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APPRAISAL OF POLLUTER PAYS PRINCIPLE IN THE NIGERIAN HYDROCARBON INDUSTRY: BEST PRACTICES FROM UNITED KINGDOM AND NORWAY

By

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Abstract

This research examined the legal applicability of the polluter pays principle in the hydrocarbon industry in Nigeria with a view to proffering ways for improving and maintaining the environment. The paper explored the need to employ the PPP as a mechanism for redressing major environmental malfeasance in the petroleum industry. The magnitude of environmental pollution and the lack of development in Niger Delta region, has made the environment uninhabitable though hydrocarbon resource is the backbone of the State economy. The PIA 2021 with other legislation attempted to address all aspects of hydrocarbon industry operations, from legal governance, regulatory and fiscal. However, despite the passing of this legislation, pollution emanating from hydrocarbon industry persist and degrades the environment till date especially in the Niger Delta region. The doctrinal method of research was adopted in this paper, while primary sources of information were distilled from case laws and legislations, the secondary sources of information were derived from journal articles, periodicals, and internet sources. This paper found that Nigeria's current hydrocarbon industry legislation are inefficacious and unable to curb the pollution and effect of hydrocarbon industry operations on the environment, for reasons such as lack of effective regulatory provisions among others. The paper recommended that the polluter pays principle be made a hard law, by express capture under our domestic laws, establishment of Nigeria Gas Flaring and Venting Authority, specifically saddled with the mandate to regulate gas flaring, as done in Norway amongst others.

Keywords: Polluter Pays Principle, Best Practices and Hydrocarbon Industry

1. Introduction

The polluter pays principle [2](PPP) is notably one of the many environmental law principles developed by policymakers as part of a global commitment to enhance environmental protection.[3] Therefore, the principal forms part of international, regional, and national laws, policies, and strategies for managing the environment. This principle glaringly echoes Plato's argument that, if anyone intentionally spoils the water of another…let him not only pay the damages, but, purify the stream or cistern which contaminates the water.[4]

Apart from the PPP, there is a wide range of environmental law principles developed globally for environmental protection and sustainability amongst which are the principle of preventive action, principle of cooperation, principle of sustainable development, principle of common but differentiated responsibility and the precautionary principle.[5] The preference for PPP in this paper is predicated on its potential to assume both a preventive dimension which is an attribute of the preventive principle and anticipatory dimension which is an attribute of the precautionary principle.[6]

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[2] Harmful Waste (Special Criminal Provisions) Act 1988, Decree No. 42 s 12(1); s 26 (3) of the Oil Spill Recovery, Clean-up, and Remediation Damage Assessment Regulations 2011.

[3] UNEP, Global Environment Outlook: Environment for Development (UNEP) xvi, M A Dumbly, 'Poverty, Wealth, and Obligation in International Environmental Law' [2002] 76 *Tulane Law Review* 843-846

[4] Plato, *The Dialogues of Plato, Translated into English with Analyses, and Introductions* (3rd edn, Oxford University Press, 1892) 845.

[5] N. DeSade leer, *Environmental Principles: From Political Slogans to Legal Rules* (Oxford University Press 2002).

[6] *Ibid.*

In Nigeria, the Niger Delta region is the core hydrocarbon industry producing region, unfortunately, its communities are not ideally benefitting from the proceeds of the hydrocarbon exploration and production[7]. Hydrocarbon production has persistently had negative impact on the environment and as well, the socio-economic well-being of people living in the hydrocarbon producing communities[8]. Thereby depriving indigenes of their traditional means of livelihood such as fishing and farming[9]. The magnitude of the devastation to the environment from hydrocarbon exploration and exploitation activities coupled with poor development of the Niger Delta region, has consistently led the inhabitants to constantly protest over their marginalization.[10]The discovery of natural resources of high local and international demand in commercially exploitable quantities, would ordinarily raise high hopes and expectations in any nation globally. However, occupants of the Niger Delta communities where these natural resources are discovered expect to witness positive transformation to aid and improve their livelihood, but the reverse is the case.

