

Imposing Liability for Oil Spill Clean-Ups in Nigeria: An Examination of the Role of the Polluter-Pays Principle

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Abstract

Oil spills lead to pollution of water and land in the surrounding environment. The health and the farmland of the people living around the area of the spills are also adversely affected. Numerous laws are usually in place to deal with the issue of oil spills but often times some of these laws are not totally enforced or the institutions set up to deal with the spills are inefficient. Oil spills cannot be left unabated. The problem of oil spills have to be dealt with in order to avoid the devastating effects of oil spills on the environment. In a place like the Niger-Delta in Nigeria where oil spills are rampant, an effective means of curbing the menace have to be thought out to deal with spills. Oil theft, pipeline vandalism and sabotage are the order of the day and thus, oil spills are a recurring decimal in the Niger-Delta. The question then is can the polluter-pays principle play a role in the prevention and control of oil spills especially in Nigeria? This article seeks to answer this question by examining whether the Polluter Pays Principle, an international environmental law principle, can act as a deterrent to oil spills especially deliberate oil spills. This paper examines the tenets of the polluter-pays principle, the deterrence theory, challenges militating against the prevention and control of oil spills in Nigeria and then relevant recommendations and conclusion as regards the role of the polluter-pays principle in preventing and controlling oil spills are put forward.

Keywords: Polluter Pays-Principle, Oil Spills, Liability for Oil spills, Niger-Delta, Nigeria

1. Introduction

The adverse effects of a single oil spill incident are often immense and unquantifiable. One key effect of an oil spill is pollution of the immediate environment. The extent of pollution of that environment depends on the amount of oil spilled into the environment during that incident; the response made towards clean-up of the oil spill and the quantity of oil that reaches the surrounding land. The type of environment the oil is spilled into also affects the magnitude of the harm. For instance, an oil spill into a trans-boundary river would most likely cause greater harm than a spill into a bare land. Also, in a situation where several barrels of oil were spilled into the sea and the spill is not immediately curtailed or the oil well that exploded is not immediately capped, the liability of the responsible party is greater and the harm caused to environment is usually colossal.²

The Niger Delta area in Nigeria is bathed with regular dose of oil spills.³ The causes of the spills there is often times pipeline vandalism or sabotage of oil installations. Operational oil spills also do occur there. Militants and oil thieves are usually constantly attacking oil installations often times to steal the oil and make money out of selling it. The fact that the oil spill was either accidental or not is not the main issue here. This is because it is an established principle of international environmental law that the polluter should pay for the harm he caused to the environment. When oil spillages occur, certain issues arise which are very important: the need to identify the responsible party who caused the oil spill; the extent to which the polluter/responsible party is responsible for the oil spill; the extent of the damage caused to the environment and measures to be taken to prevent future occurrences of events of similar nature. The polluter-pays principle thus holds someone responsible for the damage caused to the environment and prevents a situation where nobody wants to claim responsibility for an oil spill.

The question whether the polluter-pays principle serves as a deterrent to oil spills is very important. A key reason for this is that, there is a need to reduce and prevent the occurrence of oil spills in Nigeria and especially in the Niger-Delta region. This is because the devastating effects of oil spills on the environment are usually great and are not matters that can be treated with

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² A relevant example here is the Deep Water Horizon accident that occurred in the Gulf of Mexico in 2010.

³ For instance, Shell Petroleum Development Company of Nigeria Limited regularly reports on a monthly basis oil spill incidents in the Niger-Delta (Nigeria) on its website <<http://www.shell.com.ng/environmentsociety/environment-tpkg/oil-spills.html>> accessed 15 July 2015).

levity. The effects on Nigeria's economy, human health and even the marine environment are weighty. Liability has to be established so that the person responsible for the spill is held accountable for his or her actions. Oil companies, ship owners and the government who are also involved in the oil business, are not left to enjoy the profits of the oil business, but they are also expected to take all necessary precautions to prevent future oil spills from happening.

This paper is divided into seven sections. The introduction is the first. Section two discusses the nature and environmental effects of oil spills. Section three examines the basic tenets of the polluter-pays principle and its potency. Section four explains the deterrence theory and how it relates to the polluter-pays principle in the context of this research. Section five explains the challenges that hinder the prevention and control of oils spills in Nigeria. Section six wraps up this research by giving appropriate recommendations and section seven provides conclusion to this paper.

2. Oil Spills: Nature and Environmental Effects

2.1 Nature of Oil Spills:

A scholar has defined an oil spill as '...the unsafe discharge or release of oil into the human environment, for example into water bodies such as oceans, rivers and seas'.⁴ This definition describes the nature of an oil spill. Oil spills can generally be categorised into accidental and intentional oil spills. Oil spills are accidental when they occur as a result of factors beyond human control or natural disasters. Examples of these includes: tankers colliding with each other or with a rock while at sea; accidents in shallow waters⁵ during extreme weather; fire accidents and explosions on board drilling platforms; oil leaks from oil installations; earthquakes and storms affecting oil installations, such as oil pipelines and oil vessels. Examples of deliberate oil spills includes: acts of war or vandalism of oil installations;⁶ discharge of oil into the sea from tankers (while washing-out their tanks) and from oil platforms into the sea.

The three main sources of oil spills are: oil drilling platforms; oil vessels/tankers and oil pipelines. In Nigeria, oil is also spilled due to illegal oil bunkering activities. For the purposes of this research, the nature of the oil spilled is limited to crude oil that is, unrefined oil. This research also focuses more on deliberate oil spills rather than accidental oil spills. The reason for this is that, deliberate spills are found to be recurrent in Nigeria especially due to the activities of oil thieves.

2.2 Environmental Effects of Oil Spills:

One of the most important reasons why any oil spill incident is taken seriously and why the need to identify the responsible party or the polluter is very important is because of the effects of oil spills on the environment. Oil spills have adverse effects both on the environment and even on human health. Thus, a person should be held responsible for the consequences of his actions. Certain factors determine the impacts of oil spills on the environment. These are: the rate of the spill, the type of oil that was spilled, the location of the spill and the size of the spill.⁷ These factors influence the extent of damage caused to the environment. However, it has been observed that even a minor oil spill incident may cause serious harm to individual organisms and an entire population.⁸ Effects of an oil spill ranges from death of species of birds, fishes, marine mammals, marine plants⁹ and even disruption of the proper functioning of the ecosystem.¹⁰ Oil spills are also detrimental to tourism and they even put water supplies for drinking and industry uses at risk.¹¹

Oil pollution is a direct effect of oil spills on the marine environment. It is also a form of marine pollution.¹² Oil pollution occurs as a result of discharges of oil into land and the sea such as through- oil spills either from ships, pipelines or even oil

⁴ Damilola Olawuyi, *The Principles of Nigerian Environmental Law: Essential Readings* (1st edn Business Perspectives 2013) 148.

