day was shipped out of the nation's total capacity production of 5,100 barrels per day.[17] Mobil Exploration Plc in 1955, Gulf oil, now Chevron in 1961, Safrap Plc., now Elf 1962 and Agip Plc in the year 1963 also joined the league of multinational companies prospecting for oil in Nigeria after the 1959 review of Shell-BP's exclusive concessional right to prospect for oil throughout the mainland of Nigeria.[18] The ADCG in its industry Report of May 1999 stated that a total of 18 foreign and 28 indigenous oil companies were operating in Nigeria.[19]This figure had increased to over 70 as at June 2013.[20]This has consequently increased the pollution rate in the Niger Delta over time, thus prompting the need for reparation and compensation.

The first attempt at enacting a legal framework for oil exploration and production in Nigeria was in the year 1914 when the Mineral oil ordinance was promulgated.[21]This ordinance however vested the right to search, prospect and explore mineral oils exclusively on British subjects and companies owned by them.[22] Shell-BP acquired about 15,000 square miles in the Niger- Delta region that it has since converted into mining leases[23]. In spite of the legislative review of the Exclusive concessionary right granted by the 1914 Mineral Oil ordinance to Shell-BP in 1958,[24]Shell Petroleum Development Corporation, SPDC still produces about half of Nigeria's crude oil

[15] A.E Ogbuiwe, 'Compensation and Liability for Oil Pollution in Nigeria' [1985] JPPL 23.
[16] Fagbohun, *Ibid* n (1) p. 153.
[17] Fagbohun, *Ibid* n (1) p. 154.
[18] Fagbohun, *Ibid* n (1) p. 154.
[19] ADCG Report, May 1999.
[20] List of Petroleum Production and Exploration Companies in Nigeria in Nigeria, June 2013 <http://www.millionnairajobs.com>. Accessed 12 July, 2023.
[21] CAP 120, Laws of the Federation of Nigeria, LFN 1958.
[22] *Ibid*.
[23] Yinka Omorogbe, *Oil and Gas Law in Nigeria: A New Empirical Study on Oil and Gas in Nigeria* (Malthouse Law Books 2001) p.76.
[24] Section 2, Mineral Oils (Amendment) Act, 1958.

exports. This is why SPDC has remained the most accused IOC of oil pollution in the Niger-Delta[25]especially by the Ogoni people and other Niger Delta inhabitants.

From a paltry production capacity of 5100 b/d in 1958, Nigeria moved to 415,000b/d in 1966, fell to 142,000 b/d in 1968 due to the prevailing civil war, increased to 1.4million b/p in 1988 and about 3 million b/p in 1996 and currently staggers at 2.5 million b/p due to the activities of militants protesting the degradation of their environment by taking expatriates hostage and blowing pipelines in the region in times past,[26]the militants were given amnesty by the Federal Government but renewed their hostilities by further blowing up pipelines at calculated intervals.[27]

Nigeria still has an estimated proven oil reserve of over 35 billion barrels.[28] This makes Nigeria number (5), five, following The Republic of Iran, Iraq, Kuwait and Libya closely in the OPEC crude oil exports ranking. The Organisation of Petroleum Exporting Countries of which Nigeria is a member collectively possesses over 76% per cent of the world's proven oil reserves.[29] The Department of Petroleum Resources of Nigeria's former Director, Mr. Osten Olorunsola stated that Nigeria's oil reserves stood at a whopping 36 billion barrels of oil, 5.018 billion barrels for condensates, 92.6 trillion cubic feet of associated gas and 90.150 trillion cubic feet for non-associated gas as at January 2012[30].

Nigeria with its daily production capacity of over 2.5m b/d is still OPEC's 5th largest oil reserve member, producing about 55% of the total West Africa's production capacity.[31]

1.2 The Polluter Pays Principle

In the quest to protect the environment by using law as a workable tool for restoring the environment, Nigeria contended that compensation was essential to the restoration of the environment whenever there was any form of environmental pollution which was a consequence of oil exploration and production activities[32]. The need to recompense the inhabitants of a polluted community was borne out of the realization that environmental pollution was an unavoidable reality of oil exploration activities. This underlining remedy to compensate the victims of pollution was what became the 'Polluter pays principle'.[33]

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[25] Nigeria and Shell at War against the Ogoni People, 04 December 2012 <http://www.huhuonline.com/…/407-nigeria> Accessed 07 June, 2023.

[26] BBC News Africa: Pipeline blown up in the Niger Delta, 26 May, 2008. <http://www.news.bbc.co.uk/2/hi/Africa/7419918.stm> Accessed 17 July 2023.