2. Conceptual Framework

a. Pollution

The term pollution has been identified as human made or human induced man-made alternation of the quality of the environment beyond sustainable levels.[11] Pollution comes from the root word 'pollute'. To pollute means to render a substance impure, corrupt, or ritualistically unclean[12]. It also means to defile or contaminate the environment with harmful substances and sounds[13]. It has also been defined as the unnatural discharge of harmful substances into the environment. [14]

b. Polluter Pays Principle

The polluter pays principle (PPP) is an environmental policy principle that suggests that the party responsible for causing pollution or environmental damage should bear the costs associated with remediation or mitigation measures.[15] In essence, it asserts that those who pollute or contribute to environmental harm should be held financially and legally accountable for the consequences.[16]

c. Hydrocarbon

Hydrocarbon is an organic chemical compound composed exclusively of hydrogen and carbon atoms, hydrocarbons are naturally occurring commands that form the basis of crude oil, natural gas, coal and other important energy source of fuel.[17] .[18] It is often referred to as the 'black gold'.[19]Hydrocarbon is further defined as a complex mixture of hydrocarbons naturally occurring beneath the Earth's surface in liquid, gaseous, or solid form which constitutes the primary fossil fuels.[20]

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[7] L A Atsegbua, and Others, *Environmental Law in Nigeria, Theory and Practice* (2nd Ambik Press Publishers 2010)94-95.
[8] Y Omoregbe, 'Regulation of Oil Industry Pollution in Nigeria' in Epiphany Azinge (ed), *New Frontiers in Law* (Oliz Publishers 1993) 148.
[9] A Henri-Ukoha, 'Oil Exploitation and its Socioeconomic Effects on the Niger Delta Region of Nigeria' [2016] 23 (13) *Environmental Science and Pollution Research* 128-129.
[10] N E Ojukwu-Ogba, 'Legal and Regulatory Instruments on Environmental Pollution in Nigeria: Much Talk, Less Teeth' [2006] 8 *International Energy Law and Taxation Review* 201
[11] NESREA Act s 37.
[12] The New Lexicon Weber's Dictionary of English Language [1991].
[13] B. A. Garner, *Black's Law Dictionary* (West Publisher, 2009) 112.
[14] C. Schwarz,*Chambers Concise Dictionary* (2nd edn, Chambers Harrap Publishers Ltd 2016) 123.
[15] L. A. Atsegbua, and Others, *Environmental Law in Nigeria, Theory and Practice* (2nd Ambik Press Publishers 2010)94-95.
[16]*Ibid*
[17] D. Yergin, *The Prize: The Epic Quest for Oil, Money & Power* (New York: Free Press 1990) 138.
[18]*Ibid*.
[19] *ibid.*
[20] G. I. Atwater, 'Oil', <https://www.britannica.com/science/petroleum> accessed 14 March 2022.

3. The Effect of Hydrocarbon Industry Activities on the Environment

The attendant pollution that arises from hydrocarbon operations is worrisome as these operational activities in this sector causes great harm to host oil producing communities and the environment.[21] Nigerian's economy is largely dependent on the hydrocarbon sector, which supplies 95% of the country's exchange earnings with a daily production of about 2.0 million barrels of crude oil and a proven gas reserve base of over 187 million cubic feet estimated to be the largest in the world.[22] In spite of the economic significance and benefits of hydrocarbon proceeds to Nigeria's economy as its primary source of energy and revenue, it however, comes with serious environmental consequences inherent in the sector[23]. Each stage of the hydrocarbon extraction from seismic survey of oil production and refining results in a considerable impact on the environment.[24] Some of the effects includes, but not limited to physical smothering impacts on flora and fauna, physical and chemical alteration of natural habitat, lethal or sub-lethal toxic effects on flora and fauna, changes in biological communities resulting in oil impacts on key organisms, damage to soil productivity, damage to crops, depletion of fish population in the water bodies and water contamination.[25]Other impacts are water and air quality depletion and loss of the aesthetic value of natural beaches caused by oil slicks, for instance the Bodo community spill in 2008, pollution in Okuluebu- Ogale 2009, Baraale community oil spill 2002. All these cases are life incident of hydrocarbon industry pollution in Ogoni land.