⁵ J Powell, *Oil Spills* (Franklin Watts 2002) 8. An example here is when a ship collides with another tanker in shallow waters.

⁶ Ibid.

⁷ JL Ramseur, 'Oil Spills in U.S. Coastal Waters: Background and Governance' (Congressional Research Service, 2 September 2010) <<http://fpc.state.gov/documents/organization/142741.pdf>> accessed 29 August 2014.

⁸ Ibid.

⁹ J Powell, *Oil Spills* (Franklin Watts 2002) 12, 13. Apart from the effects mentioned here other economic effects result from oil spills. Effects like loss of profit to the oil companies involved, loss of revenue that the government could have generated from tax and other fees and loss of businesses that depend on the sea for their livelihood are also some of the effects of oil spills.

¹⁰ JL Ramseur, 'Oil Spills in U.S. Coastal Waters: Background and Governance' (Congressional Research Service, 2 September 2010) <<http://fpc.state.gov/documents/organization/142741.pdf>> accessed 29 August 2014.

¹¹ J Powell, *Oil Spills* (Franklin Watts 2002) 10-11.

¹² According to Article 1 of the United Nations Convention on the Law of the Sea (UNCLOS) 1982,

installations. The consequences of oil pollution are catastrophic. Oil Pollution kills seabirds, fishes, marine mammals and even adversely affects public health when toxic substances are washed into the land.¹³ Apart from economic damage, oil pollution affects local communities in terms of loss of businesses and a decline in tourism activities. Oil pollution also leads to contamination of the environment.¹⁴ Finally, the shipping industry and associated industries also suffer commercial losses as a result of oil pollution.¹⁵

3. The Polluter-Pays Principle

3.1. *Meaning and Importance of the Polluter-Pays Principle.*

Mann posits that the exact legal definition of the polluter-pays principle remains elusive.¹⁶ This implies that the principle has the potential to be interpreted differently. In simple terms however, the principle means that ‘...the polluter should bear the cost of measures to reduce pollution according to the extent of either the damage done to society or the exceeding of an acceptable level (standard) of pollution’.¹⁷ This definition places on the polluter, the responsibility for the cost of reduction of the pollution caused by his action(s). Paragraph 4 of the Organisation for Economic Co-operation and Development (OECD) Guiding Principles¹⁸ which established this principle, further provides in addition to the above definition, that the polluter should ‘...ensure that the environment is in an acceptable state’. This indicates that the polluter should ensure that pollution is reduced to an optimum level and not necessarily eradicated. The possibility of total eradication of pollution is also implied by that definition.¹⁹

From the definition given by the OECD above four key issues emerge: (1). who is the polluter?²⁰ This question must be answered where an oil spill incident occurs in order to make the polluter responsible and in order to allocate cost as provided by the definition given above by the OECD. Thus, the person that bears the cost of the pollution must be known. (2). to what extent is the environment affected?²¹ This helps to quantify the damage done to the environment. By this process, monetary value can be attached to the damage. This process can help to know the extent of liability of the polluter. (3). Pollution caused must be identifiable.²² This proves that the polluter is responsible for that resulting pollution. (4). There must be a damage that must be compensated.²³ This establishes that the environment has been affected and that there are provisions under the relevant laws that provide for compensation. These questions help to ensure that the polluter is liable for the cost of the pollution as provided by the definition of the principle given above. In essence, the core of the polluter-pays principle can be said to rest on the principle that ‘...it is the parties who generate pollution, not the others, nor indeed the government, who should bear the cost of abatement’.²⁴ The importance of the polluter pays principle stems from the fact that it allows the party responsible for polluting the environment to take responsibility for his actions. It also allows for that party responsible for the pollution to be ‘...charged with the cost of whatever pollution prevention and control measures are determined by the public authorities, whether preventive measures, restoration, or a combination of both’.²⁵

marine pollution is ‘the introduction by man, directly or indirectly, of substances or energy into the marine environment,...which results or is likely to result in such deleterious effects as harm to living resources and marine life,...’. This definition encompasses the concept of oil pollution in the sense that oil (as a substance or energy) is discharged into the sea and it also has harmful effects on the marine environment.

¹³ Lord Donaldson’s Inquiry, *Safer Seas, Cleaner Seas: Report of Lord Donaldson’s Inquiry into the Prevention of Pollution from Merchant Shipping* (Cm 2660) 24-26.

¹⁴ Ibid 26.

¹⁵ Ibid.

¹⁶ I Mann and F Hare, ‘A Comparative Study of the Polluter Pays Principle and its International Normative Effect on Pollutive Processes’ (January 2009)

¹⁷ <http://consulegis.info/fileadmin/downloads/thomas_marx_08/Ian_Mann_paper.pdf> accessed 30 August 2014.

¹⁸ OECD, ‘Glossary of Statistical Terms’ (December 2007) <<http://stats.oecd.org/glossary/download.asp>> accessed 30 August 2014.

¹⁹ OECD, ‘Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies’ C (72) 128.

²⁰ OECD, *The Polluter Pays Principle: Definition Analysis Implementation* (OECD 1975) 15.

²¹ J Thorton and S Beckwith, *Environmental Law* (2nd ed Sweet & Maxwell 2004) 14.

²² Ibid.

²³ T Okenabirhie, ‘Polluter Pays Principle in the Nigerian Oil and Gas Industry: Rhetorics or Reality?’ (CAR CEPMLP Annual Review) (2008/2009 Environmental and Social Issues in Energy Industry) <<http://www.dundee.ac.uk/cepmlp/gateway/index.php?news=30840>> accessed 29 August 2014.

²⁴ Ibid.

²⁵ I Mann and F Hare, ‘A Comparative Study of the Polluter Pays Principle and its International Normative Effect on Pollutive Processes’ (January 2009)

<http://consulegis.info/fileadmin/downloads/thomas_marx_08/Ian_Mann_paper.pdf> accessed 30 August 2014.

OECD, ‘Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies’ C (72) 6.