[27] Ex-Militants blow up Crude oil pipeline in the Delta, 20 March, 2013. <http://www.vanguardngr.com/2013/03/ex-militants-blow-up-crude-oil-pipeline-in-delta> Accessed 21 July 2023.

[28] Figure 3.1 OPEC Annual Statistical Bulletin 16 July, 2012. <http://www.opec.org/ASB2012.pdf > Accessed 21 July, 2023.

[29] *Ibid.*

[30] Department of Petroleum Resources Nigeria News Release. <http://www.dprnigeria.com/in_thenews.html> Accessed 12 August, 2023.

[31] Fagbohun, *Ibid* n (1). p. 156.

[32] G Gaucci 'Oil Pollution at Sea: Civil Liability and Compensation for Damage' England: John Wiley and Sons Ltd [1997].

[33] Environmental Law Research Institute *Report* (ELRI 2011) A Synopsis of Laws and Regulations on the Environment in Nigeria. <http://www.elring.org/newsandrelease2.html> Accessed 21 July, 2023.

Plato was a prominent proponent of this principle and he aptly portrayed it thus:

> *"If anyone intentionally spoils the water of another…let him not only pay damages, but purify the stream or cistern which contains the water."*[34]

The PPP is thus aimed at ensuring that the costs of environmental degradation that is a result of polluting activities are fully borne by the person(s) responsible for the pollution[35]. The Polluter Pays Principle was one of Nigeria's methods of attempting to put an end to the pollution that resulted from oil production in the Niger Delta and it was introduced into the legal regime through the Oil Pipelines' Act.[36] It is to the effect that a Polluter must pay for any clean up exercise of a leak, a spill or discharge from its facilities to the environment and also compensate the victims who suffer from the pollution caused[37]. As laudable as this principle of compensation seems, it has achieved very little in reducing environmental pollution in Nigeria or even restoring the environment by cleaning up the polluted sites as reality based on existing realities will show.

The PPP is a principle of the Organisation for Economic Cooperation and Development. It is also contained in The Convention on Oil Pollution Preparedness, Response and Cooperation which Nigeria ratified on the 13th day of May 1995 and in the 1992 Rio Declaration, Principle 16[38].

2.0 Challenges of Enforcing the PPP in the Nigerian Oil and Gas Industry

A series of problems arise in the bid to enforcing this principle with a view to combatting the problems of environmental pollution in Nigeria. These challenges are largely borne out of the peculiarity of the Nigerian nation as a developing nation seeking to maximize her natural resources to its utmost commercial and revenue advantage through oil profit tax on one hand, yet regulating the exploration and production of oil in an environmentally safe and sustainable manner with minimal friction. The challenges are therefore considered below.

2.1 Assessment of Damages:

The quantification of damages is a necessary component of the compensation process in Environmental law. Thus, whether the damage complained of is reversible; i.e. capable of being cleaned up, whether it has a long term effect and the damage is not noticeable instantly, whether there was in fact a historical antecedent of prior spills in the area and the multiplying effect of damage based on the perception of the affected inhabitants are issues the PPP encounters[39]. For instance, the pollution of a river might mean more than the deprivation of potable water to the inhabitants but a destruction of aquatic animals and damage to the source of their livelihood. This situation is more worrisome as the Nigerian law did not specify the mode of payment, the scope and the value of damages payable but it merely provides that the court shall fix the damages[40]. What constitutes damages was therefore not properly delineated, neither is its value sufficiently approximated, this in itself makes it easy to circumvent within the precincts and the purview of law.

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[34] Theresa O. Okenabirhie, 'Polluter Pays Principle in the Nigerian Oil and Gas Industry: Rhetorics or Reality' citing "The Dialogues of Plato: The Laws, Vol. 4, Book 8, Oxford; Claredon Press (4th ed.) 1953. <http://www.dundee.ac.uk/cemplp> Accessed 18 July, 2023.

[35] Susan Wolf and Anna White, Principles of Environmental Law (3rd ed Routledge Cavendish Publishing 2001) p. 16.

[36] Oil Pipelines Act LFN 1990.

[37] *Ibid*.

[38] *Ibid* n (80).

[39] Fagbohun, *Ibid* n (1), p.13.

[40] Section 19 (2), (3), (6) Oil Pipelines Act, 1990.

2.2 The Challenge of Identifying the Polluter:

The definition of PPP is to the effect that there should a polluter, an identifiable pollution activity and that damage must have occurred to the environment which must be compensated by the identified polluter. Identifying the polluter has become difficult in Nigeria in situations where the pollution is not caused by the oil company alone. An oil company who pollutes with the contributory negligence of another or the malicious act of a third party is not deemed a polluter in Nigeria[41]. The fact that the onus of proof of liability is also placed on the oil operator has equally made it very difficult to implement PPP in Nigeria. It then calls to question how the 'accused' is expected to prove his own guilt and consequently secure his own conviction.