4. Legislative Enactments on Polluter Pays Principle in Nigeria

Specifically, section 12(1) (2) and (3) of Flare Gas (Prevention of Waste and Pollution Regulations) 2018, generally prohibits the flaring and venting of natural gas, specifically section 12 (1) which provides to the effect that no producer shall flare gas from any facility operated by such producer except pursuant to a certificate issued by the minister, subsection 2 of the same section provides that no permit holder shall engage in routine flaring or venting of natural gas from any facility operated by such permit holder. Despite the lofty provision this regulation as stated above, the mechanism for its enforceability remains porous. As seen under section 13(1) of the same regulations which provides for payment of flaring gas at a meagre amount of $2.00 (two United States Dollars) per 28.317 standard cubic meters (one thousand standard cubic feet) of gas flared. However, the regulation provided thus, that there shall be no liability for the payment where the flaring was caused by any of the following events; act of war, community disturbance, insurrection, storm, flood, earthquake or other natural phenomenon, which is beyond the reasonable control of the producer. It is the submission of the researcher that polluters would hide under these stated exceptions to exculpate liability, hence, encouraging the act of flaring constituting pollution in the hydrocarbon industry. Consequently, section 20 (1) provides for metering equipment used for the measuring and venting of gas produced associated with crude oil production. Furthermore, section 21(1) of the above regulation provides for the sanctions upon failure by producers to prepare, maintain metering equipment the minister may direct the producer to suspend the operations or revoke the licence given as provided for sub section (2) of the above provision. However, the researcher submits that by given sole discretion to the minister to suspend or revoke a licence based on producers' default to install metering system opens an avenue for misuse of power by the honourable minister.

Furthermore, by virtue of the pollution inherent in the hydrocarbon industry operations, operators of such industries, are obliged to pay compensation for oil spill to victims for damage caused to the victims' person, business, or property[26]. Despite, this provision in the above regulation, the section does not cover the value of the properties or items affected by oil spillage in accordance with the current global

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[21]O M Akpo, *Oil, Niger Delta & Nigeria* (Jenioue International Co. Ltd 2003)16.

[22]W O Yusuf and Others, 'Recent Developments in the Oil and Gas Law in Nigeria: The Role of Law Teachers. A Paper Presented at the Annual Conference of the Nigeria Law Teachers Conference held at Port Harcourt, Nigeria from 17th - 20thJuly 2011.

[23]T. W. Walde, *Environmental Policies Towards Mining in Developing Countries* [2006] OGEL; 328-329

[24]O. C. D. Aniejionu, Hydrocarbon Pollution in the Niger Delta: Geographies of Impacts and Appraisal of Lapses in Extant Legal Framework, Resource Policy 45 [2015] 67-68.

[25]E. O. Ekhator, Environmental Principles: From Political Slogans to Legal Rules (Oxford University Press 2002); 67.

[26]Oil Spill Discovery, Clean-Up, Remediation and Damage Assessment Regulations, 2011, s 26 (1)

economic value being placed on such property, as at the time of occurrence. Thus, creating a leeway for operators in the hydrocarbon industry from deterring from oil spill pollution activities. Therefore, operators still pollute the environment through oil spillage, as the regulation does not expressly provide the exact amount to be paid as compensation. The provision provided only for the basis for compensation, in the event of spillage, without specifically detailing the amount commensurate with the pollution caused to the properties and environment, operators of hydrocarbon industry would continue to pollute the environment. Hence, making the aim of the said provision not achievable as operators would prefer to pollute to pay compensation.[27]