Moreover, in terms of liability for pollution damage²⁶ caused on the territory or territorial sea of a contracting party, as a result of discharges from ships, the 1992 International Convention on Civil Liability for Oil Pollution Damage (the 1992 Civil Liability Convention)²⁷ makes the ship owner at the time of the incident, responsible for the damage subject to three exceptions.²⁸ These exceptions are that the ship owner must prove that the damage from the pollution- did result from an act of war or natural phenomenon;²⁹ was caused by the act or omission of a third party done with intent to cause damage;³⁰ and that the damage occurred as result of the negligence or other wrongful act of any government or other authority.³¹ No liability is placed on any other person except the ship owner.³²

Furthermore, the position under environmental and safety law generally is that the operator of the installation in particular bears the liabilities and obligations.³³ However, the terms of a petroleum licence for offshore oil and gas installations in the United Kingdom makes liability of the parties involved joint and several.³⁴ Liability from oil spills could also be criminal such as the imposition of criminal fines under health and environmental regimes following oil spill incidents.³⁵ Offences relating to the environment can either be fault-based (for example, negligence) or based on strict liability.³⁶ In terms of oil pipelines, liability may be criminal or civil depending on the cause of the spill. The following sections examine the international law perspective, international environmental law perspective and the Nigerian law perspective.

3.2 International Law Perspective

This perspective can be captured from the OECD, United Nations (UN) and the European Community (EC) point of view. The OECD³⁷ formulated the polluter-pays principle and recognised it as an internationally agreed principle in 1972.³⁸ The principle was formulated as an economic principle³⁹ and was meant to allocate the cost of pollution control.⁴⁰ The polluter-pays principle is also recognised at the UN level in Principle 16 of the Rio Declaration on Environment and Development (1992). According to the preamble of this declaration, the proclamations in the declaration were made while ‘...working towards international agreements...’.⁴¹ The significance of this statement is that the proclamations in the declaration do not constitute binding provisions but are based on recognised principles which remain important in order ‘...to protect the integrity of the global environmental and developmental system...’.⁴² This move portrays the significance of the principle as a fundamental principle recognised at a global level. Principle 16 can also be said to have reemphasised the meaning of the polluter-pays principle given by the OECD. It is noteworthy that, principle 16 does not make the polluter-pays principle mandatory for national governments to follow but rather it encourages them to utilize it.

The polluter-pays principle is also recognised under the European Community Treaty.⁴³ Article 191 (2) thus provides that ‘union policy on the environment shall...be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay’. This article strengthens the stand of the polluter- pays principle at the European Union level. The polluter-pays principle or its variations is also given recognition in other environmental treaties such as: the International Convention on Oil Pollution

²⁶ Article 1 (6) (a) of the 1992 Civil Liability Convention (CLC) explains this further to mean ‘loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, ...’.

²⁷ Originally the 1969 International Convention on Civil Liability for Oil Pollution Damage (the 1969 CLC).

²⁸ 1992 CLC, Articles II and III.

²⁹ 1992 CLC, Article III (2) (a).

³⁰ 1992 CLC, Article III (2) (b).

³¹ 1992 CLC, Article III (2) (c).

³² ZO Ozcayir, *Liability for Oil Pollution and Collisions*, (LLP 1998) 214.

³³ S Shergold, D Beggs and S Boileau, ‘United Kingdom: Incidents at Offshore Facilities- Who is Responsible for Environmental Damage?’ (2010) 6 IELR 179.

³⁴ Ibid.

³⁵ Ibid.

³⁶ S Shergold, D Beggs and S Boileau, ‘United Kingdom: Incidents at Offshore Facilities- Who is Responsible for Environmental Damage?’ (2010) 6 IELR 179.

³⁷ Para 4, OECD, ‘Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies’ C (72) 128.

³⁸ J Barde, ‘Economic Instruments in Environmental Policy: Lessons from the OECD experience and their Relevance to Developing Economies’ (Working Paper No.92, January 1994) OCDE/GD (93) 193, 5.

³⁹ OECD, ‘The Polluter-Pays Principle: OECD Analysis and Recommendations’ OECD/GD (92) 81, 5.

⁴⁰ OECD, ‘Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies’ C (72) 128. According to this paragraph, allocating costs means that the polluter bears responsibility for the payment of the costs of preventing and controlling pollution.

⁴¹ Rio Declaration on Environment and Development (1992), Preamble.

⁴² Ibid.

⁴³ Article 191 (2), Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2010] C83/01.

Preparedness, Response and Co-operation (OPRC);⁴⁴ the Energy Charter Treaty 1994;⁴⁵ the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR);⁴⁶ and Agenda 21.⁴⁷

For the purpose of illustration two cases will be discussed to see how international courts have treated the polluter-pays principle. The cases are:

*1. Commune de Mesquer v Total France SA and another.*⁴⁸

The basis of this case was a contract to deliver heavy fuel oil to Italy. The contract was made between Total International Ltd (the 2nd Defendant) and ENEL (an Italian Electricity Production Company). Total France SA (1st Defendant) sold the oil required by ENEL to Total International Ltd, which chartered MV Erika (Oil tanker which carried the oil). In 1999, Erika spilled part of its cargo thereby polluting the Atlantic coast of France. Commune de Mesquer (the Claimant) later brought proceedings against the defendants at the Commercial Court, Saint Nazaire, seeking among other things, that the defendants should be held liable for damage caused to the claimant's land as a result of the defendant's 'waste'⁴⁹ and that the defendants should be held responsible for anti-pollution measures and clean-up. This action was not successful both at the Commercial Court and the Appeal Court. The claimant then appealed to the Cour de Cassation. At this court, the court considered that there was a problem with the interpretation of Council Directive (EEC) 75/442.⁵⁰ Thus, the court stayed proceedings and referred the case to the Court of Justice of the European Communities⁵¹ for a preliminary ruling for questions under Article 234 EC⁵² (former article 177 of the EEC Treaty).

The relevant point that the court considered was whether, '...for the purposes of applying article 15 (c) of Council Directive (EEC) 75/442 which stated that, in accordance with the "polluter pays" principle, the cost of the waste disposal was to be borne by the "previous holders" or the "producer of the product from which the waste came", even though the substance spilled at sea was transported by a third party, in this case a carrier by sea.'⁵³

Accordingly, the court held that 'in accordance with the "polluter pays" principle, however, such a producer could not be liable to bear that cost unless he had contributed by his conduct to the risk that the pollution caused by the shipwreck would occur'.⁵⁴ The implication of this judgement is that- the court recognises that the polluter-pays principle exists as a principle of law and that it has a role to play in allocating liability. This case also confirms that the polluter-pays principle is recognised both at the international level especially at the European Union level. The court here also advanced the polluter-pays principle in the sense that, it affirmed that the polluter must be seen to have contributed to the damage done to the environment.