2.3 The Unenforceable Character of the Polluter Pays Principle, PPP:

The PPP like most international law provisions are simply declaratory rather than prohibitive. They often lack the compulsion tone of national legislative provisions. Article 16 of the Rio Declaration merely provides that National Authorities should 'endeavour to promote' PPP. The wording of this plea is clearly not assertive and this had adversely affected its implementation by conniving and patronizing States. This is particularly so, as the Nigerian constitution provides that international obligations in treaties be ratified by the National Assembly prior to enforcement[42]. This national legislative affirmation is therefore a veritable clog in the wheel of the enforcement of compensatory nature of pollution-payment progress in Nigeria's oil and gas industry.

2.4 The Lack of Clarity of who is to be Compensated in The PPP:

The imposition of taxes and charges on the Polluting IOCs has not achieved much in restoringthe environment in line with the intendment of PPP. The fact that the Niger Delta inhabitants have been divested of their lands by the Nigerian law[43]has made the compensation not payable to the rural dwellers in the community but to the Federal Government. This compensation had only increased the Government revenue whilst a great chunk of it has enriched Public servants in Nigeria rather than restoring the environment that is plagued by pollution.

2.5 Problem of Finance:

There is financial incapacity of small and medium scale oil companies who pollute the environment to compensate the victims and clean up the polluted sites. Even financially capable oil companies refrain from making thorough clean-up of the spill but employ jobless and indigent indigenes of the Niger Delta to clean up by scooping the spilled oil into buckets with a spade[44]. This flash-in-the-pan clean-up seems to the present author as attempting to have a bath with the water from saliva. It is simply insufficient and ineffective as a clean-up mechanism.

2.6 Sabotage of Oil Production Facilities:

Many oil companies in Nigeria escape liability by claiming that the pollution was a consequence of sabotage of their oil production and transportation facilities. This is a tenable defence under the Nigerian law because oil spillage caused by sabotage does not give rise to the payment of

[41] Section 11 (5) (c), Oil Pipelines Act, 1990.

[42] Section 12, 1999 CFRN. In the Amendment to 1999 Constitution of the Federal Republic of Nigeria, only International Conventions on Labour and Industrial Relations are exempted from this provision. Thus, notwithstanding anything to the contrary in the Constitution, International Conventions on Labour and Industrial Organisations to which Nigeria is a signatory would be applicable and applicable by the National Industrial Courts, whether or not they are ratified or domesticated by the National Assembly.

[43] *Ibid* n (35); Section 44 of the Constitution of the Federal Republic of Nigeria vests all mineral resources in the Federal Government of Nigeria.

[44] A. Odiase 'Environmental and Other Issues Relating to Oil Pollution in Nigeria' [2004] OGEL 2.

compensation under Nigeria's environmental law regime[45]. The Oil Pipelines Act which exempts the oil companies from the payment of compensation whenever an oil spill results from the malicious act of a third person has become a viable defence for polluters rather than the exception to the rule. Oil companies claim that a greater percentage of oil spills in the Niger Delta was a result of sabotage[46] and they equally escape liability by proving that the oil spill was a consequence of default on the part of the injured victims[47].

2.7 Problem of Proof:

Under the Nigerian Legal system, there is a need to prove causation by expert evidence[48] as proof of damages[49] both for general and special damages or the alleged pollution would not be entertained by Nigerian Courts[50]. The financial incapacity to procure the services of an expert by many poor pollution victims naturally leads to the end of their pollution matters in Nigerian courts.

2.8 Nigerian Government's Lack of Political Will

There is a lack of political will of the Federal Government of Nigeria to enforce environmental standards on oil companies and consequently making sure they pay for pollution occasioned by them or their operation. The overwhelming dependence of the federal government of Nigeria on oil rent as its main source of revenue and neglect of other critical sectors of the economy was highlighted as depriving the Federal Government of the requisite nerve to enforce its environmental standards including enforcing rights of reparation, restoration and payment of compensation to the polluted by defaulting oil companies in the quest for oil pollution abatement.[51]The Scholar stated further that this remains perhaps the greatest threat to an effective environmental culture in Nigeria with special focus on the petroleum industry and the negative environmental implication of oil exploration activities.[52] The federal Government of Nigeria's role as an investor, a regulator and an enforcer has not only led to inefficiency and mismanagement in the oil sector but it has affected its sincerity in tackling pollution in the Niger Delta.