Additionally, section 107 (b) of the PIA also exempted licensee or operators in the hydrocarbon industry from liability upon flaring, when such is for strategic operational reasons, including testing. Thus, operators may hide under the coverage of this exemptions to continue flaring, as the term 'strategic operational reasons' is not define thereby defeating the essence for which the section of the law on prohibition on gas flaring was meant for. Conversely, section 104 earmarks the flaring penalties paid to the Commission for environmental remediation and relief of the host communities in the oil producing area on which the penalties are levied. However, the exceptions provided under this section 104 (a) and (b) exculpates licensees from flaring penalties where flaring occurred in the case of emergency. It is disheartening to state, that this provision is vague, as it does not state nor mention circumstances constituting emergencies cases, therefore, warranting such companies to flare. Furthermore, subsection (b) of the same section 104 also exculpates licensee from liability from gas flaring penalties, where such as was flared is with the exemption of the commission. It is submitted that such magnitude of power granted the commission by the act, can be easily abused, as the commission is at liberty to decide which company to grant such exemption and the limitation for granting such exemption is not also stated by the provision granting same, hence, literally subject to manipulations and excessive abuse.

Furthermore, section 108 requires all producers of natural gas to submit a plan to eliminate flaring to the Commission within 12 months of the effective date of the Petroleum Industry Act. This provision not entirely consistent with the Flare Gas (Prevention of Waste and Pollution) Regulations, 2018 which prohibit at a cost of a significant additional penalty, producers of associated gas that was being flared as of January 1, 2020, from making attempts to monetize the gas and eliminate flaring if the gas was selected for an auction. Although the 2021 law refers to the 2018 regulations, the Commission will revise those regulation and issue new regulations, including regulations that clarify that flare payment. However, the effective implementation of this section has not yet been seen in the light of the country's commitment to deepening investment in the gas sector. Further, section 13 of the Flare Gas (Prevention of Waste and Pollution) Regulations, 2018, increased the payment for flared gas and set out procedures for competitive bidding processes to auction the gas being flared to third parties as monetization mechanization, these auctions are integral to the Nigerian Gas Flare Commercialization Plan (NGFCP).[28] Also, the act allows for the suspension or revocation of the license in the event of continued non-compliance.[29] However, there is no evidence of license revocation because of flaring-related offences has not been made public.

The Oil in Navigable Waters Act[30] embodies the "polluter pays principle", it provides that the owner or master of a ship or vessel, or the occupier of land from which discharge emanates and enters into prohibited area of Sea or Land is guilty of an offence.[31] However, Section 4(1) and (2) provide defences such as discharge for the purpose of securing the safety of any vessel, or preventing damage of any vessel or cargo, or of saving life or the escape is as a result of damage to the vessel or leakage which was not caused by the owner's fault and all reasonable steps were taken to prevent or stop or reduce the escape of the oil or mixture as soon as practicable after the damage occurred. However, there is a proviso

[27] *ibid,* s 27.
[28] Flare Gas (Prevention and Waste Pollution) Regulations, 2018.
[29] *ibid,* s 21 and 22
[30] Cap 337 Laws of the Federation of Nigeria, 1990.
[31] Oil in Navigable Water Act, 1984, ss 1 and 3.

to subsection (1) of Section 4 of the Act to the effect that a defence under the subsection shall not have effect if the Court is satisfied that the discharge of oil or mixture was not necessary for the purpose alleged in the defence or was not a reasonable step to take in the circumstance. It is submitted that since the defences under the Act can easily avail a polluter to escape liability as they can be man-made, it does not provide for the principle in the strict sense of the word. In fact, a polluter can easily claim that the discharge was for the purpose of saving a vessel or cargo or life even if it is not, and even if it is, the defence of saving a vessel or cargo should not be a good defence to avail a polluter the opportunity to avoid liability, bearing in mind the effects of pollution on human lives and the environment. Sometimes the effect last for long or takes a long time before it manifests. In any case, it is the responsibility of the company or individual concerned to maintain the vessel or facility to avoid leakage. It is also discovered that the principle is not expressly provided for in our national laws, but it can be implied from some laws. In some cases where it is implied, the defences are too many and or flimsy, and intention and fault are required as conditions for liability and, or conviction.