*2. Raffinerie Mediterranee (ERG) SPA and Others v Ministero dello Sviluppo Economico.*⁵⁵

This case is based on a dispute pertaining to a site in Sicily which was set apart as a 'site of national interest'. The reason for this was that, the site was plagued with various incidents of environmental pollution. The relevant local authority then asked the companies who were carrying out their businesses at that location to decontaminate the site. The companies believed the decontamination of the site would be too expensive for them so they brought actions against the local authority before an Italian Court. The Italian court later stayed its proceedings and referred questions concerning the interpretation of the polluter-pays principle contained in Directive (EC) 2004/35/CE⁵⁶ to the Court of Justice of the European Union.

The question asked was whether the principle as provided for under the directive and in article 174 (2) of the EC Treaty, excluded national legislation which provides that competent bodies can impose measures for restoring the environment on commercial operators because they are located around the affected area without establishing the link between the damage caused to the environment and the operators. The court held that, Directive 2004/35 did not exclude national legislation from presuming the link between the operators and the damage caused to the environment based on the operators' location. The court held further that, in accordance with the polluter-pays principle, that the local authority in question must have tangible evidence that can justify the presumption that the pollutants found in the contaminated area is closely linked with what the

⁴⁴ Preamble.

⁴⁵ Article 19 (1).

⁴⁶ Article (2) (2) (b).

⁴⁷ Paragraph 8.28.

⁴⁸ [2009] All ER (EC) 525.

⁴⁹ Referring to the heavy oil being carried by Erika.

⁵⁰ COUNCIL DIRECTIVE of 15 July 1975 on Waste (75/442/EEC).

⁵¹ Now the Court of Justice of the European Union.

⁵² Treaty establishing the European Community (Nice consolidated version): OJ C 325 , 24/12/2002 P. 0127 – 0128; OJ C 340, 10/11/1997 P. 0273 – (Consolidated version); OJ C 224 , 31/08/1992 P. 0063 (Consolidated version)

⁵³ [2009] All ER (EC) 526.

⁵⁴ Ibid 527.

⁵⁵ [2010] All ER (D) 133 (Mar).

⁵⁶ 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.

operators use in their activities. This case clearly establishes the cogent point that, as regards the polluters-pays principle, the polluter must be linked to the damage he is alleged to have caused.

The above cases utilise the polluter-pays principle thus reaffirming the fact that the principle is an established principle of law. From the above cases and other oil spill incidents, it is obvious that the principle is one that applies after the damage to the environment has been done not before. Thus, the principle does not act in a preventive manner but it acts to remedy the damage that has been done.

3.3 *International Environmental Law Perspective*

The polluter- pays principle is one of the key legal and policy principles that have emerged from international environmental law and EC environmental law to shape the development of environmental law.⁵⁷ These principles are seen to maintain a balance between development and the preservation of a healthy environment, as well as allocation of liability.⁵⁸ The polluter-pays principle can be said to focus more on allocating liability. The principle wants polluters to internalise (bear) the costs of the pollution which is a result of their actions so that ‘...the cost of their goods and services reflect the true costs of the measures which primarily the state adopts to eliminate, reduce and treat the polluters’ emissions’.⁵⁹ This statement boils down to the fact that polluters should bear responsibility for their actions. The polluter-pays principle also ‘...enables the state to charge the cost of rectifying environmental damage to the relevant polluter provided that the polluter can be identified’.⁶⁰ The function of environmental law is to act as a balance between the emissions which pollute the environment generated by economic activities against the need of society for a healthy environment.⁶¹ Those emissions are then set by the government (or its regulators) at levels which are acceptable to the regulated (businesses and the public).⁶² Thus, the polluter pays principle, which is also an international environmental law principle helps environmental law to achieve the aim of a tolerable environment.

3.4 *Nigerian Law Perspective*

The polluter pays principle is also recognised under Nigerian laws. A major piece of legislation that specifically deals with response to oil spills is the National Oil Spill Detection and Response Agency Act, 2006 (NOSDRA Act). This legislation contains provisions that embody the polluter pays principle. For example, section 6 (2) (3) provides that: ‘the failure to clean up the impacted site, to all practical extent including remediation shall attract a further fine of one million naira’. The above section thus makes a polluter responsible for cleaning up an impacted site and failure to clean up the site will attract a fine of one million naira. Other relevant laws and guidelines which make provision for the polluter-pays include: the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)⁶³ and the NOSDRA (Amendment) Bill 2012.⁶⁴ Specifically, Paragraph 8.1 of EGASPIN directly makes a spiller responsible for his actions. It provides that ‘a spiller shall be liable for the damage from a spill for which he is responsible. Where more than one spiller is liable, the liability shall be joint and several’.

In order to appreciate the polluter-pays principle better, two Nigerian cases are now examined. The cases are:

1. *Jonah Gbemre v. Shell*⁶⁵

In this case, Jonah Gbemre (the applicant), claimed on behalf of the Iwhrekan community inter alia as follows: A declaration that the actions of the 1st Respondents (Shell Petroleum Development Company) and 2nd Respondents (the Nigerian National Petroleum Corporation) in continuing to flare gas in the course of their oil exploration and production activities in Gbemre’s Community is a violation of their fundamental rights (including right to healthy environment) and dignity of human person which is guaranteed by Sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria, 1999

⁵⁷ S Wolf and N Stanley, *Wolf and Stanley on Environmental Law* (5th edn Routledge 2011) 14. Other principles identified here includes: the precautionary principle, the preventive principle, and sustainable development principle.

⁵⁸ S Wolf and N Stanley, *Wolf and Stanley on Environmental Law* (5th edn Routledge 2011) 14.

⁵⁹ Ibid 17.

⁶⁰ Ibid.

⁶¹ S Wolf and N Stanley, *Wolf and Stanley on Environmental Law* (5th edn Routledge 2011) 14 6; S Wolf, A White and N Stanley *Principles of Environmental Law* (3rd ed. CPL 2002) 6.

⁶² S Wolf, A White and N Stanley *Principles of Environmental Law* (3rd ed. CPL 2002) 6

⁶³ Environmental Guidelines and Standards for the Petroleum Industry in Nigeria 2002, Paragraph 8.1, ‘Liability’.

⁶⁴ See sections 8-11.