2.9 Abolition of the Power of Nosdra to Accept Gifts

The power of the agency to accept gifts [53] is questionable. It is equally disturbing that a sensitive regulatory agency like NOSDRA is legally allowed to receive gifts even though funding is important for the effective realization of its policy objectives and for an efficient discharge of its regulatory responsibilities. There is a great tendency and huge likelihood for abuse as all forms of bribes, incitements, inducements and compensations for compromise could find themselves in the agency's coffers as 'gifts' as short corners to avoidance of the payment of adequate compensation to oil-pollution victims, this is very rife considering the volume of cash available in the industry and the amount of profits to be made if environmental standards are compromised and polluters are allowed to pay less for severe damage.

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[45] Section 11 (5) (c) Oil Pipelines Act 1990.
[46] Oil Spill in the Niger Delta <http://www.oilspill.com> Accessed 17 July, 2023.
[47] Umudje V Shell BP Nigeria Ltd (1975) 11 SC 155.
[48] Section 56, Evidence Act, LFN 2004. Seismography Service (Nigeria) Limited V Ogbeni (1976) 4. S.C 85 p 98-101.
[49] *Obanor V Obanor* (1976) 2.S.C 1 P 5-6.
[50] *Odumosu v African Continental Bank Limited* (1976) 11 S.C 55 P 67-69.
[51] O.Oluduro 'Oil Exploration and Human Rights Violations in Nigeria's Oil Industry' <http://www.africafocus.eu.file119> Accessed 12 July, 2023.
[52] *Ibid*.
[53] *Ibid.*

Other challenges include the fact that NOSDRA is limited in its oil spill detection, response and environmental clean-up of impacted sites because it does not have prosecutorial powers under the enabling Act. It is only empowered by the Act to impose small monetary fines on oil spillers; this is why pollution continues unabated in the Niger Delta by the oil companies operating thereon. This unwholesome 'pat on the wrist' is regrettable and unfortunate. The then Chairman, Senate Committee on Environment and Ecology, Senator Abubakar Bukola Saraki now Nigeria's Senate President called for a review of the NOSDRA Act 2006[54]after expressing dissatisfaction with NOSDRA's call on AGIP Company Ltd to pay the prescribed 1million naira, an equivalent of less than (£2000) as fine for AGIP's alleged failure or refusal to contain, stop and clean up an oil spill it caused at its OB/OB Gas plant in Obrikom, Omoku in Rivers' state of Nigeria[55]. Without an enabling law to prosecute environmental offenders or impose commensurate fines in the true spirit of the PPP, oil spillages and other forms of environmental degradation will continue unchallenged in the Niger Delta. For instance, oil spills in the oil-producing Niger Delta community has done serious harm to both the inhabitants and the ecosystem. An estimated 15 million barrels of crude oil has been spilled in the Niger Delta since the inception of oil exploration in the region from the year 1956[56]. Regrettably, even oil spillages that occurred over 4 decades ago are yet to be cleaned by the oil companies that spilled them. This regrettable trend continues unchallenged because IOCs take advantage of Nigeria's weak laws and her lack of a workable enforcement mechanism.

The federal Government of Nigeria is not unaware of some of the problems that have rendered its agencies ineffective in ensuring compliance and enforcing strict environmental standards on IOCs with a view to combating the environmental pollution caused by oil and gas development in the Niger Delta, it is consequently making effort to address them. Some of them will be mentioned as they relate to the government agency concerned, but there is still a lot to be done in order to achieve an environmentally responsible oil and gas exploration and production in Nigeria.

Beyond all these, there appears to be incidences of judicial corruption and heavily monetized justice system currently plaguing the Nigerian Judiciary with reported cases of Judges taking cash in exchange for truth and selling justice to the highest bidder in the court room largely described as the court of law, not a court of justice. All these challenges point to the fact that the Polluter pays principle has not been effective in addressing pollution challenges in the Niger Delta.

3.0 Conclusion

This paper has identified that the provisions in Nigeria's legal regime for ensuring that the polluter pays for defiling the environment as a result of its oil-exploration activity is inadequate for addressing environmental pollution in the Niger Delta and proven that the regulatory agencies have been largely ineffective in regulating the industry and addressing pollution in the oil-producing community of the Niger Delta. It has also particularly shown that the Polluter pays Principle has been ineffective as a compensation mechanism for restoring the environment as it stands, the following recommendations are hereby proposed for a better protection of Nigeria's oil-producing environment.

[54] Oil Spill: Nigeria at the Threshold of a New Era. <http://www.environewsnigeria.com/2013/02/07> Accessed 12 August, 2023.