5. Judicial Justification of Polluter Pays Principle in Nigerian Hydrocarbon Industry

It is in the light of these that recommendations will be made in this paper. But before that, we must look at the justification of the principle, its application under case laws, and examine compensation provisions in our laws. The "polluters pay principle" (PPP) is justified on the ground that as the polluter is obliged to bear financial costs for the pollution caused by him, it will induce him to avoid polluting the environment as much as possible to save such costs which of course will be enormous. As a matter of fact, no one would like to spend money in paying compensation to victims of pollution, and in restoring the environment to an acceptable state. This will in turn reduce pollution of the environment and in consequence will enhance the existence of a "pollution free environment". The cases below illustrates the application of strict liability for pollution activities in the legislations stated above: In *Rylands v Fletcher*[32] which is the locus classicus on strict liability, the court held the defendant strictly liable. The facts of the case are that the defendants employed independent contractors to build a reservoir on their land. Some disused shafts on the site were carelessly left unblocked by the contractors. These misused shafts permeated into the plaintiff's coal mine beneath the reservoir, so that when the reservoir was filled, water escaped down the shaft and flooded the plaintiff's coalmine. The defendants conduct did not appear to come within the scope of any existing tort.

6. Analysis for Compensation for Environmental Pollution in Hydrocarbon Industry in Nigeria

The legal regime for compensation of victims of environmental pollution evolved basically as a result of the need to balance the conflicting interests between the victims and those who are responsible for the pollution, mostly the multi-national companies which have been licensed to operate in the Nigerian hydrocarbon Industry.[33] In other words, where the Government cannot afford to stop the pollution generating operations of those companies in view of the huge economic fortune the Nigerian Government derives from the Petroleum Industry, the law has however deemed it necessary to provide some legal regime under which the victims of such pollution can claim compensation for the hazardous effect of the pollution on their lives, means of living and valuables. It has been stated elsewhere, and rightly in our view, that there is no comprehensive or one stop legislation which provides for compensation for hydrocarbon pollution in Nigeria. Be that as it may, it is the intention of the researcher to examine the constitutional, statutory, and common law provisions which in one way or the other touches on compensation claims vis-a-vis environmental pollution. In *R M and B Igara v. Shell B.P. Petroleum Company of Nigeria Limited*,[34] the court awarded the Plaintiffs two hundred naira as fair and reasonable compensation. Also, *in Umudje v. Shell B.P. Development Company of Nigeria*,[35] the trial court awarded seven thousand two hundred pounds as fair and reasonable compensation.

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[32] (1866) L. R. Exch. 265 at,279, 280.

[33] O F Emiri, 'An Economic Analysis of the Right to Compensation for Oil Pollution' [2006] (2) (2) DELSU Environmental Law Review; 406.

[34] Petroleum (Drilling and Production) Regulation 1993.

[35] Cap M12, LFN, 2004.

7. Barriers to Effective Enforcement of PPP in the Nigerian Hydrocarbon Industry

Although the Polluter Pays Principle is an accepted principle of environmental law in Nigeria, is pertinent to note the Rio Declaration, does not impose any obligation on states to enforce those principles, being as it were mere declaration without more, cannot make the principle enforceable. The effectiveness of the principle is marred with many exceptions which obviously act as loopholes for polluters to escape liability under the Nigerian legislative regime, for instance the provision of section 11 (5) of the Oil Pipelines Act[36]. The effectiveness of the polluter pays principle is further accentuated by the fact that the onus of proof in pollution cases is often on the victim. Additionally, the adequacy of the compensation paid by polluters under the Nigeria laws is questionable. For instance, under the Petroleum Act of 1969, the Act banned gas flaring. However, the Act provided for an option of paltry fines of US $0.063 per standard cubic feet flared. The polluters find it more economically viable to flare the gas and pay paltry fines, than to invest in facilities for re-injection or utilization of associated gas.