⁶⁵ FHC/B/CS/53/05 (November 14, 2005) Federal High Court of Nigeria available at <http://www.ecolex.org/ecolex/ledge/view/RecordDetails;DIDPFDSIjsessionid=0373E91B7EBE66A17FCCA47AE C57E3C2?id=COU-156302&index=courtdecisions> accessed 22 June 2015 and <http://www.ecolex.org/server2.php/libcat/docs/COU/Full/En/COU-156302.pdf> accessed 22 June 2015.

and reinforced by Articles 4, 16 and 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap. A9 Vol. 1 Laws of the Federation of Nigeria, 2004.⁶⁶ The court held that the actions of the 1st and 2nd respondents in continuing to flare gas in the course of their oil exploration and production activities in the applicants' community was a gross violation of their fundamental right to life and dignity of human person as enshrined in the Constitution.⁶⁷

In the case above, the focus was on gas flaring as opposed to oil spill. However, the conclusion drawn from this case is that, environmental pollution matters such as oil spill and gas flaring are frowned at by Nigerian courts.

2. *Shell Petroleum Development Company Nigeria Ltd v. Chief G.B.A. Tiebo & Others*⁶⁸

In this case, the plaintiffs (Chief G.B.A. Tiebo and others) claimed that the defendant, an oil exploration company (Shell Petroleum Development Company Nigeria Ltd), on 16th January, 1987, negligently caused a major crude oil spillage of over six hundred barrels from its flow station and on its pipeline or other installations at or near the plaintiffs' village called Peremabiri. The plaintiffs commenced their suit on 6th June, 1988 at the Yenagoa High Court of Rivers State claiming against the defendant the sum of Sixty four million, one hundred and forty six thousand naira (N64, 146, 000. 00) being special and general damages for the negligence of the defendant (Shell Petroleum Development Company Nigeria Ltd) and for allowing crude oil, which the defendant was mining, to spill into the lands, swamps, creeks, ponds, lakes and shrines of the plaintiffs.⁶⁹ The plaintiffs sued for themselves and as the representatives of the Peremabiri Community in YELGA. At the trial court, the judge gave judgement in the plaintiff's favour awarding six million naira (N6, 000, 000. 00) as general damages for environmental pollution of the land, river, ponds and lakes of the plaintiff and one million naira (N1, 000, 000. 00) as costs. The defendant then brought an appeal before the Court of Appeal when they were dissatisfied with the decision of the trial court but their appeal was dismissed. At the Supreme Court, the Court affirmed the award of general damages and costs awarded by the trial court therefore finding for the plaintiff.⁷⁰ The Supreme Court noted that there was evidence before the trial Judge that there was extensive damage done to the crops, farms, farmlands, ponds, creeks of the plaintiffs and that there was also evidence of widespread environmental pollution.⁷¹

The above case also shows clearly that the issue of oil spill was not taken lightly against the appellant/defendant. The appellant was made to compensate the respondent/plaintiff in the case for the damage the appellant caused to the respondent. The polluter (the appellant) was made responsible for his negligent acts against the respondent.

3.5 *Legal Effects of the Polluter-Pays Principle*

The question whether the polluter-pays principle is precise enough to have legal effects have no clear-cut answer.⁷² Moreover, it has also been observed that there are differences in the explanations of the purposes and application of the polluter-pays principle by different authors.⁷³ The fact that, the polluter- pays principle is also a 'principle' which carries multiple meanings⁷⁴ and give discretion to interpreters⁷⁵ in a way that is different from legal rules, which are '...less subject to interpretation'⁷⁶ adds to the confusion. Thus, identifying specific legal effects of the polluter- pays principle is a daunting task. However, the legal effects of the polluter-pays principle depend on certain factors-whether the principle is contained in soft law, hard law instruments, or national law and whether the hard law or the national laws instruments imbibe a 'substantive' or 'formal' approach.⁷⁷

Soft law instruments embody those rules that are not binding per se but which have played important roles in international environmental law.⁷⁸ These instruments '...point to the likely future direction of formally binding obligations, by informally

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ (2005) 3-4 SC available at <http://lawaspire.com.ng/2014/07/the-shell-petroleum-development-company-of-nigeria-limited-v-chief-g-b-a-tiebo-ors/> accessed on 22 June 2015

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² N Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules* (OUP 2002) 305.

⁷³ J McLoughlin and E Bellinger, *Environmental Pollution Control: An Introduction to Principles and Practice of Administration* (International Environmental Law Policy Series) (Graham & Trotman, London, 1993) 145.

⁷⁴ Descriptive principles, basic principles or general principles of Law which all have different purposes.

⁷⁵ N Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules* (OUP 2002) 307.

⁷⁶ Ibid.

⁷⁷ Ibid 312-333.

⁷⁸ P Sands, *Principles of International Environmental Law* (2nd ed CUP 2003) 124.

establishing acceptable norms of behaviour, and by ‘codifying’ or possibly reflecting rules of customary law’.⁷⁹ The implication of inserting the polluter-pays principle in a soft law is two-fold: (1). It would not be legally binding.⁸⁰ (2). Due to the inexact formulation of soft laws, the polluter-pays principle would not be seen as a normative principle.⁸¹ Moreover, the polluter-pays principle’s value will be of an interpretative nature.⁸² An example of a soft law that embodies the polluter-pays principle is the 1992 Rio de Janeiro Declaration on Environment and Development.

Hard law contains legally binding obligations.⁸³ The hard law formal approach entails that the polluter-pays principle is provided for in the ‘operative provisions’ of a convention.⁸⁴ When the words used in the convention make the provision binding upon the parties, this constitutes the substantive approach.⁸⁵ It has been observed that, neither the form nor type of an instrument dictates the legal status of the polluter-pays principle.⁸⁶ The polluter-pays principle can be found either in the preamble⁸⁷ or in operative provisions of a convention.⁸⁸ A principle such as the polluter-pays principle would attain a normative status only to the extent to which the principle is affirmed by an operative provision of a convention.⁸⁹ The recognition given to the principle in the preamble is only to inform the precise rules contained in the operative part.⁹⁰

As regards national laws, the effect of the polluter-pays principle will be the same as above. That is, when the polluter-pays principle is contained in a national law that is a soft law, the principle will not be binding.⁹¹ Where, however, it is contained in a national law, which is hard law, its provision would be binding on the parties involved. The formal approach here will be for national legislators to insert the polluter-pays principle into their framework laws.⁹² Thus, it is advocated that the polluter-pays principle should be contained in hard laws in Nigeria so that the principle would have binding effect on polluters.