[55] *Ibid*.

[56] United Nations Environmental Programme Report: 'Ogoniland Oil Assessment Reveals Extent of Environmental Contamination and Threats to Human Health'. <http://www.unep.org/newscentre/default.aspx> Accessed 14 August, 2023.

4.0 Recommendations

A comprehensive review of the Oil Pipelines Act 1990:
The Oil Pipelines Act 1990 should be reviewed to specify the mode of payment of damages, the scope and the value of compensation and the victims to be compensated. The money paid into the coffers of Government should be used for restoring the environment through a fund designated as the (Pollution Abatement Fund) for the clean-up of oil spills in the Niger Delta. Section 11(5) (c) which precludes polluters from compensating pollution victims when the pollution is caused by the default of the victims should be expunged because of its tendency for abuse and the law should not exempt polluters from liability on sabotage grounds but create an oil pipeline protection agency to guard all pipelines against vandalism.

Staff training and Human Capital Development:
The staff of the agencies must be imbued with the capacity for effectiveness, bureaucratic competence, the will not to compromise on quality, propriety, environmental standards, uncompromising integrity and the central core values of the organization must be to achieve equity, fairness, environmental restoration, efficiency, participatory decision-making, sustainable development, probity, transparency and accountability.

Abolition of the gift receipt powers of NOSDRA
The provision for power to receive gifts of NOSDRA should be expunged in order to reduce the likelihood for abuse and propensity for graft and official corruption. An increase of government subvention, an establishment of an 'Environmental Trust Fund' or an 'Oil Spillage Liability Trust Fund' and adequate funding of the agency is hereby advocated in order to ensure the smooth and effective running of the agency and increase its financial/economic independence. Section 11 of the NOSDRA Act 2006 which granted the Agency the power to maintain a fund[57] in order to prosecute its functions and also be given a take-off grant fund from the Federal Government, annual subvention from the consolidated revenue; counterpart funding from states and local Government, loans from national, bilateral and multilateral agencies; and other internally generated revenues, should be extended to include the receipt of the payment of all fines by oil spillers and polluters including corporate bodies and their personnel. Increased subvention is hereby thoroughly suggested to enable the agency to monitor, move, visit, detect and respond to oil spills across the country. The raised funds can then be deployed for the true clean-up of pollution sites in the Niger Delta in the correct intention of PPP.

A comprehensive review of the NOSDRA Act 2006 to enable NOSDRA to prosecute oil spillers and enforce PPP
The National Oil Spill Detection and Response Agency (Establishment) Act 15 of 2006 should be comprehensively reviewed to empower NOSDRA to prosecute oil spillers. The imposition of a paltry 500,000naira, an equivalent of (£1000) and 1,000,000naira, i.e (£2000) respectively for spilling and failing to clean-up a polluted area is greatly inadequate and incapable of addressing such a grievous environmental crime that degrades the environment and inflicts deleterious injuries to the health of the oil-producing community inhabitants. It is hereby recommended that the Act be reviewed to empower the agency to prosecute offenders (the personnel) with imprisonment and the fine should be increased to a minimum of 5billion naira, an equivalent of (£10,000,000) for oil spill and 10 billion naira, an equivalent of (£20,000,000) for neglecting to clean-up the spill. The imposition of these huge amounts will go a long way in preventing oil spillages where preventable,

[57] Section 11, NOSDRA Act, 2006.

reduce complacency and negligence, it will ensure that oil companies operating in Nigeria will exercise all due diligence in preventing oil spillages and dissuade them from refraining to clean up spills. The NOSDRA enabling Act should be amended to conform to best international environmental standards that are capable of protecting the Niger Delta environment and making it an oil-spill-free community. The new Act should compel all oil companies that own, run or use oil pipelines, storage vessels or tanks to report any leaks, spill or accidental discharge to the agency immediately it occurs, and the failure to do so should attract a huge monetary fine for each day the spill persists.

Investment in capacity development for better monitoring and surveillance

The Law must be used as a tool for creating better capacity for developing the monitoring and surveillance drive of Environmental regulatory agencies like NOSDRA and DPR in order to properly monitor pollution-prone sites, respond more quickly to oil spillage and infringement of environmental standards.

The submission and implementation of an action plan for remediation and restoration

The National Oil Spill Detection and Response Agency should be empowered to compel the party responsible for oil spill to submit an action plan for remediation and restoration of the polluted site within one week of spillage detection. The plan should timeously be implemented in order to achieve the restoration of the polluted community. The failure to submit the action plan by the spiller within one week of the occurrence of the oil spillage should also attract a costly fine.