a. Pipeline Vandalization and Sabotage:

The bulk of oil spill in Nigeria is attributed to pipeline vandalization and sabotage, at least from the point of view of multinational oil companies. Where allegation of sabotage is held to be true, the question then becomes one of determining the real polluter, who should be held to account. Is it the vandal or the owner of the facility? What happens where the culprits of these act are not identifiable? Does the polluter pay principle become irrelevant at this point, and impotent, because liability whether civil or criminal cannot be placed on anyone? This seems to be where our laws stand at this point. The cover provided under section 11 (5) of the Oil Pipeline Act, which exculpates a polluter where damage to a pollution victim result from his own default or the malicious act of a third party has made the application and implementation of the principle difficult and dormant as was seen in the case of *Paul Kpakol and Others v Shell Petroleum Development Company (Nig.) Ltd.*[37]The case of *Shell Petroleum Development Company (Nig) Ltd v Chief Graham Otoko,*[38]was for the compensation for injurious affliction and deprivation of the use of the Andoni River and Creeks as a result of crude oil spillage from the defendants' facilities, caused by their negligence. At the court of first instance, judgment was given for the plaintiff, but on appeal, it was held that the allegation of negligence on the part of the defendant/appellant was not proved and since damage to the plaintiff resulted from the malicious act of a third party the defendant/appellant cannot be held liable. Therefore, these decisions cannot be supported, because if the oil company, who owns and operates the facility is not allowed to pay for damage resulting from the independent act of a third party, it would not be justice if such burden is passed to an innocent victim, unless the victim has responsibility of keeping vigilance over the oil facilities and has failed in that duty. As it is well known, only oil companies have the responsibility over their facilities and hence, have a duty to secure such facilities from malicious third parties.

b. Lack of Effective Penalties and Sanctions for Violations of Environmental Laws

It is seen that 'without real consequences for environmental violations, there is no incentive for multinational corporations to respect the environment in which they operate.[39] The tendency for organizations and individuals to carry out illegal and substandard operations when they know that there is little or no consequences for their actions is very high. For instance, the indictment by the United Nations Environment Programme (UNEP) which reported that in Ogoni land (Rivers State) industry best practices were not applied in the control, maintenance and decommissioning of oil field infrastructure and that even Shell Petroleum Development Company (SPDC)'s own procedure in these areas were not applied thus creating public safety issues.[40] It is submitted that if relevant sanctions and penalties were implemented against Shell Petroleum Development Company and other violators of

[36]Oil Pipeline Act, 1956.
[37](1986) 6 SC 149.
[38](1991) 7 NWLR (Pt 160) 178.
[39]B. Konne, 'Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shel and Ogoni Land' [2014] (4) (7) *Cornell International Law Journal 196.*
[40]United Nations Environment Programme (UNEP), 'Environmental Assessment of Ogoniland [2011] http://postconflict.unep.ch/publicationss/OEA/UNEP-OEA.pdf> accessed 2 July 2020.

environmental laws and other relevant laws, the degradation and damage caused to the Niger Delta environment would not be as severe as reported by UNEP in its Environmental Assessment Report on Ogoniland.[41]

8. Efforts by Nigerian Government in Combating Environmental Pollution in the Hydrocarbon Industry in Nigeria

To combat environmental pollution arising from the various activities in the hydrocarbon industry sector, the Nigerian government has established some regulatory framework, enacted several legislations as well as domesticated some international conventions aimed at controlling and regulating the operations of the hydrocarbon sector with a view to achieving sustainable development.