4. The Deterrence Theory

Deterrence entails ‘the act of making someone decide not to do something: the act of preventing a particular act or behaviour from happening’.⁹³ Deterrence is not a new idea.⁹⁴ It is an idea that has been discussed in academic writings since the 18th century.⁹⁵ Deterrence theory postulates that people will commit a crime if it gratifies them and the experience of crime is beneficial.⁹⁶ This suggests that criminals or violators would engage in acts they believe would be of great benefit to them. The concept of deterrence is held to be based on the notion that people consciously try to avoid pain and seek pleasure.⁹⁷ Therefore, individuals will engage less in activities such as crime if the outcome of the crime would cause them pain. This perspective also suggests that crime rate would be at its lowest in places where offending evokes the most ‘pain’ (or costs) and it at its highest in places where offending brings the most pleasure.⁹⁸ Deterrence occurs when people do not commit crimes because of fear of the costs or unpleasant consequences that will be imposed on them. The deterrence effect is ‘how much crime is saved through the threat and application of criminal punishments’.⁹⁹

There are two main theories of deterrence namely: (1). General Deterrence and (2). Specific Deterrence. General deterrence is said to occur in a situation when we punish an offender so that other people do not go into crime.¹⁰⁰ Thus, an example is

⁷⁹ Ibid.

⁸⁰ N Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules* (OUP 2002) 312.

⁸¹ N Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules* (OUP 2002) 312.

⁸² Ibid 313.

⁸³ P Sands, *Principles of International Environmental Law* (2nd ed CUP 2003).

⁸⁴ N Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules* (OUP 2002) 313.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid 314. Example here is in the preamble of the 1990 International Convention on Oil pollution Preparedness, Response and Co-operation (OPRC): ‘...taking account of the "polluter pays" principle as a general principle of international environmental law...’.

⁸⁸ N Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules* (OUP 2002) 314.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid 329.

⁹² Ibid 330.

⁹³ Merriam Webster Dictionary, ‘Deterrence’ <http://www.merriam-webster.com/dictionary/deterrence> accessed 25 October 2014.

⁹⁴ Aaron Chalfin and Justin McCrary, ‘Criminal Deterrence: A Review of the Literature’, (2014) http://eml.berkeley.edu/~jmccrary/chalfin_mccrary2014.pdf accessed 25 October 2014.

⁹⁵ Ibid.

⁹⁶ Daniel Nagin, ‘Deterrence: Scaring Offenders Straight’ http://www.sagepub.com/upm-data/40354_4.pdf accessed 25 October 2014.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

made of offenders so that other people in the society can see that crime does not pay. An important point to note about general deterrence is that, its effects are potentially general in the sense that if this deterrence works, it is a very efficient and cost effective way of controlling crime.¹⁰¹ A limited number of offenders are punished here so that a whole lot of other potential offenders are persuaded not to break the law.¹⁰² Specific deterrence (also sometimes called special deterrence) on the other hand, is when the deterrence effect is specific to the individual being punished.¹⁰³ For example, 'Ade' is punished so that Ade will not recidivate. Thus, the deterrent effect is specific to Ade who is being punished.¹⁰⁴

In relation to oil spill cases, it is submitted that the two theories of deterrence identified above should be considered when utilising the polluter-pays principle to impose liability in the prevention and control of oil spills in Nigeria. The reasoning behind this submission is that after examining the essence of the polluter-pays principle, one can safely conclude that in order to have an effective principle, both the individual and the group of individuals involved in oil spill cases need to be deterred so that others can learn from their mistakes.

4.1 *Relationship between the Polluter-Pays Principle and Oil Spills*

From the discussion so far, it is obvious that there is a connection between the polluter-pays principle and oil spills. The link between both is not one that is so glaring that one can easily identify. Both concepts can be said to relate at the point of liability. That is, they meet at the point where the polluter has been identified and he is deemed liable for his actions committed against the environment. The polluter-pays principle functions after the happening of an oil spill. In essence, the polluter-pays principle becomes relevant after an oil spill occurs. The polluter-pays principle helps to pin-point who bears responsibility when oil spills occur. Oil pollution also acts as a linkage between the polluter pays-principle and oil spills. Oil spills leads to oil pollution while the polluter-pays principle identifies the responsible party that caused the spill which led to the oil pollution.

4.2 *Prevention of Oil Spills in the Future by the Polluter-Pays Principle:*

The subject of the analysis here deals with the all-important issue whether the polluter-pays principle would deter oil spills from happening. From the discussion so far, especially about the nature of the polluter pays principle, the conclusion is that the polluter-pays principle at its present state, cannot act as a deterrent to oil spills in the future except certain steps are taken to make the principle more efficient in acting as a deterrent to oil spills. A look at prominent oil spill incidents will also indicate that the existence of the principle does not deter oil spills from happening.

The principle of deterrence is based on the '...effect that the prospect of having to pay damages will have on the behaviour of similarly situated parties in the future (not just on the behaviour of the defendant at hand).'¹⁰⁵ This implies that when potential polluters know that they have to pay certain amount of money as damages for their actions, they would not engage in such actions. The question then is as regards oil spill cases, have oil companies or vessel owners changed their behaviour overtime since they know that they would pay heavy damages as a result of oil spills that result from their activities or activities of their companies? The answer to this question is not really straightforward. The reason is that several factors often influence events that result into oil spills. These factors are not normally due to deliberate actions of the individuals or companies involved. This is not the case with deliberate oil spills such as deliberate destruction of pipelines during a war, sabotage or pipeline vandalization.

In some other cases, events that lead to the major oil spills are caused as a result of accidents, which are not predictable. Negligence or the quest of oil executives to get the job done at all cost may not be ruled out as main reasons behind oil spills. Examples of oil spill incidents in Nigeria include: Bonga (2011)¹⁰⁶, GOCON's Escarvous (1978); Idoho (1998); Shell Petroleum Development Company (SPDC)'s Forcados Terminal (1978); and Texaco Funiwa 5-Blowout (1980)¹⁰⁷. Popular foreign oil spill events include: Torrey Canyon, United Kingdom (1967); Amoco Cadiz, France (1978); Exxon Valdez, United States (1989); Sea Empress, United Kingdom (1996); the Ekofisk Field, Norway (1977); Ixtoc I, Mexico (1979) and the Deepwater Horizon, United States (2010).

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ The deterrent effect here is personal to the person being punished.

¹⁰⁵ M Polinsky and S Shavell, 'Punitive Damages: An Economic Analysis' (1998) 3 Harvard Law Review 877.

¹⁰⁶ Adedayo Ojo, 'Bonga, Endeavour & Macondo' <<http://africaoilgasreport.com/2012/05/opinion/bonga-endeavour-macondo/>> accessed 5 May 2015.

¹⁰⁷ Peter C. Nwilo and Olusegun T. Badejo, 'Impacts and Management of Oil Spill Pollution along the Nigerian Coastal Areas' <https://www.fig.net/pub/figpub/pub36/chapters/chapter_8.pdf> accessed 3 December 2014.

Oil spill incidents can either be caused by deliberate acts or by accidents. Oil companies and vessel owners may be deterred from carrying out deliberate spills when they know that the consequences of their actions will result in heavy fines and punitive actions being taken against them. Thus, other companies would be forced to review their oil spill response capabilities in order not to fall into the trap of being caught-up in the high cost of responding to an oil spill disasters in the future. This may also make companies intending to go into new frontiers such as the arctic region to rethink their steps or brace up, financially and technologically in order to meet up with the challenges of exploring those new frontiers so as to avoid oil spills.

In summary, it can be stated that for oil spills to be deterred in the future, the polluter-pays principle must be strengthened in order for it to be an efficient deterrent tool in preventing oil spills. Some recommendations would be made to this effect in a later section of this article. A discussion on the need for liability caps¹⁰⁸ is also relevant here. It may be argued that there should be unlimited liability regime in place in oil spill cases but a counter-argument that may be put forward in support of financial caps or liability cap is that unlimited liability would increase the operating costs for ship owners and operators. Also, it may be argued that unlimited liability could also make the business environment in which oil companies operate to be difficult.

However, whichever way one looks at it, it has been observed that:

‘...to achieve appropriate deterrence, injurers, should be made to pay for the harm their conduct generates, not less, not more. If injurers pay less than for the harm they cause, underdeterrence may result- that is, precautions may be inadequate, product prices may be too low, and risk-producing activities may be excessive. Conversely, if injurers are made to pay more than for the harm they cause, wasteful precautions may be taken, product prices may be undesirably curtailed.’¹⁰⁹

In essence, wherever the polluter-pays principle is inserted or utilised, especially in cases related to oil spills, it must seek to achieve its aim- to make the responsible party bear responsibility for his actions.

5. Challenges Hindering the Imposition of Liability for Oil Spill Clean-Ups in Nigeria.

The efficacy of the polluter-pays principle in preventing and controlling oil spills in Nigeria is called to question by the various challenges that would be analysed afterwards. This is particularly the case with challenges like vandalism and sabotage where the perpetrators of these acts are not identifiable. The polluter-pays principle will not be relevant or even practicable at that point because liability cannot be placed on anyone.

5.1 *Lack of Effective Penalties and Sanctions for Violations of Environmental Laws*

It is observed that ‘without real consequences for environmental violations, there is no incentive for multinational corporations to respect the environment in which they operate’.¹¹⁰ This observation is valid. The tendency for organisations and individuals to carry out illegal and substandard operations when they know that there are little or no consequences for their actions is very high. A clear example is the indictment by the United Nations Environment Programme (UNEP) which reported that in Ogoniland (Rivers State) industry best practices were not applied in the control, maintenance and decommissioning of oilfield infrastructure and that even Shell Petroleum Development Company (SPDC)’s own procedure in these areas were not applied thus this creating public safety issues.¹¹¹ Assuming relevant sanctions and penalties were implemented against SPDC and other violators of 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.¹¹²

5.2 *Lack of a Comprehensive Oil Spill Clean-Up Law*

¹⁰⁸ A liability cap or financial cap limits the liability of the responsible party to a stipulated amount.

¹⁰⁹ M Polinsky and S Shavell, ‘Punitive Damages: An Economic Analysis’ (1998) 3 Harvard Law Review 873.

¹¹⁰ Barisere Konne, ‘Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoni Land’ (2014) 47 Cornell International Law Journal 196.

¹¹¹ United Nations Environment Programme (UNEP), ‘Environmental Assessment of Ogoniland: Executive Summary’ (2011) < http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf> accessed 2 July, 2015.

¹¹² United Nations Environment Programme (UNEP), ‘Environmental Assessment of Ogoniland’ (2011) < http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf> accessed 2 July, 2015.

The problem of oil spill prevention and control in Nigeria cannot be solved without a comprehensive and adequate oil spill clean-up law. Although, extant laws¹¹³ have provisions dealing with oil spill clean-ups, these provisions are scattered all over. For instance, certain provisions relating to clean-ups are contained in the EGASPIN¹¹⁴ while the NOSDRA Act¹¹⁵ also has provisions relating to clean-ups contained in it. These provisions should be harmonised, revised regularly and implemented to the letter for effective clean-up operations to be recorded.

5.3 *Insecurity*

This is a major concern in Nigeria and especially in the Niger-Delta as regards oil spill incidents. Insecurity is due to an increase in the deadly activities of militants and terrorists. Some authors¹¹⁶ have observed that insecurity in Niger-Delta is as ‘...a result of resistance campaigns through the kidnapping of expatriates and demonstrating the inability of Nigerian Security Forces to stop attacks, as well as the sabotage of oil installations and the effective use of the global news media’.¹¹⁷ The implication of this state of insecurity in the Niger-Delta is that oil installations and facilities are not entirely safe. These installations are regular targets of militants and vandals who damage the oil installations in order to syphon oil from them and make use of the oil. It is reported that Nigeria loses about 120,000 to 150,000 BPD (barrels per day) to smugglers¹¹⁸ due to the problem of insecurity.

5.4 *Inefficiency of Monitoring Agencies:*

General inefficiency, lack of adequate funding, technology and manpower are the recurrent problems faced by monitoring agencies. The National Oil Spill Detection and Response Agency (NOSDRA) and the Department of Petroleum Resources (DPR) are two major agencies involved in dealing with oil spill incidents in Nigeria. It is observed that oil companies usually decide when oil spill investigations take place.¹¹⁹ Oil companies usually provide transport to the site of the oil spill investigations and they provide technical expertise, which the regulatory agencies such as NOSDRA and the DPR do not have.¹²⁰ Specifically, NOSDRA is saddled with the responsibility of ensuring proper clean-up and remediation of affected sites of an oil spill incidences.¹²¹ Thus, NOSDRA is at the fore front of dealing with oil spill incidences while the DPR is given the statutory responsibility of ensuring compliance to petroleum laws, regulations and guidelines in the oil and gas industry.¹²² A relevant example here regarding NOSDRA is the Amnesty International report that oil spill investigations are usually led by oil company personnel and not NOSDRA.¹²³ NOSDRA is reported to be usually notified by text or letter when an oil spill investigation will take place.¹²⁴ It is expected that since NOSDRA is the main regulatory government agency saddled with the responsibility to deal with oil spills, it should take the lead in oil spill investigations rather than oil companies taking the lead in oil spill investigations.