a. **Oil Pipelines Act:** The Nigerian government through the enactment of this law, has made efforts to ensure that polluters take responsibility for their actions. Thus, under Section 33(3) (c) of the Oil Pipeline Act, the Minister charged with the responsibility for matters relating to oil fields and oil mining is empowered to make regulations for the prevention of pollution of any land or water. A licensee is under an obligation to pay compensation to any person who suffers injurious affliction, loss or damage by reason of the exercise of the right conferred by the license, leakage or breakage of an oil pipeline or any ancillary installation[42]. However, one of the significant weaknesses of this enactment is that no actual amount payable as compensation is statutorily stipulated. Therefore, at the end of the day, what constitutes a 'fair and adequate compensation' is determined by the bargaining powers of the parties and where there is no agreement between them the compensation would be left to be decided by the court. Most often than not, the multinational oil companies, which enjoy strong government supports, have the upper hand.[43]

In the face of obvious realities that require a country like Nigeria to give a strong effective Constitutional 'bite' to her environment protection strategies, it must be emphasized that a constitutional provision like section 20 is an initiative that is grossly incapable of catalyzing desired environmental policy performance.[44] A victim of environmental pollution can explore the provisions of the Constitution to seek compensation. According to section 20 of the Constitution, the State shall protect and improve the environment and safeguard the water, air and land, forest and. wide life of Nigeria.[45] While we hasten to state here that this section is embedded under Chapter II of the constitution thus making it a non-justiciable provision[46], we however argue that a community reading of the entire Constitution, especially when section 20 is read alongside section 33 of the Constitution, would reveal that the Constitution actually gives environmental pollution victims the right to live in a clean and healthy environment or otherwise claim compensation from whomsoever denies them this right. In other words, the right to live in a clean environment is subsumed in the constitutionally inherent right to life.

9. Lessons from Best International Practices

The paper found that the legal frameworks of United Kingdom, Norway and India provide some lessons for Nigeria on effective application of the polluter pays principle. More specifically, these lessons reflect in the provision for penalties and revocation of licenses of licensees and lessees and the restoration of the impacted sites after exploitation. Such lessons, range from effective policy on quality pipeline installation, in the United Kingdom, unlike in Nigeria, where pipelines are left to corrode for years, thus leading to blowout and vandalization. In the United States, as an act to deter potential polluters, the Oil Pollution Act, increased the financial penalties from $10,000 United States dollars to $250,000 for individual defaulters and as well, $500,000 is provided for defaulting companies. These amounts, to the researcher is high enough to deter potential defaulters from engaging in the act of pollution. Unlike in

[41] *ibid.*
[42] Oil Pipelines Act, Cap 07 LFN 2004, s. 2.
[43] *ibid*, ss. 1, 2, 4, 7, 12, 14 and 19 of the Act.
[44] *ibid.*
[45] s 1(1) & (3) *Nafiu Rabiu v Kano State (1980) 2 NCLR 117 and Agundi v. Commissioner of Police* (2013)
[46] CFRN 1999

Nigeria, where the penalties are still very meagre, rather than discourage the potential polluter, it will rather encourage the defaulter to continue, as seen in the Associated Gas (Continued) Flaring Re-Injection Act, 1984. Also, under CERCLA, the legislation provides for compulsory clean of the impacted site after damage, and it is enforced to the latter. In India, the right to a clean and healthy environment is justiciable, as captured clearly in their constitution, as broadly discussed under chapter five of this thesis. Unlike in Nigeria, where the right to a clean and healthy is not still justiciable, as expressly captured under section 20 of the 1999 Constitution, except one goes through the limb of article 24 of the African Charter (Ratification and Enforcement) Act, 1981. Lastly, in Norway, award of licence to licensees is made public, which clearly allows for transparency and proper scrutiny, through public consultation and involvement. In Norway, the Environmental Impact Assessment, describing any environmental effects of expected emissions and discharges and it includes a systematic review of costs and benefits of any mitigating measures. Unlike in Nigeria, where the Environmental Impact Assessment in the hydrocarbon sector is so ineffective in terms of effective compliance. Obviously, the lack of will power and enforcement deficiencies in government, coupled with deep rooted corruption has made it possible for oil and gas companies flaring gas to obtain EIA certificates, despite the enormous environmental impacts of their activities. In Norway, the Carbon Tax Act provides that fines or imprisonment for up to three months can be imposed for negligent violation of regulations issued under the Petroleum Act. The Norwegian role of being a large energy producer with a pioneering position on environmental issues. Further, permission to flare, under the PAA shall be by way of application from the license, the Ministry shall stipulate, for fixed period, the quantity which may be produced, injected, or vented. At all times, application shall be submitted for gas flaring and shall have such contents as decided by the Ministry. Also, application for issuing gas flaring permits and the use of flaring equipment and operating procedures is compulsorily evaluated. Unlike in Nigeria, where such procedures are clearly omitted under the established laws. In Norway, there is Gas Flaring and Venting Authority, regulating gas flaring operations of oil companies, unlike in Nigeria.[47]

The lessons drawn from these countries can be effectively applicable in Nigeria and the necessary amendments made to our laws. Particularly, the need to remove the ouster clause, ousting the jurisdiction of courts by virtue of section 6(6)(c) from assuming jurisdiction over environmental right issues. Also, if the needed institutions can be created, for instance, an institution like Gas Flaring and Venting Authority in Norway, such similar institution could be created in Nigeria, to aid curb in the incidence of pollution. Unhappily, there is plenty of evidence that regulation such as Associated Gas Re-Injection Act (Amended) 1985, through which the Federal Government has persistently demanded an end to gas flaring, but whose target dates have regularly passed by since its inception, with no real effect on the flaring. In effect, the legislators have done their job, while the regulators, whether through lack of resources or conflict of interest, have not.

10. Conclusion

It is seen from this paper that the primary objective of the polluter pays principle is economic, as it allocates cost of pollution to the polluter, as a mechanism for revenue generation for the host oil producing countries. However, the principle is justified on the ground that it relieves the victim from the burden of having to prove the cause of pollution, negligence, and fault of the polluter as he has little or no knowledge of the incidence. Also, as the polluter is obliged to bear the cause of pollution and of reinstating the environment to an acceptable state, he will endeavor to avoid pollution as much as possible and this will reduce pollution and hence the existence of a pollution free environment.

11. Recommendations

After identifying some of the shortcomings of the application of polluter pays principle in Nigerian hydrocarbon industry, the following recommendations are made:

[47] PAA, 1996.

1. The Polluter Pays Principle should be expressly provided for in statutes. In this way, it will have binding force and will not exist merely as an economic principle. Legislations which are aimed at protecting the environment, such as the Harmful Waste (Special Criminal Provisions) Act, 1990, should be reviewed, so that it will be provided that in pollution matters, mens rea, negligence, fault will not be required as conditions for convictions, as pollution have adverse effects on human beings and the environment. It should be sufficient for the victim to prove that the polluter owns or has control over the things that caused pollution.

2. Judges should expressly give judgment on basis of ''polluter pays principle'' when such cases come before them. With regards to compensations, the legislations concerned should be amended to stipulate the basis for assessing what is a fair and adequate compensation. Also, the enumerated factors that are taken into consideration in determining compensation should be included in statute as guidelines. The legislations concerned should be amended to remove those defences, so that the only defence that should avail a polluter from paying compensation should be a force majeure.

3. Amounts of fine imposed under NOSDRA Act, 2006, should be reviewed upwards to deter potential polluters. Also, compensation provided under the Oil in Navigable Waters Act should be reviewed upwards. Oil companies operating in Nigeria should annually report their gas flaring and progress towards Zero Routine Flaring (ZRF) initiative set up in 2015. Although, the initiative is not legally binding, it a strong public commitment to end gas flaring and to promote environmental stewardship and effective extractive resource management globally.

4. Given the lapses by non-justiciability of section 20 of the CFRN, 1999, the thesis recommends the need for amendment of this section, in order to make the right to clean and healthy environment justiciable.

5. The federal government should not give an option of a fine alone, as gas flaring should also be criminalized and any corporation that refuses to halt gas flaring should be shutdown.