5.5 *Inadequate Enforcement of Environmental Laws and Guidelines:*

This is a major issue when it comes to imposing liability on the polluter. Relevant government agencies do not carry out their roles adequately. Thus, provisions of the National Oil Spill Detection and Response Agency (Establishment) Act No.15 2006 and EGASPIN as regards liability of the polluter may not be strictly adhered to or enforced. The benefits of the polluter taking responsibility for his actions for oil spill incidents in Nigeria cannot be realised without strict enforcement and implementation of existing environmental laws and guidelines.

6. **Enhancing the Imposition of Liability for Oil Spill Clean-Ups in Nigeria using the Polluter-Pays Principle: Recommendations on the way forward.**

From the forgoing discussions and analysis and especially bearing in mind the consequences of oil spills, the conclusion that can be drawn is that there is a need to deal seriously with the menace of oil spills in different countries and especially in

¹¹³ NOSDRA Act and EGASPIN.

¹¹⁴ For example see paragraphs 8.0 ‘Liability, Compensation and Sanctions’.

¹¹⁵ See section 6 (3).

¹¹⁶ P Oromareghake, R Arisi, M Igbo, ‘Youth Restiveness and Insecurity in Niger Delta: A Focus on Delta State’ (2013) 13 Global Journal of Human Social Science Political Science <<http://socialscienceresearch.org/index.php/GJHSS/article/view/594/541>> 5 December 2014.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Amnesty International, ‘Bad Information: Oil Spill Investigations in the Niger Delta’ (2013) <www.amnesty.org> accessed 25 November 2014

¹²⁰ Ibid.

¹²¹ National Oil Spill Detection and Response Agency (Establishment) Act No.15, 2006 (NOSDRA Act), sections 6 & 7.

¹²² Nigerian National Petroleum Act Cap. N123 L.F.N. 2004 Section 10 (2) (b)

¹²³ Amnesty International, ‘Bad Information: Oil Spill Investigations in the Niger Delta’ (n119).

¹²⁴ Ibid.

Nigeria. Drastic and consistent steps must be taken by the federal government, oil companies and other stakeholders in the oil and gas industry. In order to succeed in combating the scourge of oil spills using the polluter-pays principle, this article makes the following vital recommendations.

Stiffer penalties and sanctions for violators of environmental laws especially as regards oil spills must be put in place. There is the very high tendency that potential violators would think twice before they cause any damage to the environment through oil spills when they know that the consequences of their actions are grave. Moreover, the National Oil Spill Detection and Response Agency (Amendment) Bill 2012 (NOSDRA Amendment Bill 2012) should be passed into law. Section 8 (1) (d) of the NOSDRA Amendment Bill 2012 provides for liability limit for as much as N15, 000, 000, 000 (fifteen billion naira) for oil spill from any onshore facility and/or deep-water port. This kind of provision is encouraged and it is hoped that when this bill is passed into law, this provision among others would be effectively implemented.

A comprehensive oil spill clean-up law must be in place for a successful fight against oil spill incidents to be recorded. This law must provide specific details on how to ensure that oil spill incidents are prevented or dealt with immediately after they have occurred. The law must have provisions providing specifically for the polluter-pays principle and it must in clear terms provide for environment-friendly clean-up processes. Details of the lead agency responsible for clean-ups in Nigeria must be provided in such law. Provisions dealing with the imposition of liability for oil spill incidents scattered in different legislations can also be harmonised into this single comprehensive law which is revised regularly to meet current best practices in the oil and gas industry. A step in the right direction would be the passage of the NOSDRA Amendment Bill 2012 into law.

The problem of insecurity in Nigeria and in the Niger-Delta especially must be dealt with so that the imposition of liability on polluters would be successful. Insecurity would make it difficult for the responsible party to be successfully identified and held accountable for the damage done to the environment. A state of security will ensure that relevant oil facilities and installations are well protected and those that eventually destroy such facilities are held responsible for their actions.

Moreover, monitoring agencies such as NOSDRA and the DPR should be well funded and equipped to effectively deal with oil spill incidents. These agencies should have clear mandates and roles as regards oil spill incidents. In particular, NOSDRA must have the necessary manpower and technical expertise to monitor and deal with oil spill cases efficiently. With the necessary tools and funding, NOSDRA will perform better as a regulatory agency. NOSDRA will implement the relevant provisions of the appropriate statute and make sure that polluters are brought to book.

Furthermore, environmental laws and guidelines must be implemented to the letter for a successful imposition of liability on the polluter. Usually, it is not that laws providing for the imposition of liability are limited but these laws are not effectively implemented and enforced by the regulatory agencies saddled with the responsibility of enforcement due to corruption or lack of commitment to combat the menace of oil spill.

7. Conclusion

This paper examined the role the polluter-pays principle plays in the imposition of liability for oil spill clean-ups in Nigeria and argues that despite the fact that the principle is essential and relevant to the battle against the menace of oil spill incidents in Nigeria; its enforceability is rather weak and ineffective. Cases of oil spill incidents are still recorded almost on a daily basis in the Niger-Delta region of Nigeria thus, this calls to question the deterrent nature of the polluter pays principle and its continued relevance and application to oil spill incidents in Nigeria. The importance of a pollution-free environment cannot be overemphasised. Parties responsible for oil spills must be identified and held liable for their actions and they must clean-up the environment and made to compensate those affected by the harm they have caused. For the polluter-pays principle to be efficacious in deterring oil spills in Nigeria the recommendations above should be implemented to the letter and lapses in the regulatory system set-up to deal with oil spill incidents in Nigeria must be constantly reviewed and fixed by stakeholders in the oil and gas industry. Moreover, there must be proper implementation and enforcement of laws relating to the environment especially laws dealing with oil pollution and oil spills. This would help early containment of the oil that is spilled and prevent greater damage to the environment. It is believed that if the polluter-pays principle is taken more seriously the occurrence of oil spills in Nigeria would reduce to a very large extent.

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